

**Anand Sarup Vs. the State**

**Anand Sarup Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/680203](http://sooperkanoon.com/680203)

**Court :** Delhi

**Decided On :** Jan-30-1987

**Reported in :** 32(1987)DLT20

**Judge :** M.K. Chawla, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 161 and 165A; Prevention of Corruption Act - Sections 5(1) and 5(2); [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 161 and 313

**Appeal No. :** Criminal Appeal No. 417 of 1977 (Against order of D.C. Agarwal Special J., Delhi, D/- 30-11-1977)

**Appellant :** Anand Sarup

**Respondent :** The State

**Judgement :**

1. The present appeal by Anand Sarup is directed against the judgment and order dt/- 30-11-1977 of the learned Special Judge, Delhi holding him guilty under Section 161, I.P.C. and S. 5(2) read with S. 5(1)(d) of the Prevention of Corruption Act. He was sentenced to undergo R.I. for one year on each count and a fine of Rs. 100/- only; in default of payment of fine to further undergo R.I. for two months. Both the sentences of imprisonment were directed to run concurrently.

2. In order to appreciate the challenge of his conviction it is relevant to keep in mind few salient features of the prosecution case.

3. Hari Babu Vashisht is a tenant. His landlord had filed an eviction case against him. The case was decided in his favor. The landlord had preferred an appeal which was pending in the court of Shri M. K. Chawla, the then Additional District Judge. The next date of hearing was 5th August, 1976. Hari Babu Vashisht asked his son Shekhar Vashisht to apply for a certified copy of the order of the lower court dt/- 31st January, 1976. This was required to be filed in the appellate court. The copying Agency gave the date as 19-6-76. On that date, the copy was however not ready. On 3-8-76, Hari Babu Vashisht himself went to the Copying Agency (Civil). He enquired from the accused, who was posted as L.D.C. about the fate of his application. The accused informed him that his application was not available and that he should apply afresh. Hari Babu Vashisht was not satisfied with the reply. He approached Shri Shanti Narain Gupta, in charge Copying Section. On Shri Gupta's request Hari Babu moved a fresh application for the copy on the same day and gave the same to another Clerk for registration. That clerk had given the date for collecting the copy as 10th August, 1976. As the copy was required to be produced on 5th August, 1976, Hari Babu Vashisht again approached the in charge Copying section. Shri Gupta made an order that the copy be prepared and given to him on the next day. Hari Babu Vashisht also approached the accused for urgent need to the certified copy mentioned in the said application. The accused assured him that in case he pays Rs. 10/- as bribe, the work will be done. Hari Babu Vashisht agreed to pay the said amount on the next day.

4. In the meantime Hari Babu Vashisht approached the Anti Corruption Branch at Tis Hazari Delhi and lodged the report. The case was marked to Pt. Chander Sain, Inspector. He recorded the statement, summoned two independent witnesses, completed the formalities of mixing the two currency notes of denomination of Rs. 5/- each with phenolphthalein powder and noted down their numbers. The complainant was sent along with the two witnesses to the Copying Agency. The panch witnesses were given clear instruction to remain near the complainant, to hear the talk and observe the passing of the currency notes to the accused. On

reaching the office of the Copying Agency on the next date, the complainant asked the accused if the certified copy was ready. The accused then asked him if he had brought the money, to which he replied in the affirmative. The accused then directed Hari Babu to come inside. On teaching near him the accused said 'give the money'. The complainant took the notes and handed over the same to the accused. At that time one of the Panch witnesses was standing outside window No. 1 while the other was watching from outside window No. 2. Immediately after handing over the two notes to the accused, the complainant rubbed his hands and gave the required signal to Pt. Chander Sain, Inspector and the two witnesses. They immediately rushed to the spot and caught hold of the accused by his hand. The Inspector asked the accused if he had accepted the bribe from the complainant to which he replied in the affirmative. The inspector then arranged for a glass of water, got the hand of the accused in one of the Chemical dipped and his pocket of the pant washed in the other glass. The solution turned pink. The inspector then completed the formalities at the spot. After completing the investigations in due course of time, challan was filed in court.

