

Babu Lal Bajpai

Vs

State of U.P.

Criminal Appeal No. 339 of 1980

(P.B. Sawant, R.M. Sahai JJ)

24.11.1992

JUDGMENT

1. Mr. Sushil Kumar, Senior Advocate is appointed as amicus curiae on behalf of the appellant to assist the Court.
2. The appellant-accused in this case was prosecuted for the offence under S. 5 (2) read with clause (a) of sub-sec. (1) of S. 5 of the Prevention of Corruption Act read with S. 161, I.P.C. for allegedly having accepted an amount of Rs. 75 / - as a bribe for sanctioning the bills of the complainant contractor. The prosecution case is that at the relevant time, the appellant was employed as an Accounts Officer with the Lucknow Electric Supply Undertaking. He was, in fact, on deputation from the Railways. One of his duties was to pre-audit the bills given by the contractors like the complainants for the supply of goods made to the Undertaking. The case of the prosecution is that at the relevant time, two bills of the complainant were pending sanction. According to the prosecution further he had made a demand of bribe to the extent of 2 per cent of the amount of the said bills. Accordingly, a trap was arranged and on 11th March, 1970, the accused was caught in the actual act of accepting Rs. 75 / - which were paid by the complainant as a bribe to him.
3. At the trial, excepting the Magistrate, no other independent witness was examined, all the prosecution witnesses being members of the raiding party. After examining thoroughly the evidence led by the prosecution and also taking into consideration the version of the accused as given in his examination under S. 313, Cr.P.C., the trial Court came to the conclusion that the prosecution had failed to establish the charge against the accused and acquitted him of the said offence.
4. Against the said decision, the State preferred an appeal to the High Court and the High Court by the impugned judgment reversed the acquittal and convicted the accused of the offence in question and sentenced him to 6 months' imprisonment on each count and to pay a fine of Rs. 2,000/-.
5. With the help of the counsel for the appellant-accused and the State, we have gone through the judgment of both the courts below, as well as the evidence on record and have come to the conclusion that there was no tangible reason for the High Court to interfere with the finding of acquittal recorded by the trial Court. In the first instance, the trial Court has recorded a finding that at the relevant time, there was no motive for demanding and accepting the bribe because no bill was pending before him for pre-audit. Secondly, there was no independent witness examined although it was possible for the prosecution to secure one to witness the actual transaction. The only witness who could be said to be independent was the Executive Magistrate who was asked by the District Magistrate to accompany the raiding party for laying the trap. Even this witness, in his deposition, has failed to support the prosecution on the most material point, viz., the actual acceptance of the

money by the appellant as was the case of the prosecution. On this point, in his evidence he has stated that after the complainant gave a signal by putting his hand on his head, he proceeded to the shop where the trap was laid. By that time, both the Deputy Superintendents of Police who were the members of the raiding party also came there from a hiding. The two Police officers disclosed their identity to the accused. It is only then that the witness reached the shop. When he reached the shop, all that he saw was a bundle of notes lying on the floor of the shop near the chair of the accused.

6. The case of the accused is that the complainant had tried to thrust the money in his pocket and he had resisted the said attempt, and thrown down the money on the floor. This version of the accused has been supported by the prosecution witness Raghbir Singh who is the adjacent shopkeeper and in whose shop the testing of ultra violet rays on the currency notes was made. Since he was aware of what was going to happen he had naturally moved near the shop of the trap. According to this witness he was standing outside the said shop and had heard the conversation inside the shop where the trap was laid. There is no reason why this witness who is a stranger both to the prosecution as well as to the accused would support the version of the accused, as stated above, if that was not the true version. The trial Court has also relied upon, and according to us rightly, this version of the said prosecution witness. These are two of the most important reasons given by the trial Court for acquitting the accused. The High Court has ignored these reasons and has tried to substitute its own finding which unfortunately is based on surmises. We are, therefore, more than satisfied that this was not a case where any interference with the finding of the trial Court was called for. In the circumstances, we are of the view that the impugned order of the High Court deserves to be set aside and the appellant-accused should be acquitted of both the charges.

7. Accordingly, we allow the appeal, set aside the order of conviction and sentence of the accused on both the charges and acquit the accused of the offences in question. The bail bonds of the accused shall stand discharged. Appeal allowed.

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