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Adikando Satpathy Vs. the State

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Court : Orissa

Decided On : May-06-1966

Reported in : AIR1967Ori31; 1967CriLJ388

Judge : R.K. Das, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 116, 161 and 165A; Criminal Law (Amendment) Act, 1952 - Sections 6(1) and 6(2); General Clauses Act, 1897 - Sections 15

Appeal No. : Criminal Appeal No. 72 of 1965

Appellant : Adikando Satpathy

Respondent : The State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B. Mohapatra, ;R.K. Mohapatra and ;K.P. Acharya, Advs.

Disposition : Appeal dismissed

Judgement :

R.K. Das, J.

1. The appellant has been convicted under Section 165A of the Indian Penal Code and sentenced to undergo R. I. for two years.

2. P. W. 1 Japa Kissore Mohanty is a junior Sub Inspector of Police attached to Jagatsingpur Police Station in the District of Cuttack. Sometime in January 1964 he had gone to investigate a case lodged ill the instance of Kartik Satpathy, in case No. 1 of 1964, accnmanicd by some of his constables. While investigating that case, it is said, that at the instance of the present appellant some other accused persons, including Radhu Mallik and Babaji Mallik assaulted P. W. 1 and the constables. Accordingly P W 1 started a case against the appellant and ten others (Jagatsinghpur Police Case No. 4/64). The accused persons in this case filed an application under Section 494, Cr P. C., before the district Magistrate. Cuttack, for withdrawal of the said case.

The Additional District Magistrate who considered this petition (Cr. Misc. Case No. 23/64-Ext. 2), on 21-4-1964 called for the opinion of the Superintendent of Police regarding withdrawal of this case and adjourned the case to 18-5-1964 for the purpose. The Superintendent of Police in his turn by a letter dated 27-4-1964 (Ext. 6) asked for a report from the sub-inspector of Police, Jagatsingpur, whether the case can be withdrawn. After this letter, Ext. 6, reached the Jagatsingpur Police Station, it is alleged by the prosecution, the appellant in order to get a favourable report offered P. W. 1 a sum of Rs. 150 by way of illegal gratification and made him liable under Section 165A of the Indian Penal Code.

3. The prosecution story is that on 6-5 1961 at about 4-30 p.m. while P. W. 1 was busy in his work at the Police Station, the appellant along with some other accused persons in P. S. Case No. 4/64, such as Radhu Mallik. Aparti Mallik etc., came to the police station and called P. W. 1 outside of his room and told him that, they had filed an application for withdrawal of the case on which a report had been called for by the Supdt. of Police, The appellant then requested P. W. 1 to give a favourable report so that the case can be withdrawn. He asked the other accused persons who were then present there to beg apology of P. W 1 as a result of which the other accused persons prostrated themselves before the feet of P. W. 1 The appellant also asked to be excused. P W 1 denied knowledge of any such letter having been received at the police station, and so saying he came back to his seat and resumed his work.

Shortly after the appellant again came and requested P. W. 1 to handover the report to him personally so that, he would expedite the decision in the office of the Supdt. of Police and so saying he thrust a bundle of G. C. notes into the hand of P. W 1. P. W. 1 then caught hold of the appellant, and when he wanted to slip away from his grip, he caught hold of his Dhoti and raised a hue and cry and soon overpowered him brought him before the officer in charge. P. W. 3 and lodged Ext. 1, narrating the incident. P. W. 10. the Inspector of Police was authorised to investigate the case (Police case No. 90/64) and after completion of the investigation the appellant was prosecuted for an offence under Section 165A, I. P C., and was tried by the Special Judge, Cut tack, who convicted and sentenced him as hereinbefore stated.

4. At the trial the plea of the accused was one of a denial. His case was that he had been to Jagatsingpur Sub-Registrar's office on 5-5-1964 with a view to get a sale deed registered by Kalpataru Mohanty (D. W 2) in his favour for a consideration of a sum of Rs. 150. After the document was scribed, it could not be presented for registration on that day as the office was being held in morning and the Sub-Registrar had left his office by the time the document was made ready. So he, Kalpataru, the scribe of the document, Harihar Singh, D. W. 1 and the attesting witness Radhakrishna Satpathy (D. W. 3) and several others such as Nath Malik, Govind Charan Das were sitting in the southern verandah of the Sub-Registrar's office which is located in the same building as the Police Station. Though the consideration of Rs. 150 could not be paid for want of registration, the vendor Kalpataru wanted some payment to be made to him by way of advance for the expenses.

