

C.N. Peters Vs. the State

C.N. Peters Vs. the State

SooperKanoon Citation : sooperkanoon.com/459300

Court : Allahabad

Decided On : Feb-05-1959

Reported in : AIR1959All483; 1959CriLJ924

Judge : A.N. Mulla, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 4; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 109, 162, 251A and 342; [Evidence Act, 1872](#) - Sections 6, 8 and 24

Appeal No. : Criminal Appeal No. 292 of 1957

Appellant : C.N. Peters

Respondent : The State

Advocate for Def. : Badruzzaman, Adv. holding brief for ;Addl. Govt. Adv.

Advocate for Pet/Ap. : Manik Chand Jain and ;Nirankar Nath Saxena, Adv.

Disposition : Appeal dismissed

Judgement :

A.N. Mulla, J.

1. Sri C. N. Peters has been convicted under Section 161, I.P.Code and sentenced to fifteen months' rigorous imprisonment and a fine of Rs. 300/-, in

default further rigorous imprisonment for three months by Sri K. L. Arora, Special Judge, Lucknow. The charge against the appellant is that he demanded and received illegal gratification from Kalapnath Lal Guard on 14-2-1955 at about 4 P. M. in the Guards' Running Room at Gorakhpur Railway station.

2. The prosecution story is that the appellant was posted at Gorakhpur as the Claims Prevention Inspector in the North Eastern Railway. Kalapnath Lal was a Guard in the same railway with his headquarters at Gonda. On the 8th February 1955, Kalapnath had taken a goods train from Gonda to Gorakhpur and when the train reached Gorakhpur it was found that some bags were stolen away from one of the wagons in the train. A report was made to the Government Railway Police and enquires were started.

The appellant who was present at Gorakhpur joined this inquiry on his own without being directed to do so. On 9-2-1955, the appellant demanded Rs. 300/- from Kalapnath Guard as illegal gratification telling him that he will give a favourable report, but if this money was not paid to him, he will give an adverse report. Kalapnath did not like to part with Rs. 300/- and so he went to Sri D. D. Pathak, a Railway Sectional Officer attached to the Special Police Establishment and he handed a written report to him on 11-2-1955. Sri Pathak contacted the Superintendent of Police, Special Police Establishment and Sri M. A. Ahmad, Inspector of Police was deputed to lay a trap.

This trap was accordingly laid on the 14th of February and it was arranged that the illegal gratification should be paid in the Gurads' Running Room at about 4 P. M. In the trap two independent witnesses were also included. The witnesses who were present at the time when this money was handed over to the appellant were (1) Sri Istafa Husain, M. L. A., (2) Sri S. C. Dhar, (3) Sri D. D. Pathak (4) Sri R. B. Singh, (5) Sri K. B. Khare, (6) Sri Nakchhed Tewari and (7) Inspector M. A. Ahmad, Out of the seven witnesses named above, two were Railway Sectional Officers, two were railway guards, one was an inspector of police and two were independent persons.

The transaction was watched by these witness ses who also heard the talk that proceeded the transaction. The moment the money was handed over and

pocketed by the appellant Sri M.A. Ahmad disclosed his identity and took the search of the appellant. It may be mentioned that the numbers of the notes which constituted Rs. 300/- paid as illegal gratification were noted down earlier and their list was prepared.

These Rs. 300/- were recovered from the pocket of the appellant, who produced them himself. When the numbers were compared, they were found to be the same lot. Sri M. A. Ahmad asked the appellant to explain the presence of these notes with him and thereupon the appellant wrote down a statement in his own hand which is marked Ex. P. 3. Sri Istafa Hussain then recorded the recovery Memo, and this was signed by the other witnesses also. Sri M. A. Ahmad then procured the necessary sanction and after investigating the case prosecuted the appellant.

