

Ramnarayan Patnaik Vs. the State

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Court : Orissa

Decided On : Jan-21-1988

Reported in : 1989CriLJ172

Judge : L. Rath, J.

Appellant : Ramnarayan Patnaik

Respondent : The State

Judgement :

L. Rath, J.

1. The conviction of the appellant under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and under Section 161 of the Indian Penal Code with imposition of sentence of R. I. for one year under the Prevention of Corruption Act with no separate sentence under Section 161, I.P.C. has occasioned this . appeal. P. W. 3 the informant, was a sweeper in the headquarters hospital at Sambalpur and had been previously also working in Talapatia Government Dispensary and while posted at Talapatia had applied for leave for six months. He had also been occupying a rented house while employed at Sambalpur and had made an application to the C.D.M.O., Sambalpur for being allowed to draw his leave salary and house rent allowance for a period of 21 to 22 months. Besides, he had also moved the C.D.M.O. for his transfer from Sambalpur either to Dhama or Themera. It is the prosecution case that a few days prior to 23-2-79, the date of

occurrence, P.W. 3 had met the C.D.M.O. for redress of his grievances when the appellant who was then the Head Clerk of the office of the C.D.M.O. had demanded Rs. 200/- from him as illegal gratification on promise of looking into his matters. P.W. 3 had expressed his capability only to pay Rs. 100/- with an assurance that the balance would be paid after his dues were reimbursed. The agreement was reached to pay the amount on 21-2-79. P.W. 3 borrowed a sum of Rs. 100/- from one hotel-keeper Singh Babu of Phatak area, Sambalpur but informed the matters at the vigilance office and lodged the F.I.R. Ext. 3. Acting on the report, the S. P., Vigilance registered a case and laid a trap. On 23-2-79 P.W. 3 met the Vigilance Officer and produced ten currency notes each of ten rupee denomination before him, the Magistrate and other members of the raiding party including P.W. 6 the overhearing witness. The numbers of the notes were noted down and they were all treated with phenolphthalein powder. After observing all formalities, the raiding party proceeded to the headquarters hospital. P.Ws. 3 and 6 alone proceeded ahead. Finding the appellant busy in conversation with some other clerks, P.W. 3 waited for about ten minutes outside and when the other clerks had left the room, he entered the same. On the appellant's query as to whether the amount had been brought, P.W. 3 replied in the affirmative and handed over the tainted ten rupee notes to him who received the same in his right hand and kept them inside his left chest pocket. He again brought out the currency notes and kept the same on his table. P.W. 3 then came out of the room and the overhearing witness signalled the raiding party who promptly came in and confronted the appellant and after disclosing their identity demanded production of the tainted currency notes. The notes were on the table. The appellant though nervous, yet took the plea that P.W. 3 had kept the bunch of notes on his table in spite of his protest. P.W. 5, the Sub-Inspector of Police, got the hands of the appellant washed and the handwash turned pink. The pocket of the appellant was also washed and the wash also turned pink in colour. The necessary seizures were made and after completion of investigation chargesheet was submitted.

2. The defence stand of the appellant was that P.W. 3 was a man of very dubious character, was addicted to drinking and was charged with several delinquencies and was finally dismissed from service. The appellant had never asked for any illegal gratification from him and on the date of occurrence while the appellant was

in the office room writing something P.W. 3 had come there and forcibly put some currency notes in his hand which he threw away telling him that he could not help him in any manner and instead advised him to approach the A.D.M.O., Sambalpur. P.W. 3 abused the appellant and left the notes on the table and went away. The appellant then kept his pen in his pocket and asked one Prusty, a peon of the office, to call P.W. 3 back and while he was again writing something by taking out the pen, the raiding party reached and purported to carry out the raid.

3. The prosecution, to establish the case, examined eight witnesses of whom the only two material witnesses to the occurrence are on the P.W. 3, the complainant, and P.W. 6 the accompanying witness. P.W. 6 in his evidence supported the defence version and stated that P.W. 3 offered some amount to the appellant and in spite of his protest and refusal to accept the same, P.W. 3 forcibly placed the same on the table of the appellant and came out of the room. The witness was permitted to be confronted by the Special Public Prosecutor with his previous statement under Section 161, Cr. P.C. where he had given a different version in line with the prosecution case. The witness is not one who inspires any credence and his evidence is not acceptable.

