

Harbhajan Dass Vs. the State

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Court : Delhi

Decided On : Jan-30-1985

Reported in : 1985(8)DRJ309

Judge : Charanjit Talwar, J.

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

Appeal No. : Criminal Appeal No. 102 of 1982

Appellant : Harbhajan Dass

Respondent : The State

Advocate for Pet/Ap. : D.C. Mathur and; M.L. Sachdev, Advs

Judgement :

Charanjit Talwar, J.

(1) This is an appeal filed by Harbhajan Dass challenging his conviction under Section 161 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act vide judgment dated 7th May, 1982. He has also challenged the order dated 18th May, 1982, sentencing him to three years' rigorous imprisonment under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act for the offence of criminal misconduct and to three years' rigorous imprisonment under Section 161 of the Indian Penal Cede. He was

also directed to pay a fine of Rs. 500.00 in relation to the charge under Section 5(2) of the Prevention of Corruption Act and in default of payment of the fine he was directed to suffer further rigorous imprisonment for six months. The sentences, however, were directed to run concurrently.

(2) It is not necessary to notice the prosecution case in detail as it has so been noticed in the judgment under appeal. However, briefly- the allegations of the prosecution were that on 30th September, 1980, Public Witness .Basakha Singh had ledged a written complaint. Exhibit Public Witness 1/A, with the Central Bureau of Investigation, New Delhi, alleging that the appellant, who was at the relevant time employed as Inspector (Customs), had demanded a bribe of Rs. 300.00 From him for reducing the custom duty on a 'ear tape stereo' which had been sent to him from Kuwait and was to be collected by him from the foreign post office, New Dielhi. On receipt of the complaint a case was registered and a trap was organized by Mr. A.A. Khan, Deputy Superintendent of Police for the next day, i.e., 1st October, 1980. All the necessary formalities were observed by the Investigating Officer in the presence of two independent witnesses Partap Singh Public Witness 2 and Ram Kishan Public Witness 10. The three currency notes of Rs. 100.00 each. Exhibits P/1 to P/3, which were to be delivered to Harbhajan Dass were treated with Phenol Phathale in powder and were returned to Basakha Singh after explaining to him the effect of that powder. He was also instructed to hand over the notes only on a specific demand to be made by Harbhajan Dass and he was to give an agreed signal to the raiding party after the bribe amount had been passed. Public Witness . 2 Partap Singh who is an Assistant Engineer in the Vigilance Department of Delhi Telephones was instructed to hear the conversation between Basakha Singh and the appellant herein and it was also impressed upon him to particularly watch the transaction of the handing over of the money.

(3) At about 11a.m.the raiding party reached near foreign post office. The members of that party look up position near a tea stall situate near the boundary wall of the adjoining building. At about 1p.m. Harbhajan Dass along with one Suresh Kumar, a clerk in the same office and Jagdish Chander Public Witness ., a friend of Basakha Singh who had accompanied him to the foreign post office earlier on 29th September, 1980 as well as on 30th September, 1980, to find out

about the delivery of the said 'car tape stereo' and in whose presence the appellant had agreed to reduce the duty on that stereo subject to the condition that he would be paid Rs. 300.00 by way of bribe, came out of the post office. On reaching the tea-stall the appellant told the complainant to accompany him and they started walking on Kotla Road which is by the side of the Foreign post office. While going together the appellant, it is stated, told Basakha Singh that he had reduced the duty on car stereo From Rs. 600.00 to Rs. 420.00 and that, therefore, he should pay him Rs. 400.00 instead of Rs. 300.00 which he had demanded earlier. Basakha Singh showed his inability to do so as he had brought only Rs. 300.00 as per the demand. On that the appellant accepted the three G.C. notes offered by the complainant. On the agreed signal being given the Investigating Officer A.A. Khan (P.W. 11) who was walking on the other side of the road rushed towards the appellant and caught him by his left hand after disclosing him his identity. The case of the prosecution is that on hearing the name of Mr. Khan, Suresh Kumar the companion of the appellant who was also going along with him took to his heels. Some of the members of the raiding party chased him and apprehended him He was brought back to the place where the appellant and Mr. Khan were standing. It is stated that as Mr. Khan had caught hold of the appellant's left arm only, the appellant thus was able to take out the bribe money from the right pocket of his pants with his right hand. The prosecution case further is that lie folded the G C. notes in his right hand, put the notes in his mouth and swallowed them. It appears that an attempt was made by a Sub-Inspector of Police, who was in the raiding party, to extract the currency notes from the mouth of the appellant but he was unsuccessful. Thereafter, hand-wash of the hands of the appellant was taken. The right pocket of the appellant's pant was also dipped into a solution of sodium carbonate and the three colourless solutions, it is stated, turned into pink. The solutions were sealed in three separate bottles. Formalities regarding the hand-wash being sealed into bottles etc. were gone into at a nearby house at Kotla Road. The prosecution case further is that the appellant was taken to Jaya Parkash Narayan Hospital for a stomach wash. The hospital authorities, however, referred the case to the police hospital as according to them there was no need to admit the patient. Endorsement referring the case to the police hospital has been proved as Exhibit Public Witness 11/C. The trap witnesses Partap Singh