2A. The defence of the appellant is not easy to understand. He has been changing his defence from place to place and from court to court. In Ex. P. 3 the statement which he made spontaneously on first questioning, he took up the stand that these Rs. 300/- were taken by him from Kalapnath as a loan. In his second statement made before Sri Zutshi on 10-4-1956 he took up the following stand:

'Q. Is it a fact that you obtained a sum of Rs. 300/- in G. C. Notes from Sri Kalapnath Lal on 14-2-1955 as illegal gratification for showing official favour to him?

A. The sum of Rs. 300/- was given to me by Sri Kalap Nath Lal on 14-2-1955 at about 4 P. M. to be given to the Officer who would have dealt with his case. I took that amount under pressure of certain friends to do a good turn to Sri Kalap Nath Lal with definite understanding that it would be returned to him in case the Officer dealing with his case refused to accept that money within two or three days.

Q. Did you realize at the time that your acting as go-between was departmentally objectionable and also illegal?

A. I did not realize the gravity of receiving such tainted money for payment to another departmental Officer as I had no intention to pay such money to any officer but to return it to Sri Kalap Nath Lal himself.

Q. Is it a fact that after counting the G.C. Notes of the total value of Rs. 300/- you put them in the right inner pocket of your coat?

A. I never counted the G. C. Notes but I did pocket them.

Q. Did Inspector M. A. Ahmad ask you whatever you wanted to say by way of explanation or otherwise about your having accepted the sum of Rs. 300/- from Sri Kalap Nath Lal Guard? A. Yes.

Q. Is the statement now marked Z after being shown to you the same statement under your signature and in your writing that you furnished to Inspector M. A. Ahmad on his inquiry? A. Yes.'

The third statement of the appellant was recorded on 24-5-1956. It is on the same lines as the earlier statement dated 10-4-1956, but certain other admissions were made by the appellant and I will incorporate the relevant questions and answers. They are as follows:

'Q. Is it a fact that after you pocketed the money, Messrs. Istafa Hussain, S. C. Dhar, R. S. O., D. D. Pathak, R. S. O., R. B. Singh Guard, K. B. Khare Guard, Nak Ched Tiwari and Inspector M. A. Ahmad arrived at the spot?

A. Yes, it is correct; six or seven persons did reach there about the same time. Out of these 6 or 7 persons, only two were known to me from before and they were R. B. Singh Guard and K. B. Khare guard, others were strangers to me. One of these strangers also disclosed his identity to me as M. A. Ahmad, Inspector Police. D. D. Pathak was also known to me, but he did not reach there immediately, he had come shortly after. I did not know Istafa Husain, S. C. Dhar and Nak Ched Tiwari at that time at all, but now I have come to know them, it is correct as well that these three named persons had also reached there on that day.'

As regards Ex. Z, (which is now Ex. P. 3) a further question was put at this stage which is also important.

'Q. Is this correct as well? A. No (it was not correct. I did not accept this amount of Rs. 300/- from Sri Kalap Nath Lal as a loan at all. This mistaken statement was

noted by me because of my confusion.'

The fourth statement of the appellant was recorded on 5-11-1956. The appellant took up an entirely new stand in this statement. I will again quote the relevant questions and answers:

'Q. Is it a fact that you obtained a sum of Rs. 300/- in G. G. Notes from Sri Kalap Nath Lal on 14-2-1955 as illegal gratification for showing official favour to him?

A. No this is incorrect. I did not obtain any such amount from Kalap Nath Lal as illegal gratification at any time. Kalap Nath Lal did pay Rs. 300/- to me in the Guards Running Room on that very day and this was the amount borrowed by Kalap Nath Lal from, me previously which was so returned by him to me on that day.

Q. Can you state when this amount was bor-rowed from you by Kalap Nath Lal?

A. Kalap Nath Lal had borrowed Rs. 500/-from me about 1 or 11/2 years previous to this refund of Rs. 300/-. Rs. 200/- had already been refunded to me earlier in instalments, while this amount of Rs. 300/- was refunded to me in full discharge of his liability on that very day.'