When the appellant brought out the money from his pocket for payment to Kalpataru, P. W. 1 came out from his nearby residence and called him twice, but the appellant did not listen to him. Later on he was prevailed upon to go near him and when he went near P. W. 1 with the money in his pocket, the latter snatched away the bundle of notes from his pocket. On protest by the appellant, there was some altercation between the two when P. W. 1 dragged him inside the Thana, kept the money on his table and forced him to write out something which the appellant did out of fear of molestation and assault. In support of this defence, the

appellant examined the aforesaid persons, viz., the scribe, the attestor and the vendor of the sale-deed. Ext. A.

5. In support of the prosecution a number of witnesses were examined including P. Ws. 1, 5 and 7 who proved the actual offer of the bribe by the appellant. Some other witnesses were also examined to prove that in fact there was a hulls at the police station raised by P. W. 1 accusing the appellant for having attempted to bribe him with a sum of Rs. 150 which had been seized at the police station. Thus the case of the prosecution is that the accused offered a bribe of Rs. 150 to P. W. 1 with a view to have a favourable report so that the case P. S. Case (No. 4/64) pending against him and others could be withdrawn.

6. P. W. 1 is the Officer to whom the money was offered as a bribe. His case in brief is that the appellant came to him with other accused persons in the aforesaid case and requested him to give a favourable report so that the case may be withdrawn and at the direction of the appellant, the other accused persons fell at his feet and begged to be excused and the appellant also apologized for what all had been done in the past. P. W 1 told them that he would look into the matter and then he went and resumed his work, when the appellant again approached , him and inserted the bundle of notes into his hands. P.W. 1 soon after handed over the money to P. W. 5 Prakash Chandra Roy who had been to the Police station in connection with the lodging of some information. P. W. 5 counted the notes and found them to be Rs. 150 which was seized under seizure list, Ext. 4.

It is the evidence of P. W. 5 that he came to the police station to lodge a report against one Sachikanta Patnaik. After lodging the report he was sitting in the verandah on the southern side. He noticed the appellant Adikando Satpathy and some others calling P. W. 1 and falling at his feet. They gave him some paper and told him about withdrawal of a case, and P. W. 1 said that he would look into the matter. This was on the northern side verandah of the Police Station. Shortly after while he was on the southern side of the verandah he again noticed the appellant calling P. W. 1 and when the latter came he caught hold of his left hand and thrust a bundle of notes into his right hand and tried to leave the place, but P. W. 1 caught hold of the appellant and raised a hulla and a number of people gathered

here.

P. W. 7 is another witness who had gone to the Sub-Registrar's office on that day to gel a document registered. It may be stated here that both the Sub-Registrar's office and the Police station are situated in one block and are contiguous to each other. It is the evidence of P. W. 7 that while he was sitting on the southern verandah of the building, he saw this incident According to him the appellant called P. W. 1 and requested him to give a report in his hand, but P. W. 1 told him that he would look into the matter and then he went in. The accused again called him and when P. W. 1 came out he pushed a bundle of notes into his hand P. W. 1 then caught hold of the accused and when the latter tried to escape he was over-powered by P. W. 1. P. W. 1 gave the bundle of notes to Prakash Babu (P. W. 6) who counted the money and found it to be Rs. 150.

P. W. 8 is the head-clerk of the office of the Sub-Registrar and P. W 9 is another clerk in the said office. Their evidence discloses that at about 4 p.m. on 5-4-64 they heard a hulla and on coming out they found P. W. 1 had caught hold of the accused in one hand with a bundle of notes in the other. To their query P. W. 1 replied them that the accused was offering him bribe, P. W. 9 also admits the presence of Prakash at the police station. These two witnesses. P. Ws 8 and 9 are of course not witnesses to the actual offer of the bribe but the circumstantial value of their evidence cannot be ignored. According to them, they saw P. W. 1 holding the accused in one hand and the bundle of notes in the other.