and Ram Kishan deposed to the facts which occurred at the police hospital. As the deposition of those witnesses on this aspect has a bearing on (he decision of this case, it is useful to notice that part of their statements. P.W.2 Partap Singh states 'After the completion of proceedings at Kothi No. 44, I along with Ram Kishan, accd. Harbhajan Das Dsp Mr. Khan and few other persons went in a car to Lnjp Hospital, New Delhi. Mr. Khan instructed other members of the raiding party to take Suresh Kumar to the office of the C.B.I. in the other car. Mr. Khan Dsp requested the doctor at the hospital for taking the stomach wash of the aecd. but he could not do so. From there we went to the police hospital where the stomach wash of accd. Harbhajan Dass was taken and x-ray was also taken. The stomach wash did not come in the currency notes and so it was not preserved. Public Witness . 10 Ram Kishan slates 'The accd. was then taken to J.P. Hospital for stomach wash. The doctor on duty however refused to assist in the matter. Then, the accd. was taken to Police Hospital. The accd. was made to vomit and x-ray and screening of stomach was also taken. Nothing however came out. He was then taken to Hindu Rao Hospital.'

(4) The out-door patient ticket prepared by the medical officer of the police hospital, however, merely shows that the case was referred to Hindu Rao Hospital by him. That ticket has been exhibited as Public Witness . 11/D.

(5) At this stage I may note that the Public Prosecutor was given permission to put questions to Partap Singh by way of cross-examination. The questions were mainly directed to show that he had resoled from his earlier statement regarding the fact of actual passing on of the money. In his examination in-chief this witness had emphatically stated that he was unable to see the passing on of the money. In an answer to the questions by the Public Prosecutor, he gave his reasons for not having been able to see the actual passing on of the money. At this stage, what is important to note is that the learned Prosecutor did not ask any questions to this witness regarding the stomach wash which had been conducted at the police hospital. At any rate the statement of Ram Kishan Public Witness . 10 to the effect that 'the accused was made to vomit and x-ray and screening of stomach was also taken', has been accepted in toto by the prosecution.

(6) The further case of the prosecution that it was in the Hindu Rao Hospital where the appellant had been brought from the police hospital that he had spat out the currency notes when he was not being watched and that the stomach wash which was allegedly handed over by one doctor to the Investigating Officer in a bottle which bottle was sealed by him by a 'C.B.I.' seal and not with a hospital seal, was the one which was sent to Central Forensic Science Laboratory, R.K Puram, has to be assessed with a due care. Obviously, the appellant had been made to vomit at police hospital. According to Partap Single the stomach wash was not preserved whereas according to Ram Kishan the accused was made to vomit but nothing came out. It is therefore, clear that the currency notes could not have been retained by the appellant after the stomach wash. It is the prosecution allegation that when he was taken to Hindu Rao Hospital for another stomach wash the doctors did not allow anyone of the police party to accompany the appellant when the second stomach wash was to be given. It is at that juncture, it is stated, that he spat out the notes. According to the Investigating Officer after his stomach wash the appellant was brought to the C.B.I, office for interrogation. It was during interrogation that he disclosed that he had thrown the currency notes in a dust bin in the Hindu Rao Hospital. The Investigating Officer took the appellant to the Hospital where he was informed that the dust bin in question had been emptied by a sweeper on duty in a garbage dump near the mortuary. The prosecution case further is that from the dump the appellant was told to fish out the said three currency notes which he did. These currency notes were got sealed in the presence of Dr. Bansal Public Witness 5, with the seal of Hindu Rao Hospital although he was not present at the time of recovery. The Investigating Officer did not take any precaution to join any independent witness to witness the recovery of the said currency notes Those notes, as noticed above, have been exhibited as P1 to P3. I have examined those notes. They are only double-folded. Even a careful examination does not show any mark of crumpling. Nor I have been able to see any teeth marks on them.

