

Ram Kishore Vs. State

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Court : Delhi

Decided On : Jan-17-1987

Reported in : 31(1987)DLT312

Judge : M.K. Chawla, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Prevention of Corruption Act, 1947](#) - Sections 4 and 5(2)

Appeal No. : Criminal Appeal No. 234 of 1979

Appellant : Ram Kishore

Respondent : State

Advocate for Pet/Ap. : O.P. Soni,; Kamlesh Dutt and; P.S. Sharma, Advs

Judgement :

M.K. Chawla, J.

(1) Ram Kishore. appellant, is not satisfied with the finding of fact given by Shri V.S. Aggarwal, Special Judge, Delhi, vide his order dated 18th October, 1979, whereby he was held guilty of an offence u/s 161 as well as u/s 5(2) read with Section 5(l)(d) of the Prevention of Corruption Act, and sentenced him to undergo R.I. for a period of 2 years and a fine of Rs. 100.00 on both the counts. In default of payment of either fine, to further undergo imprisonment for two months.

(2) In order to appreciate the contention of the appellant, it is relevant to keep in mind the salient features of the prosecution case, Babu is employed as a sweeper for sweeping the roads in the Municipal Corporation of Delhi. The accused appellant was an Assistant Sanitary Inspector of the same area where Babu used to work. On a sunny day, the accused met Babu and told him that he would be transferred to some lorry. Babu, Public Witness requested for his continued posting at the same place. On this the accused insisted that in case Babu wanted to remain on the same posting, he would have to pay a sum of Rs. 100.00 . Thereafter, Babu is alleged to have applied for 15 days' leave which was accepted for 10 days. Babu, Public Witness was to join his duties on 1st of August, 1978. Accused is alleged to have met him on 31st July, 1978 and repeated his demand of Rs. 100.00 . Babu promised to pay Rs. 80.00 to start with by 2 P.M. in his office and the remaining amount of Rs. 20.00 on some later date.

(3) Immediately thereafter, Babu approached the Anti-corruption Branch and met Inspector Nanda. His statement was recorded, two Panch witnesses were requisitioned, the currency notes of the denomination of Rs. 50.00 , Rs. 20.00 and Rs. 10.00 were requisitioned and phenol disinfecting powder was applied, and after completing the other formalities, the raiding party was organized and deputed for the job. Unfortunately, on that day, the accused could not be found as it transpired that he had already gone.

(4) On 1st of August, 1978, the accused again repeated his demand upon which Babu agreed to pay the amount at 2 P.M. He again came to the Anti- Corruption Branch, got his statement recorded and same formalities were duly completed. When the raiding party reached the Tiraha Behram Khan, Rajinder Public Witness was instructed to complain about the cleanliness of the premises of any house while Krishan Lal Public Witness was asked to enquire about the vaccination or the procedure to be followed for the birth entries of the children from the accused. The raiding party reached the office at Chandni Mahal near about 12.40 P.M. The accused was sitting in the office. Babu Public Witness gave a signal to the accused indicating that he has brought the money and that he should come out of the office. When the accused came out of the office, Babu Pw took out the currency notes which the accused accepted in his right hand and put the same in

his pocket of the shirt. At that time, the accused is alleged to have told Babu that his work shall be done.

(5) At that point of time, Babu gave a signal. Inspector Nanda challenged the accused after disclosing his identity and asked if he had accepted the bribe. The accused replied in the negative. The Inspector then recovered the currency notes from the left pocket of the shirt of the accused. The nos. of the currency notes were tallied and thereafter the hands as well as the pocket of the shirt were separately washed in the solution carbonate which turned pink. The articles were taken into possession. The Inspector recorded the statement of the witnesses and completed the formalities there and then. On the receipt of the report from the office of the C.F.S.L., and the sanction to prosecute, the accused was challaned.