The other two witnesses are police witnesses, viz., P. W. 3 Kakir Charan Mohanty and P. W. 4 Purna Chandra Mohanty. P. W. 3 is the Officer-in-charge of the Police Station. In the afternoon of the date of occurrence he was working in his office along with P. W. 1 and others. He noticed a person loitering on the southern side verandah of the Police Station and being called by him P. W. 1 went out and a little after there was a hulla on hearing which the witness came out of the office and found P. W. 1 having caught hold of that man in the one hand and a bundle of G. C. notes in the other. P. W. 1 then reported to him that the said man was Adikanda the accused in the aforesaid G. R, Case who had offered the bundle of notes to him to get a favourable report regarding the withdrawal of the case. Then P. W. 1

handed over the money to P. W. 6 and lodged information Ext. 1 and drew up the formal F. I. R. (Ext. 5) for an offence under Section 165 A, I. P, C, He admits to have received the letter, Ext. 5 from the Office of the Superintendent of Police asking for his opinion and he submitted his report Ext. 7 stating that in the interest of administration the case should not be withdrawn. This report was given on 7-5-1964, that is two days after the occurrence.

P W 4 is an A. S. I. who was also working in the same office at the time of this incident. His evidence is to the same effect as that of P. W. 3 in all material particulars. Even if the evidence of P. Ws. 3 and 4 is rejected on the ground that they are colleagues of P W. 1 the evidence of P. Ws. 8 and 9 lends corroboration to the evidence of P. Ws. 1, 5 and 7 at least to the extent that the accused was found on 5-5-1964 in the premises of the Police Station at about 4 p.m. They heard a hulla and coming out of office noticed P. W. 1 had caught the hand of the accused in one hand and some currency notes in the other.

7. The accused also admits that he was caught by P. W. t with a sum of Rs. 150, but according to him it was in a different context. He admits to have gone there at about 4 p.m., on 5-5-64 and further admits that he had a sum of Rs. 150 though according to him the sum represents the consideration money kept by him to be paid to D. W. 2 under the sale-deed, Ext. A. According to him, on account of delay in the execution of the document, the same could not be registered that owing to the morning sitting of offices closing at 12.30. So the consideration was left with him and when he was about to pay some money to D. -W. 2 by way of advance, P. W. 1 appeared there and forcibly dragged him inside the Thana room, snatched away the money from his pocket and had falsely implicated him in a charge of bribery. In support of this part of his story ho relied upon the evidence of D. Ws. 1, 2 and 3. D. W. 1 is the scribe of the document. Ext. A. He does not support the defence version that P. W. 1 forcibly took away the money from the pocket of the accused.

There is no other evidence to support the plea of the defence except that of D. Ws. 2 and 3. Both of them come from the village Rambhaderpur the village of the accused. D. W. 2 is the vendor and D. W. 8 is the attestor under Ext. A. The

prosecution case is that these two witnesses are agnates of the accused and have come forward to support the case of the accused only to save him from the charge levelled against him. They however, do not admit that they are relations though their evidence discloses that they are concealing the truth in cross-examination D. W. 2 admitted that Banchhanidhi father of Adikanda (appellant) is the son of Dhaneswar and Dadhibaban is the grand-father of the witness. When it was suggested to the witness that Dadhibaban and Dhaneswar are brothers and therefore he is a cousin of the accused, the witness was unable to say if his grand-father Dadhibaban was the brother of Dhaneswar. It is difficult to believe that the witness did not know the name of the brother of his grandfather.

He admits that he was prosecuted for an offence under Section 457/380 and he was accused of having made his sister-in-law pregnant during the absence of his brother. Apart from the fact that he appears to be a relation of the accused, he appears to have some enmity with the police at Jagatsingpur as he had been prosecuted for some offences. It is also doubtful if the document Ex. A was executed that day. D. W. 2 was in need of money, so much so, that he asked for some advance out of the consideration money under Ext. A. But it appears that he was not eager to get the document registered. As appears from Ext. A the document was registered on 20-5-1964, that is a fortnight after the alleged execution. D. W. 2 admits that he did not request the Sub-Registrar if the Kabala could be taken up for registration on that day. The explanation for the non-registration of the document on that day is that the scribe could not complete the document earlier, and due to the morning sitting of the office the sub-registrar left his office by 12.30 p. m.