(7) Mr. M.L. Sashdeva, learned counsel for the State, submits that it was not the prosecution case that the notes had been clewed. According to him, the case was that the notes were folded and swallowed. Public Witness . 11 Mr. Khan's earlier statement under Section 161 of the Code of Criminal Procedure was that he had

noticed the appellant chewing the notes. When asked in cross-examination about it, he denied the fact. This is what he stated, 'When I saw the accd. taking the money from Basakha Singh. I could not see how many notes he had taken or that he had taken Rs. 300.00 . At the time the accd. put the currency notes in his mouth, I could not see how many notes he had put in his mouth. It is not correct that after putting the notes in his mouth, the accd. started chewing the same. I did not state before the I.O. that Harbhajan Dass was chewing the notes (confronted with portion A to A of Ex. .P.W. I I/DA so recorded). When the currency notes were recovered from the garbage bin of Hindu Rao Hospital, there were no signs of chewing on the same. It is wrong to suggest that because there were no signs of chewing on the notes, I am denying the fact that I stated to the I.O. that the accd. was chewing these notes'.

(8) Now let me advert to the averment of Mr. Khan that in fact the notes were folded by the appellant and thereafter swallowed. As I have noticed, the notes are double-folded. According to Mr. Sachdeva for the purpose of identification and comparison of numbers of the G.C notes with the handing over memorandum prepared at the office of the C.B.I, these notes had to be straightened out, and as such there are no marks of either folds or crumpling after a lapse of so many years. It is not necessary to give any finding on this submission. In my considered opinion, the story of the notes having been thrown in the dust bin or spat out by the appellant is totally unacceptable. The prosecution, as noticed above, has not challenged the testimony of the Panch witnesses regarding the stomach wash conducted in the police Hospital. A bare reading of that part of the testimony shows that nothing came out in the vomit or stomach wash of the appellant. After that to allege that the appellant was still retaining the notes in his stomach or in his food pipe cannot be comprehended. It is not the case of the prosecution that because of stomach wash given at Hindu Rao Hospital these currency notes had come out. The notes, according to the prosecution, which could not be recovered even after the stomach wash in the police Hospital, were thereafter thrown out by the appellant. In my view, the allegation that the discovery was made on the disclosure statement Exhibit Public Witness . 2/A is unbelievable. It is clinically not possible to retain three G.C. notes in the stomach or in the food pipe after the stomach wash had taken place.

(9) The further allegation of the prosecution that the appellant was able to fish out the three currency notes from a garbage dump which dump he had admittedly not seen earlier is also not acceptable. It is rather strange that at the time of recovery no doctor or any other employee of the Hospital was jointed in the investigation. How was the appellant able to divine that the said three currency notes must be in that very garbage dump is difficult to understand. The currency notes so fished out by the appellant were sealed in the presence of a doctor with the hospital seal. The contents of the stomach wash which allegedly were put in a bottle handed over by a doctor in that very Hospital were, however, not sealed with the Hospital seal.

(10) The medicolegal certificate of the Hindu Rao Hospital pertaining to the appellant herein has not been exhibited. Out-door patient ticket also has not been exhibited. There appears to be a reason for this because the physician to whom the appellant was referred by the medical officer has not put any remarks on the report or on the ticket. It is common knowledge that when a patient is referred to a particular doctor or department of a hospital whatever action has been taken or is to be taken in accordance with the recommendation in the medicolegal certificate or the out-door patient ticket is recorded therein. The telling fact that the bottle Ex. P/11 said to contain the stomach wash of the appellant was got sealed with C.B.I. seal and not with the hospital seal, strengthens the doubt that in fact the stomach wash of the appellant taken at Hindu Rao Hospital was in fact not sent for Chemical analysis, and that possibly what was sent was the wash obtained at the Police Hospital. But as this is not in accord with the prosecution case, the report of the Chemical Examiner regarding that wash has to be completely ignored. In my view, the attempt by the prosecution to introduce the story of recovery of Rs. 300.00 from Hindu Rao Hospital has weakened the prosecution case altogether. It has certainly left a number of doubts. It is not possible to agree with Mr. Sachdeva that the prosecution case regarding the recovery be ignored 'and the case as brought out from the testimony of Basakha Singh Public Witness and his friend Public Witness Jagdish Chander regarding the acceptance of the currency notes by the appellant, be considered separately from the other facts regarding recovery of the notes. Mr. Sachdeva submits that these two witnesses whose version of acceptance of the notes by the appellant is corroborated by the Investigating

Officer is sufficient to bring home the guilt of the accused. I do not agree. It is not necessary to go into the question whether Basakha Singh and Jagdish Chander were the accomplices. It is well-settled that a complainant in a case like the present one is in the position of an accomplice. Jagdish Chander is alleged to have accompanied him to the foreign post office and thereafter to the office of the C.B.I. He was the one who had written the complaint and handed over the same to the C.B.I. 'He was equally interested in the result of the prosecution case. These two witnesses do require corroboration on material particulars. In the present case there is no corroboration. In fact one part of the prosecution story. i.e., the part regarding the recovery makes the earlier part doubtful.

(11) In that view of the matter I allow this appeal and set aside the conviction and sentence awarded to the appellant. Fine, if already paid, be returned to the appellant.