4. Thus, the sole evidence on which the case of the prosecution hinges is that of P.W. 3 who himself is the decoy witness and is the person who played the role of a bribe-giver. There is abundance of authorities that the evidence of such witness is that of an accomplice and hence a conviction on his evidence is ordinarily not possible unless there are strong reasons to solely base the conviction on such statement. In : 1958 CriLJ976 (State of Bihar v. Basawan Singh), a five-Judge Bench held, following : 1952 CriLJ547 (Rameshwar Kalyan Singh v. State of Rajasthan), that while the evidence of an accomplice is admissible in law, yet the Judge is to indicate in the judgment that he has had this rule of caution in mind, and should proceed to give reasons for considering it unnecessary to require corroboration. The decision was followed in : 1985 CriLJ504 (Khili Ram v. State of Rajasthan). A large number of case law have been cited at the Bar in support of the proposition that the evidence of an accomplice in a trap case is not worthy of acceptance unless independent corroboration is forthcoming. The position is too well settled and does not necessitate cataloguing all of them. But however it must

always be kept in mind, as was held in the very case of the Supreme Court in : 1958 CriLJ976 (Supra), that independent corroboration does not mean a corroboration of every detail of what the witnesses of the raiding party have stated and all that is required even in respect of evidence of an accomplice is that there must be some additional evidence rendering it probable that the story of the accomplice is true and it is reasonably safe to act upon it. Corroboration need not be direct evidence and even circumstantial evidence in that regard would be sufficient,

5. Viewed from such position of law, it is to be seen as to whether the evidence of P.W. 3 is of an acceptable quality so as to sustain the conviction of the appellant. It must be said at the outset that in this case there is no corroborative evidence either direct or otherwise so far as the evidence of P.W. 3 is concerned. The seizure of the tainted currency notes has not been made from the wearing apparels of the appellant. Admittedly, the notes were on the table. The only circumstance appearing against the appellant is that the solution after washing of his hand and pocket turned slightly pink as appears from Exts. 8 and 9. The appellant has given the explanation that he had been writing when P.W. 3 entered his room and thrust the . currency notes in his hand which he did not accept and threw them on the table and then kept his pen in the pocket which he subsequently brought out. It is the evidence of P.W. 3 that the appellant had accepted the notes, kept the same inside his pocket and then again brought out and kept the same on the table. No explanation has been given as to why the appellant, if he had kept the money in his pocket, would have again brought the same out and kept them on the table. The fact remains that by the time the raiding party arrived the notes were lying on the table. There is absolutely no other evidence to show that the appellant had actually kept the notes inside his pocket. If the version of the appellant is correct, then it is possible that under such circumstances the solution would also turn pink. The explanation is probable and hence without any corroboration of the evidence of P.W. 3 it would be risky to convict the appellant on such statement alone. A further factor which lends support to the probability of the defence case is that as would appear from Exts. 8 and 9, the seizure lists, one receipt and an one rupee note were also seized from inside the left side chest pocket of the appellant. If the tainted currency notes had been

kept in the same pocket, then phenolphthalein powder on those notes would have also come in contact with the one rupee note and the receipt which would have also produced the same pink solution and the evidence would have been damaging against the appellant. It is not known why the same was not done. Apart from such fact even the evidence of P.W. 3 exposes disturbing features justifying its rejection. His statement in the F.I.R., Ext. 3, lodged on 23-2-79 was that he had made the application to the C.D.M.O. since seven days, which means that the application for the desired reliefs had been made on 16th or 17th of February, 1979. In his evidence however he stated that he had applied to the C.D.M.O. fifteen days prior to the date of occurrence and on that date the appellant had called and asked for Rs. 200/- to be paid to him to facilitate the work. Thus, according to him, the application had been filed either on 8th or 9th of February and the demand by the appellant was alleged to have been made on that very date. He further stated in para 4 of his evidence that on the date he filed the application before the C.D.M.O. for his transfer, the appellant had met him while he was coming out of the office of the C.D.M.O. and demanded money from him. From Ext. 10 it appears that the application was made on 19-2-79 and thus the demand for illegal gratification made by the appellant would have been on the same date. A little later again his evidence was that the appellant had demanded the sum of Rs. 200/- on the day following the application for transfer. In this stage of the evidence, P.W. 3 does not inspire any confidence at all and hence it must be held that the charge against the appellant has not been established.

6. In the result, the appeal is allowed. The conviction and sentence against the appellant are set aside and the bailbond furnished, if any, by the appellant be discharged.