5. The accused when examined under Section 313 of the Cr.P.C. inter alia, took up the stand that at no point of time Shekhar Vashisht son of the complainant approached him for the supply of certified copy. However, he admitted that Hari Babu Vashisht came to him on 3-8-1976 with a slip. On examining the record he informed the complainant that his application was missing and that he should apply afresh. He also took the complainant to Shri Shanti Narain Gupta, in charge of the Copying Agency who also advised him to make a fresh application on which Sh. Gupta ordered that the copy should be supplied to him on 4th August 1976. The accused denied the prosecution version that on 4-8-1976 Hari Babu Vashisht had contacted him at window No. 1 or presented slip or he ever asked him to come inside the room. He also denied having accepted any amount from the complainant or a sum of Rs. 10/- was recovered from the left side pocket of his pant by Inspector Chander Sain. According to him on 3rd August, 1976 the complainant exchanged hot words with him on account of missing of his application and on 4th August, 1976, when he came inside to enquire about the certified copy, he tried to put something in the pocket of his pant. And he prevented him from doing so. Just then the police inspector entered the room and

asked him to raise hands.

6. In support of the case the prosecution examined as many as 17 witnesses while the accused produced only one witness in his defense. The learned lower court, as observed earlier, on consideration of the oral as well as documentary evidence on record convicted and sentenced the accused, the result of which is not to the liking of the appellant.

7. The only material question that requires determination is as to whether the currency notes Ex. P-1 and Ex. P-2 of the denomination of Rs. 5/- each were accepted by the accused as illegal gratification voluntarily or an attempt was made to insert these notes in the pocket of his pant with a view to involve him falsely in a corruption case.

8. Before advertng to this question it will be relevant to keep in mind the status of the complainant, after the introduction of S. 165A of I.P.C. The Supreme Court in a case Panalal Damodar Rathi v. State of Maharashtra, : 1979 CriLJ936 laid down the following guide-lines :-

'that there could be no doubt that the evidence of the complainant should be corroborated in material particular. After introduction of S. 165-A of the I.P.C. making the person who offers bribe guilty of abatement of bribery the complainant cannot be placed on any better footing than that of accomplice and corroboration in material particulars connecting the accused with the crime has to be insisted upon.'

9. To what extent his evidence is to be corroborated a note of caution has been laid down in the judgment reported as the State of Bihar v. Basawan Singh, : 1958 CriLJ976 . On this aspect the Supreme Court lays down as under :-

'The uncorroborated evidence of an accomplice is admissible in law but it has long been a rule of practice which has virtually become equivalent to a rule of law, that the Judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice. Where the offence is tried by a Judge without the aid of a jury, it is necessary that the Judge should give some indication

in his judgment that he has had this rule of caution in mind and should proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he considers it safe to convict without corroboration in that particular case.'

10. The second note of caution which the court has to keep in mind is that in a case of bribery, mere recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable.

11. Applying the principles of law referred to above to the facts of the present case it can safely be held that the learned court has failed to come up to the expectations of the above rules of caution. The reasons are not far to seek. In the first instance both the panch witnesses P.W. 2 L. N. Filok and P.W. 3 Saran Gulati, whose services were requisitioned by the Inspector on 4th August, 1976 to be the panch witnesses, have not supported the prosecution case at all. Both of them have gone to the extent of saying that they neither heard any conversation between the complainant and the accused nor observed him passing the currency notes to the accused. In fact they were standing at a position from where they could not have a glance at the transaction. Both of them reached at the spot when the inspector had already caught hold of the accused. Their evidence thus does not advance the case of the prosecution. Secondly, the report of the Chemical examiner is so far as the insertion and recovery of the notes from left hand pocket of the pant of the accused is concerned, did not certify the presence of phenolphthalein powder. This circumstance is also against the prosecution.