It however, appears from the evidence of the scribe (P. W. 1) that he began to scribe at about 10.30 a.m., and finished the document by 11 a.m. The attestor and the vendor came at about 11 a.m., and after the document was read over to him the witnesses were called upon to attest. If the whole document was scribed by 11 a.m., and when the vendor arrived at the place by about that time, there is no reason why it would not be presented for registration on that day. If the document could not be registered by 12.30 p.m., on that day, there is absolutely no reason for all these people to wait at the Sub-Registrar's office till 4.30 p.m., in the after-

noon. It appears from the evidence that some other accused persons in the G. R. Case No. 4/64 had also accompanied the appellant to the Police Station. In fact, P. W. 3 admits the presence of these persons on the southern verandah where the incident took place. There is no explanation as to why they would also be there at that time since they had nothing to do with the sale-deed, Ext. A. Thus, the evidence put forward by the defence is far from convincing and must be rejected.

8. Even if we ignore the evidence of the other police officials such as P. Ws. 3 and 4 on the ground that P. W. 1 being one of their colleagues, they might have come forward to support the case, there is absolutely no reason to discard the evidence of P. Ws. 5 and 7 who substantially corroborate the evidence of P. W. 1 that the accused thrust a bundle of notes into the hand of P. W. 1. It was contended that though the evidence of P. W. 1 is that the accused pushed the bundle of notes to his left hand, P. W. 5 comes with a contrary story that it was into the right hand of P. W. 1 that the money was thrust. This, however, is a discrepancy too minor to be taken note of. When there was a russel going on between P. W. 1 and the accused, it is just possible that the witness might not have noticed the particular hand into which the money was pushed and this itself is no ground to reject his evidence.

It was contended that though P. W. 5 went to lodge a complaint against Sachikanta Patnaik, no such document is forthcoming to satisfactorily explain the presence of P. W. 5 at the Police Station at the time of occurrence. But the presence of this witness at the police station has been stated by almost all the witnesses including P. W. 9, the clerk of the Sub-registrar's office, who has said that the money handed over to Prakash Roy was seized under seizure list Ext. 4, which also bears the signature of P. W. 5. Thus there cannot be any doubt about the presence of P. W. 6 at the police station and his statement about the thrusting of the money into the hands of P W. 1 appears to be true.

To the same effect is the evidence of P. W. 7. The evidence of P. Ws. 8 and 9 shows that they were working in their office at about the time of occurrence. No doubt, the evidence of P. W. 1 left to itself, might have been subject to some comment because definitely he was not in good terms with the accused and on

account of his previous enmity he might have entangled the accused in a case of this nature. But the evidence of the other witnesses such as P. Ws. 6 and 7 and the seizure of the money and the presence of the accused persons in P. S. Case No. 4/64 along with the appellant at the time of ocourrence at the police station leave no room for doubt that the accused did offer the money to P. W. 1.

9. Mr. Mohapatra, learned counsel for the appellant, contended that even assuming the story of offering bribe is held to have been proved, there is nothing to connect the said offer of bribe with any official act of P. W. 1. His contention is that it was not P. W. 1, but P. W. 3, who was in charge of the Police Station and was called upon by the Superintendent of Police to give his views about withdrawal of the case and therefore, P. W. 1 cannot be said to be in a position to show any favour or disfavour to the accused. In this connection he drew my attention to the charge the relevant portion of which runs thus :

'That you on or about the 5th of May, 1964, abetted P. W. 1 a sub-inspector of police in the commission of an offence under Section 161, I. P. C., by offering him Rs. 150 as illegal gratification, other than legal remuneration, as a motive or reward for showing favour to you and your co-accused persons in G. R. Case No. 25/64 in exercise of his official function to wit, to give a favourable report on a petition for withdrawal of the G. R. case and thereby committed an offence punishable under Section 166A, I. P. C.'

It was urged that the charge indicates that the motive for the bribe was to obtain a favourable report on the withdrawal petition from P. W. 1 and since it is not the official duty of P. W. 1 to give any such report and the evidence being that it was P. W. 3 who was the real person to give such report, and he was called upon to do so, the charge against the accused must fail.