(6) During the course of the trial, the accused admitted that he was posted in the locality where Babu Public Witness was working. He, however, denied that any demand was made from the complainant or that he accepted the bribe as alleged. He took up the defense that Babu had a rickshaw which was being plied by his son. In the beginning of the year 1978, Babu purchased two tyres and two tubes for the said rickshaw on credit through him and paid the amount within 2 months. In mid-1978, Babu again approached the accused and asked him to get him some cloth on credit which he needed for the marriage of his sister's son. According to the accused, he got the cloth worth Rs. 97. 75 from the Prints Centre on credit. Babu did not make the payment on the plea that the colour of the prints had faded as a result of which the shirts have become worthless. On this, he told one of his colleagues Khazan Singh that when the pay for the month of June, 1978 was to be disbursed, he may collect Rs. 97.75.P from Babu. Even there, Babu did not oblige Khazan Singh. It is also his case that during the month of July, 1978. he had received many complaints from the locality against Babu which he had forwarded to the higher authorities. According to the accused, he did not meet Babu on 31st July, 1978 and even on 1st August, 1978, he made no demand.

(7) In defense, the accused produced as many as five witnesses but the learned Special Judge placed reliance on the testimony of the complainant and keeping in view the surrounding circumstances convicted and sentenced the accused as

stated earlier.

(8) In the present case, the accused admits the recovery of the tainted currency notes from his person. There are two rival contentions. According to the complainant, the amount of Rs. 80.00 was paid to stall his transfer from sweeping the streets and drains to the garbage carrying truck as demanded by the accused-appellant. On the contrary, the version of the accused is that he had got purchased certain cloth to the complainant for a sum of Rs. 97.75 on credit basis, at his responsibility from the shop of Prints Centre and Rs 80.00 had been paid to him as part payment towards the same. The question which requires answer is as to which of the versions is correct.

(9) Before reverting to the facts, it will be relevant to keep in mind the settled proposition of law. In such like cases, the accused is not required to prove his defense by the strict standard of proof of reasonable doubt. It is sufficient if he offers an Explanation or defense which is probable and once this is done, presumption u/s 4 of the Prevention of Corruption Act, will stand rebutted. The second proposition which is attracted is that the 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.

(10) During the course of the arguments, learned counsel for the appellant has raised four-fold arguments. Firstly, on the date of the occurrence, the accused was on rest and there was no question of his making any demand or receiving any amount from the complainant. In fact on that day, the attendance of the complainant was marked by one Shri Tyagi, Assistant Sanitary Inspector. Secondly, there is no corroboration of the statement of the complainant to the actual talk that took place before the money was given to the accused. Thirdly, there is a discrepancy between the said report and the statement of the complainant regarding the place of handing over the amount and lastly, the accused was not competent or authorised to transfer a road sweeper to a lorry sweeper and, therefore, there was no question of demanding any bribe on that pretext,

(11) There appears to be much substance in the submissions. First of all, I propose to deal with the last submission. It is not disputed that Babu, Pw was on duty as a sweeper of drain in gall Kama, Suiwalan, Delhi. According to the prosecution, the accused had threatened Babu to transfer him from his present duty to the duty at the lorry. I he evidence of the prosecution as well as the defense goes to show that the accused could not and was not authorised to make any transfer as the two cadres are quits different. PW-5, V.B. Sharma Sanitary Inspector who not only brought the attendance Register of the accused but also. while under cross-examination, was frank to admit 'There are separate cadres of sweepers working on the trucks and those who work in different localities. Babu, Public Witness was not in the cadre of sweepers who work on the trunks. The accused or I could not transfer Babu for doing the sweeper's work on the trucks.....- If there is a shortage of sweepers on the refuse truck, then we provide substitutes from outside. They are employed on daily wages.' This part of the statement finds corroboration from UW-2 Leela Parsad, an L-D.C. working in the Accounts Branch of the City Zone, M.C.D. According to him. 'In the Municipal Corporation, there are two separate cadres of sweepers i.e. Road sweepers Cadre and Lorry Sweepers Cadre They draw their salaries under separate heads. The sweepers who work on the lorry are called Lorry Baildars. If a regularly appointed sweeper proceeds on leave or absents, in his place, a daily wager substitute can be appointed. His Muster Roll is prepared separately. I have brought the Muster Roll for substitutes turn July, 1978 with respect to constituency no 75. Babu, Public Witness was on leave from 21st to 31st July, 1978 and in his place one Khem Chand was appointed as his substitute. I have brought the Muster Roll also with respect to the substitute and he has been paid Rs. 175.50 I have also brought the Muster Roll of lorry baildars with respect to June and July, 1978. In July, 1978, three lorry baildars were appointed on daily wages. Separate Muster Rolls were prepared for them,' The only question asked and his reply to it while under cross-examination read as under.-