The appellant then admitted that he had placed these Rs. 300/- in his pocket. He also admitted the presence of the prosecution witnesses immediately after he had received this money. He also admitted that when Sri M. A. Ahmad asked him for his explanation, he wrote out Ex. Z (Ex. P. 3) and banded it over to him, I will, however, repeat the question and answer relating to this point because the counsel for the defence objected to the question put by the Court:

'Q. Is the statement now marked 'Z' after being shown to you the same statement under your signatures and in your writing that you handed over to Inspector M. A. Ahmad on his enquiry?

A. Yes, this written explanation was tendered by me to Sri M. A. Ahmad at that very time.

(Note: This question was objected to by the learned defence counsel, but the objection was overruled).

Q. Was this explanation of yours correct as well?

A. No. This explanation of mine was not correct. This statement shows as if I had borrowed the amount of Rs. 300/- as a loan from Kalap Nath Lal, but the real fact was otherwise; Kalap Nath Lal had borrowed a loan from me, and this amount of Rs. 300/- was refunded by him to myself. This wrong explanation was given by me in writing because of confusion.

Q. Were you examined as an accused in the Court of Sri B. N. Zutshi, Special Judge on 10-4-1956?

A. Yes, I was examined in that court, but I do not remember the date of that statement.

Q. Did you give the statement as shown to you and marked 'A' by this Court?

A. Yes, I did give this statement.

(Note:-- The attention of the accused was specially drawn to Q. No. 13 and the reply recorded in the above statement, which was specially read over to him.)

Q. Do you want to offer any explanation why you have now given a contrary statement in this court today?

A. My statement in the court of Sri B. N. Zutshi has been wrong. I had given that wrong statement because of confusion and also because I was given to understand by Sri D. D. Pathak that if I confessed my fault, I will escape punishment.

Q. Why this false case has been concocted against you?

A. This false case has been concocted against me by Kalap Nath Lal, against whom I was making enquiry, and in order to save his own neck.'

3. The last statement of the appellant was recorded on 24-1-1957, but there is nothing in his statement which need be quoted.
4. The appellant in defence examined five witnesses. One of them did not support the defence version at all and was declared hostile by the defence. The remaining four witnesses do not help the defence case at all. They only prove that the money was not paid at the place suggested by the prosecution but outside in the verandah. The only important defence witness is Sri Satyapal Singh (D.W. 3), but his evidence also is of no use, for even if it is accepted in its entirety it would only show that Kalapnath was wanting to meet the appellant the trial court has dealt with the evidence of these defence witnesses in detail and has very rightly come to the conclusion that this evidence is worthless.
5. I have quoted from the statements of the appellant, because it is admitted by the appellant that the tainted money reached his hands. Once the prosecution establishes the receipt of the tainted money by an accused person, then an onus is cast on the accused to rebut the presumption against him and offer an explanation Section 4 of the Prevention of Corruption Act runs as follows:
- 'Where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, at shall be presumed unless the contrary is proved that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.
- Provided that the court may decline to draw such presumption if the gratification or thing aforesaid is in its opinion so trivial that no inference of corruption may fairly be drawn.'
- A sum of Rs. 300/- cannot by any means be described as trivial. A presumption, therefore, arose against the appellant and it was for him to rebut this presumption.

The appellant in his attempt to rebut this presumption has taken several stands which are incorporated in the extracts quoted above. The multiplicity of these stands by itself destroys the bona fides of any one of these stands.

These stands are on the face of them unbelievable and they are quite inadequate to rebut the presumption against the appellant. The appellant started by claiming that he had taken a loan and order by taking up the stand that he had realized a debt. In between he accepted that this money was taken by him to be given as illegal gratification to some superior officer in order to help Kalap Nath Lal.

I am therefore, satisfied that the appellant stands condemned by his own statements irrespective of the evidence led by the prosecution. Advances of Rs. 300/- are usually given either on the basis of a pronote or at least some writing is taken from the person to whom the money is advanced, even if it is a transaction between friends.