12. Now only the evidence of the complainant is to be seen, if at all it advances the prosecution version. The evidence on record goes to show that neither on 3rd or 4th August, 1976 Hari Babu ever came in contact or had the occasion to deal with the accused. In fact the accused had no occasion to make a demand or accept the bribe as alleged. On 3rd August, 1976 when the complainant was informed that his application for supply of certified copy is missing, the matter was brought to the notice of the in charge Copying Section, who in turn required the complainant to file a fresh application. According to Shri Shanti Narain Gupta, in charge Copying

Section the fresh application was moved by the complainant at about 4.30 p.m. and the slip Ex. P.W. 2/G was issued to him by another receipt clerk. Shri Gupta directed the said clerk that copy should be prepared and delivered to Shri Hari Babu definitely on 4th August, 1976 as he was to produce the same before the Court on 5th August, 1976. To this effect also a note was recorded on the application itself, by Mr. Gupta. The Clerk concerned prepared a Rucker for the record keeper Mauza clerk concerned and got collected the file on the same day. However Mr. Gupta went on to say that on 4th August, 1976 at about 2.30 p.m. the complainant came to him and enquired about the certified copy. He then asked Mr. Nanak Chand who was sitting opposite his seat as to what had happened to that copy. Nanak Chand told the in charge copying section that the copy is being compared and that within a short time it would be ready for delivery Nanak Chand supported this version. This part of the prosecution evidence goes to show that the accused had no occasion to deal with the receipt of the application, preparation of the copy or its delivery thereof to the complainant on any of these two dates. It is not understood as to why the complainant should pay the money when the accused was not at all connected either with the issue or preparation of or in any way concerned in helping the complainant in getting the certified copy. In fact Hari Babu was sure to get the copy, after the in charge had passed the order in this behalf. The evidence of the complainant does not find corroboration from any reliable quarters. Rather the prosecution witnesses cut across his stand.

13. It is the case of the prosecution that two currency notes of Rs. 5/- each smeared with phenolphthalein powder were kept wrapped in a piece of paper before delivering the same to the accused. Unfortunately neither the paper used as wrapper was recovered from the accused nor produced by the complainant at that time. Even the investigating officer did not make any attempt to locate the said paper or dipped it in the solution to certify that the notes were mixed with phenolphthalein powder. In fact there is no worthwhile Explanation as to where that wrapper vanished.

14. Furthermore there are a number of contradictions in the statement of the complainant itself which go to the root of the matter. It is the case of the complainant that on 3rd August, 1976 when he was told about the misplacement

of his application for certified copy he contacted the in charge copying section, Mr. Shanti Narain Gupta. At that time Mr. Gupta is alleged to have enquired from him if he had a talk with the dealing Assistant at the counter to which the complainant replied that he had already talked to him. At this Mr. Gupta told the complainant that he should do whatever the dealing Assistant had told him to do. This part of his statement does not find place in his statement recorded under Section 161 of the Cr.P.C. with which he was duly confronted. On the other hand it has come on record that the accused was not the dealing clerk on that day. The second material contradiction brought on record is the handing over of the second application to the accused. The name of the accused does not find mention in his earlier statement Ex. P.W. 12/A wherein it is recorded that the second application was entertained by another clerk and the slip was also given to him by the said clerk. He also admitted that the date given on his application was mentioned by the same clerk and not by the accused. The third contradiction is with respect to the manner of demand and payment of bribed amount to the accused. Before the Court the case of the complainant is that when he showed the slip Ex. P.W. 2/G to the accused, the accused asked 'Laye Ho' to which he replied 'Haan' thereafter the accused asked him to come inside. This part of the very material ingredient of the demand unfortunately does not find mention in his statement Ex. P.W. 12/A. The confronted portion is as under :

'I do not remember if I made the statement before the I.O. that when I came to the window to collect the copy and showed him the slip, the accused asked me 'Laye Ho' and I replied 'Yes' (Haan).'

This part of the statement does not find place in the statement recorded by the police under Section 161 of Cr.P.C. This contradiction by itself knocks down the demand of bribed amount by the accused from the complainant.

15. As a result of the above discussion it can safely be concluded that the prosecution has failed on all the fronts firstly there is absolutely no corroboration to the solitary statement of the complainant, secondly there are material contradictions in the statement of the complainant itself, thirdly the recovery of money by itself, even if admitted to be correct, divorced from the circumstances

under which it was paid is not sufficient to convict the accused, fourthly, the report of the Chemical Examiner knocked down the basis of acceptance of the bribe and lastly, the circumstances to indicate that the accused was not at all concerned with the preparation of the certified copy or delivery thereof either on 3rd or 4th August, 1976.

16. In the result, the appeal is allowed. The order dt/- 30th November, 1977 of the Special Judge, Delhi is set aside. The accused is acquitted. The bail bond furnished by the accused is hereby discharged.

17. Appeal allowed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**