10. No doubt, where the charge against the accused is under that part of Section 161 which refers to accepting of gratification for rendering any service or disservice to a person by a public servant, the charge should specify the other public servant who is to be approached for rendering such service. But where the other public servant is not so specified in the charge it would only mean that there is a defect in the charge and such defect is curable under Section 537, Cr. P. C.,

unless such error or omission has in fact occasioned a failure of justice. That apart, Section 165-A is a restatement of the offence of abetment of bribery under Section 161, I. P. C. Illustration (a) of Section 116 shows that, the offer of bribe would amount to an abetment under Section 116, and thus constitutes an offence under Section 165-A even without actual payment (See AIR 1956 Bom 61, Damodar v. State).

11. In the present case the accused was fully aware of the fact that P. W. 1 was the person who was aggrieved in P. S. Case No. 4/64 and it is at his instance the case was started though P. W. 3 as the officer-in-charge of the Police Station has to submit a report in response to the letter of the S. P. He knew that, P. Ws. 1 and 3 were working in the same office. The object of the offer to P. W. 1 may be, to arrange a favourable reply by P. W. 8 to facilitate the withdrawal of the case. At the trial, the accused must have understood the implication of the charge levelled against him.

In a case reported in AIR 1964 SC 492, State of Maharashtra v. Jagatsingh, it was held that where a person is a public servant in the very office where the appointment of the person giving the bribe is to be made and takes the money in order to get the appointment made, there is no further question of the charge or evidence indicating who was the other public servant with whom the services would be rendered. It is not necessary to show whether there was any other public servant who was to be approached where the public servant taking the money is in the very office by which the appointment would be made In such a case the person would be taking money for himself or for any other person in his office in order to do any official act or get it done. It is enough if it is shown that money, was paid to a public servant in a particular: department by which an order would be made and if it was taken for doing any official act in that department. Thus, the charge framed, in this case cannot be said to suffer merely because it does not show that the object of giving the bribe was to obtain a favourable report from P. W. 3, the officer-in-charge of the Police Station, and not P. W. 1.

12. There cannot be any doubt that the offer of the bribe is related to an official act, viz., submission of a report for withdrawal of the case. Even if the public

servant had no power to assist the accused, the question is not what the public servant would have been able to do, but the question is what the accused wanted him to do. In a charge under Section 165-A it is immaterial whether the public servant was not in fact in a position to do or to show any favour (See AIR 1959 All 707, Padam Sen v. State.)

13. It was urged that the Sessions Judge who tried this case was not duly appointed as a Special Judge specially empowered to try such cases, and as such the trial was illegal. The Criminal Law (Amendment) Act, 1952 which inserted Section 165-A in the Penal Code provides for appointment of Special Judges to try offences under Section 165-A. Section 6 (1) of that Act contemplates appointment of Special Judges. Section 6 (2) mentions the qualifications of persons to be appointed as such Special Judges. It runs thus :

'A person shall not be qualified for appointment as a Special Judge under this Act unless he is or has been a Sessions Judge or Additional Sessions Judge or an Assistant Sessions Judge under the Criminal Procedure Code (Act 5 of 1898).'

In the present case the Sessions Judge of Cuttack-Dhenkanal, was appointed as a Special Judge for the purpose of Criminal Law (Amendment) Act, 1962, by a notification of the Government of Orissa dated 16-2-1963.

14. Mr. Mohapatra urged that the notification should have been in the name of the particular person who is to be appointed as a Special Judge. But this contention is without any substance. Section 15 of the General Clauses Act, 1897 clearly lays down that where under any Central Act or Regulation a power is given to any person to fill any office or execute any function, unless it is otherwise expressly provided, any such appointment if it is made after commencement of this Act may be made in his name or by virtue of his office. In view of this provision the appointment of either a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge by virtue of their office is not invalid.

It cannot be disputed that the Special Judge who tried this case is a person who was duly qualified and appointed under the aforesaid section of the Cr. Law (Amendment) Act. This view also gets some support from a decision reported in

AIR 1965 Andh Pra 372, Public Prosecutor v. Sheriff. The contention that the Special Judge who tried this case was not competent to try the case must accordingly be rejected.

15. In the result, the conviction of the appellant must be maintained, but with respect to the sentence. I think R. I. for one year would be sufficient to meet the ends of justice in this case While therefore, maintaining the conviction of the appellant under Section 165 A I. P. C. I would reduce his sentence to a period of one year rigorous imprisonment, and with this modification in the sentence the appeal is dismissed.

16. The seized money shall be forfeitedto the State.

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