6. As regards the last stand taken up by the appellant that also cannot bear analysis. The appellant admitted that the first Rs. 200/- were paid in several instalments and yet he contends that a bigger sum of Rs. 300/- was paid by Kalap Nath Lal just in one lump sum. There is also evidence that Kalap Nath Lal collected Rs. 100/- from a witness in order to make up this sum of Rs. 300/-. I fail to understand that if Kalap Nath Lal had to incur a fresh debt to make this payment why should he pay back the entire amount and not pay only Rs. 200/- to the appellant. The appellant was not charging any interest nor was he pressing Kalap Nath for repayment.

I am, therefore, satisfied that the defence is merely a desperate attempt of a sinking man to clutch at straws. The position he had taken earlier amounted to a confession of guilt, for this was no defence in law that he was not going to pocket this money himself, but was going to offer it to some other superior officer. When this was realized that the statement given by the appellant was by itself incriminating it had to be changed and the explanation offered at the last stage is quite unbelievable and cannot be accepted.

7. Again, if the last explanation of the appellant is sound, there was no reason for Kalap Nath Lal to report against the appellant and contact the authorities so that a trap should be laid. The appellant as a matter of fact was a benefactor of Kalap Nath Lal, for he advanced Rs. 500/- to him without any bond or paper and gave plenty of time to Kalap Nath Lal to pay back this amount. He was also not pressing his demand and Kalap Nath Lal voluntarily paid him a lump sum of Rs. 300/- and then got him falsely implicated. It does not stand to reason at all.

8. The trial court has discussed the evidence of the prosecution witnesses and has reached to right conclusions. There are clear indications that the appellant unnecessarily interfered with this inquiry and took down unfaithful statements in order to make Kalap Nath Lal feel a little nervous. This can only be interpreted as an exercise of pressure to coerce Kalap Nath Lal to meet his demand.

The evidence of the independent witnesses who were associated with this trap is also absolutely convincing Sai Istefa Husain M.L.A., is a respectable witness who showed his responsibility as a citizen when he agreed to associate himself with this trap. I only wish other responsible citizens would also agree to help the investigating agency in such matters.

Sri Istafa Husain had no animus against the appellant and admittedly the appellant did not even know him from before He occupies a status and he could not have been under the influence of the police. His statement, therefore, deserves the highest consideration and he not only supports the story that Rs. 300/- were recovered from the possession of the appellant, but he also supports the talk that preceded this transaction.

He proves that a demand of illegal gratification was made and then Kalap Nath Lal paid this amount. I am, therefore, of the opinion that the case against the appellant is fully proved by the statement of Sri Istafa Hussain alone irrespective of all other evidence. The other witnesses also give the same version and there is no reason why their statements should not be believed It is, therefore established that an illegal demand was made and Kalap Nath Lal paid Rs. 300/- as illegal gratification to the appellant.

9. Now I will deal with some of the contentions advanced before me by the counsel for the appellant. Really there are two points of law that have been pressed before me. The first point is that the earlier statements made by the appellant are inadmissible in evidence and the only statement which can be considered is the statement dated 24-1-1957.

The argument is that Ex. P. 3 was a statement made during the course of investigation and so it is hit by Section 162, Criminal P.C. As regard, the statements dated 10-4-1956, 24-5-1956 and 5-11-1956, it was contended that they were statements under Section 251-A, Criminal P.C., and they cannot be used as evidence against the appellant.

In continuation of this argument it was contended that only the statement dated 24-1-1957 was a statement under Section 342, Criminal P.C., and the contents of this statement alone can be used against the appellant.

