

Kesho Parshad Vs. State

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Court : Delhi

Decided On : Nov-15-1966

Reported in : AIR1967Delhi51

Judge : I.D. Dua. J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1)

Appeal No. : Criminal Appeal No. 22-D of 1966, from order of Special J., Delhi D-22-1-1966

Appellant : Kesho Parshad

Respondent : State

Advocate for Def. : Daljit Singh standing Counsel

Advocate for Pet/Ap. : D.R. Kalia, Adv

Judgement :

1) Kesho Pershad appellant appeals from his conviction under S.5(2) read with S.5 of the Prevention of Corruption Act and sentence of rigorous imprisonment for one year. He has also been convicted under S.161 of the Indian Penal Code and sentenced to the same period of imprisonment, the two sentences running concurrently.

2) The facts giving rise to this case are that one Mani Ram serving in the Municipal Corporation of Delhi as sweeper in the area of West Patel Nagar was immediately subordinate to Kesho Parshad, Assistant Sanitary Inspector, (accused -appellant). Mani Ram requested Kesho Prashad to accommodate the former's brother Ram Nath against a temporary vacancy. Kesho Parshad accordingly provide a job to ram Nath but on payment of Rs.5 as bribe. Later he received Rs. 15 and again Rs.30 more from Mani Ram as a consideration for allowing his brother Ram Nath to continue in the employment. A few days before 10-11-1964, Ram Nath lost his job and in order to re appoint him Kesho Parshad asked for more bribe. In order to put pressure on Mani Ram, the arrears of wages due to Tam Nath were also nto paid to him. Pressed y these harassing tactics, Mani Ram lodged a report with the Deputy Superintendent of Police, Anti Corruption on 10-11-1964, as a result where of Sri M.D. Singh D.S.P. organized a raiding party and sent Mani Ram to kesho Parashad for payment of the illegal gratification demanded by the accused

The raiding party consisting of Mani Ram, the D.S.P. and the toher witnesses and police officials, started from Tis Hazari at 3.45 P.M. and reached West Patel nagar at 4.45 P.M. The van was parked in a lane in West Patel nagar and Mani Ram along with two witnesses went to the office of the Corporation. The accused met Mani Ram in the office and demanded money from him whereupon he was told that the money was with Mani Ram's brother who was on duty, at a distance of about one furlong from the office. The accused replied that he would accept money at the place where roll call used to be taken. Mani Ram and the witnesses then proceeded to the tea stall by the side of the road where roll call was normally taken. The baildar named Risal came to the tea shop about 15 minutes before the accused did. On enquiry from Risal, Mani Ram was informed that on behalf of his brother Ram Nath, a sum of Rs. 30 and Rs.15 had already been received by the accused. Mani Ram told Risal that the accused was demanding antoher sum of Rs.25 but he had nto been able to arrange for more than Rs.20. Rissal is then stated to have suggested that Rs.20 be paid to the accused. In the meantime, the accused himself arrived at the tea stall

Mani Ram offered Rs. 20 to be accused as a consideration for providing job to his brother Ram Nath and also requested him nto to remove his brother in future. The

accused directed Mani Ram to put the two currency notes in his pocket which Mani Ram did. It may be pointed out that the numbers of two currency notes, of Rs.10 each and already been noted by the D.S.P. in memo Exhibit P.B. signed by Mani Ram. The official witnesses who had accompanied Mani Ram were standing when the aforesaid conversation, between him and the accused took place and when the payment was made. The accused looked around and rode was on his bicycle, but he was arrested at the spot by the police. The D.S.P. also came there and after disclosing his identity questioned the accused and searched his person. The currency notes Exhibits P.1 and P.2 were recovered from the pocket of the accused.

Numbers of these currency notes tallied with the numbers mentioned in memo Exhibit P.B. This story is amply corroborated by Rajinder Kumar P.W. 2. L.D.C. office of the Deputy Commissioner. Delhi Bhagwan Dass, head Constable, Anti Corruption P.W. 3, Sham Behar P.W. 10 and Shri M.D. Singh Asst H.A.P. Himachal Pradesh, P.W. 11 Shri M.D. Singh was D.S.P. Anti corruption at Delhi in November, 1964, Ram Nath brother of Mani Ram, has also appeared as P.W.6 and deposed that his brother and got him appointed in a leave vacancy as a temporary sweeper by paying first Rs. 5 as bribe to this accused and later his brother again paid Rs. 30 and Rs. 15 to the accused for allowing the witness to remain in office

3) This evidence was believed by the learned Special judge, Shri M.S. Joshi, who tried the accused.