'THERE are separate statutory rules with respect to the lorry baildars and other sweepers. I have not brought those rules.'

(12) Dw 5 Chander Singh is another Sanitary Inspector who produced the circular dated 13-9-71 issued by the Municipal Health Officer. According to his version, the Assistant Sanitary Inspector has no right to transfer a road sweeper to the refuse truck or vice versa. Even the Sanitary Inspector does not have such a power. The reason for not doing so is that the circular referred to above has been issued and even before that some instructions were in force. The refuse truck sweepers bear certain allowances namely, refuse allowance, mustard oil, soap, bathing and washing. These allowances are not given to other safai karamcharis. In cross-examination, he re-emphasized his statement by alleging that even in cases of emergency, their services cannot be transferred even temporarily. If a lorry sweeper is absent, his substitute is engaged automatically by the Assistant Sanitary Inspector. They are engaged not from the regular sweepers. From the perusal of the evidence of these three witnesses, it can safely be said that neither PW-5 Shri V.B Sharma was declared hostile nor any worthwhile cross-examination was conducted to dislodge DW-2 and DW-5 from their stand.

(13) The learned lower court, however, without adverting to the statements of these witnesses drew an adverse presumption from the wording of the circular Dw 5/A which reads as under :

'THERE has been practice whereby some of the safai karamcharis are made to work in diverted capacity either temporarily or as a permanent measure. Instructions have already been issued to stop such diversion in future, except in the emergencies and in the exigencies of the services. Each and every sweeper should normally be assigned the duty meant for the post against which his salary is drawn. If there is shortage of the staff in any one particular category, case should be moved for either creation of the posts or the conversion of the existing posts so as to regularise those incumbents which have been diverted and continue to work in diverted capacity since long.'

(14) According to the learned lower court, the perusal of the circular shows that there is no statutory bar and in fact in exigencies of service, safai karamcharis can be made to work in diverted capacity and with this end in view, the accused threatened that Babu Public Witness shall be transferred to work as a lorry baildar

and asked for the bribe. This inference prima facie is against the evidence of the prosecution and defense witnesses. It is also in consonance with the circular Ex. Dw 5/A. It clearly lays down that in case of emergency, if there is a shortage of staff in one particular category, a case may be moved for the creation of posts or conversion of the existing posts, etc. By virtue of this circular, certainly neither the Sanitary Inspector nor the Assistant Sanitary Inspector had the authority to transfer the safai karamcharis to work in diverted capacity either temporarily or on permanent basis. The intention for the issuance of the circular dated 8-9-71 by the Municipal Health Officer appears to be to administer a warning to the department not to divert the sweepers from one cadre to another. This fact was known to all the persons working in the Health Department. If this state of affairs is admitted to be in force, there was no occasion for the accused to extend any threat to Babu for his transfer from safai karamchari to the other cadre or ask for an illegal gratification to stall his transfer. This ground, by itself, is weighty enough to demolish the prosecution case.