10. As I have believed the prosecution witnesses these contentions really do not arise and I would not have even considered these arguments advanced before me if there had not been a decision of the Madhya Pradesh High Court, which partly supports these contentions. This decision is in *State v. Sitaram Dayaram*, AIR 1958 Madh Pra 69. This is a Bench decision and reliance has been placed on the following extract in this decision:

'The consideration of the documents referred to in Section 173, Criminal P.C., and the examination, if any, of the accused under the provisions of Sub-sections (2), (3), (4) and (5) of Section 251-A, Criminal P.C., is only for the purpose of determining whether prima facie there is any ground for discharging the accused and for presuming that he has committed an offence.

'The examination of the accused under Section 251-A, Criminal P.C., must necessarily be with regard to the material against him in the documents referred to in Section 173, Criminal P.C., and the answers given by the accused during such examination explaining those documents can at the most be the material on which a Magistrate can discharge the accused or frame a charge against him.

But the answers given by the accused do not constitute any evidence either for or against him. That being so, Section 342 (3), Criminal P.C., which applies to the answers given by the accused when he is asked to explain any circumstances appearing in the evidence against him, cannot be said to be applicable to answers given by the accused under Section 251-A when he is examined before the framing of the charge.'

11. The learned Judges in support of this opinion referred to a decision of the Supreme Court in *Vijendrajit v. State of Bombay*, AIR 1953 SC 247. With all respect to the learned Judges who gave the Madhya Pradesh decision, the view of the law taken by them does not appeal to me. I looked into the Supreme Court decision and the way I understood that decision, it was no authority for the proposition of law laid down by the learned Judges. Even the counsel for the appellant could not rely upon the decision of the Supreme Court quoted above as an authority for the proposition laid down by the learned Judges.

It seems to me that the learned Judges came to the conclusion that a statement under Section 251-A, Criminal P.C., is different from a statement recorded under Section 342, Criminal P.C. In my opinion there is only one provision of law in the Criminal Procedure Code under which the statements of accused persons are recorded. That provision of law is Section 342, Criminal P.C.

No statement of an accused person is recorded under any other section and Section 251-A, Criminal P.C. only mentions the stage at which the statement is to be recorded. In my opinion it is erroneous to say that any statement of an accused is recorded under Section 251-A, Criminal P.C. A trial court has a right to put any questions to an accused person at any stage and the record of every such statement would be under Section 342, Criminal P.C.

Section 342, Criminal P.C., however, makes it mandatory that the accused must be examined at one particular stage. Every statement of the accused, therefore, stands on the same footing and in my opinion it is incorrect to distinguish between the statements of the accused person and to say that one statement is more important than the other.

12. I have approached this question from another angle and I find that the view expressed above is not consistent with the frame work of the Criminal Procedure Code. A statement under Section 251-A, Criminal P.C., when it is taken by the Special Judge, is made in open court and usually the counsel for the accused is present. The accused is, therefore, in a better position to give a true statement and put forward his defence.

Under the Criminal Procedure Code, a statement recorded by a Magistrate under Section 164, Criminal P.C., if it amounts to a confession, is sufficient to hold him guilty. If the trial court comes to the conclusion that the statement made by the accused before the Magistrate was voluntary and true, it can convict the accused on the basis of that statement.

Obviously a statement under Section 164, Criminal P.C., is made in circumstances where the accused is in a far more unfavourable situation. A counsel is not present at that time near the accused and the Magistrate may record this statement either in open court or in his private chambers or even at his house. The Legislature could never have contemplated that a statement under Section 164, Criminal P.C., should possess more evidentiary value than a statement recorded at the stage of Section 251-A, Criminal P.C.

13. Again, I find that in a Sessions Trial, the case begins with the plea of an accused person. At that time there is no evidence on the record barring a charge sheet. Even this charge sheet is not final, for the Sessions Judge either accepts the charge-sheet or amends that charge sheet. Under Section 271 (2), Criminal P.C., an accused can be convicted on his plea of guilty alone.

This is another matter that as a rule of prudence and caution the courts usually do not convict the offenders on their plea of guilty, but there is no bar in law to convict them if they plead guilty. It is inconceivable to me that even in a murder case an accused may be convicted on his plea of guilty, but in the cases which are done by the Special Judge, even a statement at the stage of Section 251-A, Criminal P.C., possesses no evidentiary value.