4) On appeal, after taking me through the entire evidence, the learned counsel for the appellant has very strongly argued that the story is highly improbable because there is no logical reason as to why the accused should have asked Mani Ram to put the money in his pocket. There is also a suggestion in the evidence that the accused first desired that the money be paid by Mani Ram to Risal who had arrived at the tea stall a few minutes before the arrival of the accused. The learned counsel has contended that it is not explained as to why the accused should have suggested that the money be paid to Risal. I must confess my inability to see eye to eye with the learned counsel for the appellant when he argues that the story is

highly improbable., I do not find any element of improbability in the story. On the other hand, it seems to me to be highly likely that the accused instinctively first suggested that the money which was being paid on the road side be paid to Risal and when this was not agreed to, to have suggested that it be put in his pocket. I am unable to reject the prosecution evidence. On the ground of the story being improbable. I do not find any element of improbability in the story. On the other hand, it seems to me to be highly likely that the accused instinctively first suggested that the money which was being paid on the road side be paid to Risal and when this was not agreed to have. Suggested that it be put in his pocket. I am unable to reject the prosecution evidence on the ground of the story being improbable.

It is next been argued that there are no disinterested witness supporting the prosecution's version and, therefore this story should be discarded. It may be pointed in this connection that the accused in his statement completely denied the occurrence and stated that nothing of the kind had happened. Of course he led no defense. Except for the bald argument that the witnesses are connected with the raid party, nothing else has been urged to persuade me to reject their testimony. The evidence of the eye-witnesses, including that of Shri M.D. Singh, D.S.P. and Shri Bajinder Kumar L.D.C. Office of the Deputy Commissioner, cannot be brushed aside as wholly connected or untrustworthy and therefore liable to be rejected.

5) Granting that decoy or trap witnesses may to an extent be considered to be interested in a much as they may be inclined to see that their trap succeeds, in the final analysis. However, the necessity of corroboration of evidence from its very nature depends on the facts and circumstances of each, case including inter alia the status and calibre of the witnesses and the equality of their testimony. It is indeed a rule of caution devised to seek assurance and dispel doubts in regard to the credibility of the evidence and is dictated by judicial experience of the common course of human conduct. No hard and fast rule demanding rigid adherence need or can be formulated to be followed in all cases without considering the background, the totality of circumstances and the intrinsic quality of testimony in each case. In the case in hand, I am fully convinced that on the evidence and the material on the record, the offence has been brought home to the accused -

appellant beyond the possibility of a reasonable doubt.

6) On behalf of the appellant my attention has been drawn by Shri Kalia to a decision of P.D. Sharma, J. In *Kharaiti Lal v The State*, 1965 Dlt 362 whereas Shri Daljit Singh for the State has cited a decision by Bedi, J in *Tarsem Lal v. State* 196 PLR 1102 Air 1965 Pun 27. In the former case, after observing on the facts and circumstances that the witnesses associated with them by the Anti - corruption raid party, could not be considered independent, the court added that the Anti - Corruption Department in order to avoid such criticism should always make an earnest effort to associate outsiders having some status in life and in case it is not possible for them to do so they should join senior officials working in various departments of the Delhi Administration while conducting raids of the present kind. In the latter case it was observed that merely because a person appears for the police as a witness. It is not enough to dub him as a stock witness and make his evidence altogether unreliable unless some strictures are passed against him or he has been disbelieved by a competent Court. In this last reported case, reference has also been made to a decision of the Supreme Court in *Raja Khima v State of Saurashtra*, : 1956 CriLJ426 in which the presumption of acting honestly has been applied to police officers as well.

I consider it unnecessary to deal at length with these decisions for in my opinion, each case has to be dealt with on its own peculiar facts. It is however, desirable to point out that corruption is the deadliest enemy of every free civilized society; more so in an equalitarian welfare democratic set-up like ours. Not only does corruption in official and semi-official spheres hit the economically and socially low strata of society harder than the comparatively better placed citizens, but it also tends to breed dislike for and want of faith in the set up which tolerates corruption. And the longer corruption is tolerated in a political set up the wider and deeper its tentacles spread, with the result that even the agency created to root out corruption may have to be closely watched in its activities. Keeping this aspect in view Courts in my opinion, have to scrutinize each case, with great care in their attempt to see that neither is an accused person made a victim of police chicanery nor is the anti-corruption agency unduly obstructed in lawfully discharging its duty to bring to book the guilty persons.

The normal instinctive disinclination of private citizens to readily agree to take part in anti-corruption raids or traps also deserves to be noticed. It is unnecessary to go into the background of this disinclination. But it would be inadvisable to ignore this aspect. There was a passing reference that smaller firms are being proceeded against, but this by itself would be no ground for the law not taking its course in cases like the present.

7) For the reasons forgoing, this appeal fails and is dismissed. The appellant must surrender to his bail-bonds to undergo the remaining sentence.

CK/JRM/G.G.M.

8) Appeal dismissed.

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