

State Vs. Har Prasad Sharma

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Court : Allahabad

Decided On : Sep-27-1957

Reported in : AIR1958All334; 1958CriLJ586

Judge : Randhir Singh and ;A.N. Mulla, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417 and 423;
[Evidence Act, 1872](#) - Sections 133; [Indian Penal Code \(IPC\), 1860](#) - Sections 161;
[Prevention of Corruption Act, 1947](#) - Sections 5(2)

Appeal No. : Criminal Appeal No. 520 of 1955

Appellant : State

Respondent : Har Prasad Sharma

Advocate for Def. : Sri Ram Asrey Misra, Adv.

Advocate for Pet/Ap. : Addl. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Randhir Singh, J.

1. This is an appeal on behalf of the State against the acquittal of one Har Prasad Sharma, who was prosecuted under Section 161, I. P. C. and section 5 (2) of Act II

of 1947,

2. It appears that the accused-respondent was station master at Sikandarpur in June 1953 and earlier. Vendors of milk and other milk products carry milk from places in the vicinity of Delhi to Delhi by train and they obtain monthly tickets for travelling by train. One Puran Lal, who was a milk vendor, also used to go to Delhi daily with his milk products and for this purpose he used to obtain monthly tickets for the journey to Delhi and back.

3. Towards the end of May 1953, it was alleged on behalf of the prosecution, Puran Lal was travelling along with other milk vendors in a compartment and they were discussing about the payment of Rs. 5/- per mensem to the station master, who used to charge the sum in excess of the sum due, as illegal gratification. This conversation was overheard by L. S. Sharma, Watcher, Anti-Corruption Department, Northern Railway, Delhi, who also happened to be travelling in the same compartment at that time. He felt interested and contacted Puran Lal. Information was conveyed to Sadhu Ram, Sub-Inspector, Special Police Establishment, and Puran Lal stated that in the normal course of his business he would be obtaining a monthly ticket on the 3rd June, 1953, and that arrangement for laying a trap for watching this payment of bribe to the station master, Har Prasad Sharma, may be made.

Consequently an application was made to the District Magistrate and a trap at which a Sub-Divisional Magistrate was to be present was arranged. On the appointed date and time Puran Lal came to the Magistrate and he had in his possession currency notes of the value of Rs. 37/-. A search of the person of Puran Lal was made and the numbers of the currency notes were noted on a piece of paper by the Magistrate. His statement was also recorded. This having been done, the party consisting of the Magistrate, Puran Lal, and some others went to the Railway Station to watch the payment of the bribe by Puran Lal. Puran Lal is said to have paid Rs. 37/- although the monthly Railway fare was Rs. 31/8/- in accordance with the practice of Har-Prasad Sharma of charging Rs. 5/- in excess of the true fare. A sum of annas -/8/- was returned to Puran Lal and on a pre-arranged signal being given the Magistrate entered the office and searched

Har Prasad Sharma.

Currency notes of the value of Rs. 37/- were recovered from his person and a recovery list was drawn up. The statements of Puran Lal and Chhotoy Lal, who happened to be present at the time when the payment was said to have been made, were recorded under Section 164 of the Code of Criminal Procedure by the Magistrate. A report of the raid was made to the District Magistrate and after the investigation had been done a charge-sheet was submitted against Har Prasad Sharma.

4. The defence of Har Prasad Sharma was that he did not take any bribe. He denied the recovery of the notes from his person and stated that Puran Lal had come and placed some money in the shape of currency notes on the table and that it was this money which was subsequently recovered by the Magistrate. He definitely denied the recovery of the money from his person.

5. The learned Special Judge, who heard the case, entertained doubt about the recovery of the money from the person of Har Prasad Sharma and acquitted the accused respondent. The State has come up in appeal against this order of acquittal.

6. In an appeal against an acquittal the main point to be considered is whether the appraisal of evidence made by the trial Court could be said to be an impossible appraisal or the conclusion arrived at by it could be said to be a conclusion which could be derived from the evidence adduced to the case. In essence, the finding should be perverse or at any rate an impossible finding on the evidence in the case. Even if this Court could on the evidence produced in the case come to a different finding, this circumstance alone would not justify the setting aside of an order of acquittal.

7. In the present case it was alleged on behalf of the prosecution that Har Prasad Sharma put one currency note of the value of Rs. 5/- into his mouth and produced only Rs. 32/- and it was only after the Sub-Inspector had forcibly taken out the currency note from the mouth of Har Prasad Sharma by putting his fingers into the mouth that the currency note of Rs. 5/- was recovered. No mention of this course

of conduct of the accused respondent was made in the recovery list, nor does it find a place in the statement of either of the two witnesses Chhotelal or Puran Lal recorded under Section 164 of the Code of Criminal Procedure at the time when the recovery was made. It has been argued on behalf of the State that this incident of recovery had been mentioned in the report submitted by the Magistrate to the District Magistrate after the raid had been made and also in the report submitted by the Sub-Inspector Sadhu Ram.

It is, however, in evidence that both these documents were written some hours after the recovery had been made and the recovery memo, and the statements of the two witnesses Puran Lal and Chhotey Lal had been recorded. What transpired between the recording of the statements and the writing of the reports could not be brought out as no evidence could be led by the prosecution or by the defence on this point. The omission of a mention of this specific conduct of the accused respondent which was material in this case from the documents prepared immediately after the recovery was a very suspicious circumstance and if the learned Special Judge entertained a genuine doubt about the recovery in the manner indicated by the prosecution, he cannot be said to have taken an impossible view. No doubt we are unable to endorse some of the conclusion arrived at by the learned Judge with regard to the purpose of the raid.

The payment of money in this case to the station master was in the normal course of business and the transaction was not a got up offence staged only for the purpose of detecting the payment of bribe. A distinction has to be made in the various kinds of trap or payments of bribe. There may be a case in which a bribe is going to be paid in the normal course of business and on information being received by the police a trap is arranged for watching this normal course of transaction. No legitimate objection for laying such a trap can be made but there may be another case in which it is not the intention of a bribe giver to pay any bribe and it is only the police which wants that a bribe should be paid in order that an offence may be staged and detected.

It is this kind of trap which has been disapproved in the pronouncements of the various High Courts as also by the Supreme Court. We are, therefore, of the

opinion that the trap in the present case was a legitimate trap but it is not only the trap which will prove the case. The recovery of the notes from the person of the accused is an important link in proving the case and if the recovery becomes doubtful no conviction can be maintained. It is not open to us to set aside an acquittal,' as remarked above, even if we come to a different conclusion on the evidence produced in the case.

We cannot, on looking to the circumstances of the case, come to the conclusion that the suspicion which was raised in the mind of the learned Special Judge could not possibly have been raised and the view taken by him cannot be said to be an impossible view. The acquittal of the accused respondent cannot therefore, be set aside.

8. As a result, this appeal instituted by the State against the acquittal of Har Prasad Sharma is dismissed. The accused respondent is on bail. The bail bonds are cancelled.

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