I cannot accept this position. In my opinion a statement at the stage of Section 251-A, Criminal P.C., possesses just as much evidentiary value as the statement recorded later on after the evidence is recorded. They supplement each other and are parts of the same statement.

15. I may at this stage also mention that under Section 277 of the Code of Criminal Procedure, the statement made by an accused in a Sessions case before the Committing Magistrate is brought on record and is made substantive evidence. It seems incredible to me that a statement recorded by another court can be used as evidence by the trial court, but the statement which it has recorded itself cannot be used as evidence against an accused person. It is not necessary to multiply these reasons.

I am satisfied that the statements recorded at the stage of Section 251-A, Criminal P.C., are just as much an integral part of the statement of an accused as his subsequent statement. Any facts accepted in these statements can be used as evidence by the trial Court. I am, therefore, of the opinion that the trial Court was justified in taking into account the irreconcilable conflict that existed in the various statements of the appellant. It would have committed a grave error in assessing the evidence if it had not done so.

16. Even if the view taken by the Madhya Pradesh High Court is correct, it will not help the appellant in this case. In the statement dated the 5th of November, 1956, all these earlier statements were put to the appellant and he had offered explanations for making these earlier statements. They thus become a part of his statement dated 5-11-1956.

If it is held that even this statement cannot be used in evidence then it seems that the appellant has offered no explanation as to how this money reached his hands. It is in this statement alone that he has suggested the story of a refund by Kalap Nath Lal. It cannot be held that one part of this statement is admissible and the other part is inadmissible.

17. There is another aspect of the case on which I would like to comment. The statements of the accused are of two kinds. There are exculpatory statements and

inducatory statements. While inculpatory statements should be accepted with a great deal of caution and unless the law permits it, they should be excluded from consideration, but exculpatory statements cannot be placed on the same footing.

An exculpatory statement is the defence of the appellant and not a statement from which any inference of guilt can be drawn against him. The three stands taken by the appellant in this case were all exculpatory statements. None of them was an inculpatory statement and, therefore, these exculpatory statements cannot be excluded from consideration. That the appellant was changing his position time after time is another matter, but at every stage he was denying his guilt and was putting forward a different explanation.

18. The other question on which arguments were addressed to me was that Ex. P. 3 was inadmissible in evidence, as it was a statement given by an accused during the course of the investigation. It is not necessary for me to decide this point. Whether the investigation had started when the accused gave this statement to the investigating officer or not is not free from doubt.

The appellant gave a spontaneous explanation right at the moment when the crime was committed and, therefore, his first explanation amounted to *res gestae* within the meaning of Section 6 of the Indian Evidence Act. Illustration (a) of Section 6 of the Indian Evidence Act runs as follows:

'A is accused of the murder of E by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.'

I have no doubt that the statement Ex. P. 3 was part of the same transaction, but as I have observed above it is possible that the investigation had started earlier when this statement was made and so it may not be admissible because of the provisions of Section 162, Criminal P.C. In cases under Section 109, Criminal P.C., evidence as always led that the moment the accused was apprehended, he gave unsatisfactory answers and did not disclose his name but gave fictitious names.

Is this evidence inadmissible according to Section 162, Criminal P.C? If this evidence is admissible, 'then in my opinion the spontaneous statement made by an accused when an explanation is sought should also be admissible, especially when the statement is of an exculpatory character. It amounts to the conduct of an accused person and so is relevant under Section 8 of the Indian Evidence Act. However, I am not willing to give any definite opinion on this point.

19. In view of my findings and conclusions,I hold that the case against the appellant is fullyestablished. The sentence awarded to him cannotbe said to be excessive. This appeal is, therefore,dismissed. The appellant is on bail. He shouldsurrender forthwith to serve out the sentence. Theline should be deposited within one month.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com