(15) It is the case of the complainant himself that on 31-7-78, the accused demanded the amount of Rs 100.00 as illegal gratification for which he reported the matter to the Anti-corruption Department. In spite of the fact that he Along with the raiding party reached the office of the accused, he was not present On the next day, according to Babu Pw, the accused again met him and repeated his demand This time he succeeded in getting the accused apprehended The demand and acceptance of illegal gratification are very important ingredients of the offence with which the accused has been charged. It has come on record that on 1st of August, 1978 the accused was on weekly rest. In his place, the daily attendance of the sweepers was marked by one Shri S R. Tyagi, DW-3 The accused was not expected to be in his office on that day. In that situation, prima facie he is not expected to ask the complainant for the payment of Rs. 100.00 at his office. According to the accused, he had come to the office on 1 -8-78 at the asking of his Inspector in view of the impending visit of the Area Councillor and the Zonal Assistant Commissioner. It was per chance that on a weekly rest day. the accused was directed to be present in the office. Otherwise, in the normal course, he would not have been there. The person would like to demand and accept an illegal gratification when he is sure that he would be at his office or any other fixed place.

This is not the case here.

(16) At this stage, it will be relevant to keep in mind that the only Panch witness Shri K.L. Malhotra heard the accused telling Babu Pw 'Sab theek hai turn jao'. Even though in his cross examination he denied having heard any conversation with Babu prior to the utterance of these words, but taking these words on their face value, it cannot be interpreted to mean that after accepting the amount, the accused ensured the complainant that his work will be done. The words can also be interpreted in favor of the accused. When after the payment of Rs. 80.00 towards the payment of cloth purchased by him from Prints Centre, the accused asked Babu, Pw for the balance of Rs. 17.75. he was told that the balance would be paid to the shopkeeper himself. This part of the defense version finds support from the evidence of DW-4, Dhanpat Rai. According to this witness, on the responsibility of the accused, Babu Public Witness was supplied cloth for a sum of Rs 97.75 vide Cash Memo no. 4664 dated 1-5-78 for Rs. 97.75 on credit basis. This transaction was duly entered into in the ledger and the cash book. The learned lower court brushed aside the evidence to this witness on the short ground that this was the only cash memo which finds mention in the books of accounts and the entry being the last on the page throws doubt. The learned lower court failed to rely on the Explanationn of the entry of the cash memo as the cloth was given on loan which Explanationn prima facie appears to be probable. It hardly matters if the entry is found on the last page of the ledger. Once the witness deposed about the entry in his hand, and in the account books which are being kept in the regular course of business, his evidence should not have been disbelieved.

(17) This aspect can also be looked into from another angle. Public Witness 7, Khazan Singh, Assistant Sanitary Inspector admittedly had gone to the City Zone, Minto Road, where the salaries to the safai karamcharis were being disbursed for the month of June, 1978 to identify the persons. The accused had instructed him to realise Rs. 2.00 less than Rs. 100.00 or so from Babu Pw towards the price of the cloth which he had obtained at his instance. This witness goes on to depose that after the salary was disbursed, he requested Babu Public Witness to pay him the amount on which he replied that he (Babu) would himself pay the amount to

the accused. This part of his statement has not been challenged by the prosecution and there appears to be no reason as to why it be not taken into consideration coupled with the other circumstances mentioned above. All these facts taken together lead to the only conclusion that the accused took a sum of Rs. 80.00 from the complainant under a bona fide belief that this was the amount towards the purchase of the cloth from Prints Centre. When asked for the balance, Babu Public Witness told him that he would pay the same to the shopkeeper on which the accused said ' sab theek hai turn jao'. This circumstance should not have been interpreted otherwise.

(18) No other point has been urged nor requires going into. The sum and substance of the above discussion is that the accused has proved his innocence beyond any reasonable doubt or at least has offered a probable defense. 1. thereforee, accept the appeal, set aside the impugned order of conviction and sentence, and acquit him. The bail bond, if any, is hereby discharged.

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