

Parmeshwari Lal Vs. the State

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Court : Delhi

Decided On : Dec-19-1985

Reported in : 1986(2)Crimes163; 29(1986)DLT261

Judge : H.C. Goel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Prevention of Corruption Act, 1947](#) - Sections 5(1) and 5(2)

Appeal No. : Crl. Appeal No. 188 of 1976

Appellant : Parmeshwari Lal

Respondent : The State

Advocate for Def. : M.L. Sachdeva, Adv.

Advocate for Pet/Ap. : Bawa Gurcharan Singh, Adv

Disposition : Appeal dismissed

Judgement :

H.C. Goel, J.

1. This is an appeal by Parmeshwari Lal, appellant, against his conviction under Section 161 Indian Penal Code, 1860 - and Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) and sentence of one year's RI under

Section 161 IPC and 15 months' RI and a fine of Rs. 500/- under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) (for short 'the act'). The Prosecution case stated in brief is that Smt. Sharda Devi Mahadevan (PW 3) used to carry on business in the name of India Commercial Corporation at A-15 Green Park, New Delhi- 1100016. She used to reside at 122, Golf Links, New Delhi. She made the Telex machine at her residence 122, Golf Links, New Delhi. She made the payment of Rs. 2285/- as per the demand note issued to her on October 26, 1973 (Ex. PW 3/13). On January 18, 1974 Parmeshwari Lal, appellant, and Banwari Lal (DW 2), Engineering Supervisor, Telex (Out-door) inspected the premises and gave approval for installation of the machine. The telex machine was brought to the premises on March 30, 1974 and on April 9, 1974 at about 9.00 a.m. the connection was provided for the same by Parmeshwari Lal, appellant. He demanded a sum of Rs. 500/- from her for the services rendered by him and his boss Banwari Lal (DW 2) in providing the telex machine. The complainant Smt. Mahadevan declined to pay any money to the appellant. The appellant then tampered with the telex machine as a result of which the machine did not work properly on that day. The complainant contacted the appellant for removing the fault in the machine. He, however, told her that the machine would continue remaining faulty unless the complainant assured the appellant of the money as demanded by him. The appellant then set the machine right on the morning of April 11, 1974. He was told by the complainant that he could collect the money from her at about 6.00 p.m. on that day. Smt. Mahadevan then contacted Shri R.C. Sharma, Superintendent of Police at Kota House and lodged the complaint Ex. PW 1-A. the Complainant gave the above facts in her complaint. She also stated that the appellant would be coming to her house to collect the money at 6.00 p.m. on that day. A case under Section 161/162 IPC Was registered by Inspector R.P. Kochar (PW 7) and it was decided to (set) a trap for the appellant. Inspector Sobti and one other police official besides PWs Shri Tilak Raj and Shri Madan Mohan Lal Verma were joined in the raiding party. Smt. Mahadevan gave the currency notes of Rs. 500/- Ex. P 2 to Ex. P 6 which were treated with Phenolphthalein powder by Inspector Kochar. The members of the raiding party were told that on the currency notes being tendered the finger of the hand would get powder on them which on being nipped in the colorless solution of sodium carbonate would

make the solution turn pink. A demonstration of the same was given before the raiding party. The currency notes Ex. P 2 to Ex. P 6 were handed over to the complainant vide memo Ex. PW 1/B. She put them in her purse Ex. P 1. It was ascertained that the complainant was not carrying any other paper or money in her purse Smt. Mahadevan was told to give the currency noted Ex. P 2 to Ex. P6 to the plaintiff on demand being made by him in that behalf. It was decided that Shri Madan Mohan Lal Verma (PW 2) would act as a shadow witness and sit by the side of Smt. Mahadevan in the drawing room and the other members of the raiding party would stay in the adjoining room which was on the back of the cabin where the telex machine was installed. Shri Madan Mohan Lal Verma (PW 2) was directed to observe whatever happens and the conversation between the complainant, Smt. Mahadevan and the appellant. The complainant was instructed to give a knock at the door of the adjoining room on the passing of the currency notes as a signal. The raiding party reached the house of the complainant at about 4.30/4.40 p.m. and took their position as decided. At about 5.30 p.m. there was a knock at the door of the drawing room. The complainant opened the door of the drawing room of her house and received the appellant in one verandah. The appellant asked Smt. Mahadevan if the if the telex machine was alright. The complainant told him that he should better check up the same. Accordingly they both went inside the telex room. The machine was checked her if she could get taped for getting the messaged speedily. The appellant told her that the could be arrange on officially and that would cost her Rs. 900/- All this took about 10-15 minutes. Thereafter the appellant and the complainant came inside the drawing room of the house and set on two sofa chairs. The Appellant asked Smt. Mahadevan for the money. He further told her that he would charge Rs. 80/- per month for keeping the telex machine in order and told her that the money was to be shared by the officials of the telex department. The complainant then got up she picked up her purse Ex. P 1 which was kept at the mental piece. She then took out the currency notes Ex. P 2 to Ex. P 6 which were kept folded in the purse and offered them to the appellant. The appellant took them in his right hand and transferred them to his left hand and then put them quickly on the sofa. The complainant then gave a knock at the adjoin door. Thereupon Inspector Kochar and Inspector Sobti and other members of the party rushed in. Inspector Kochar

disclosed his identity to the appellant. He challenged the appellant asking him if he had accepted the bribe. The appellant became dumb founded. He Was caught hold of by Inspector Kochar by his two arms. The fingers or right hand were put in a glass of the solution which turned pink. The contents of the solution were transferred in the two bottles Ex. P 8 and Ex. P 9 and were sealed. The currency notes Ex. P 2 to Ex. P 6 lying on the sofa were compared with the numbers as given in the handing over memo Ex. PW 1 Which were found to tally. They were then sealed in a packet. The seal which was used for sealing the packet and the bottles of the solution was handed over to Shri Tilak Raj (PW 1). The investigation of the case was later transferred to Inspector S.I. Bishnoi on April 15,1974. Hw recorded the Statements of the witnesses under Section 161 Cr PC. After Obtaining the necessary sanction the appellant had been challaned.

2. The prosecution examined four witnessed including the complainant Smt. Mahdevan, Shri Tilak Raj, Madan Mohan Lal Verma and Inspector Kochar, members of the raiding party. Shri Banwari Lal Supervisor was also cited as a prosecution witness. Hw was, however, given up by the prosecution and was later examined by the appellant in defense as his witness. The defense version as given by the appellant is that he and Shri Banwari Lal Supervisor had inspected the premises of Smt. Mahadevan on March 21, 1974 in connection with the installation of the telex machine and the machine was left at the premises on March 30,1974 by the appellant and the driver of the department's van, Hans Raj (DW 3). The complainant was insisting for early installation of the machine. He (the appellant) told her that the connection was to be given by the Jor Bagh Exchange people after repair of the connection line in which he had no hand. The complainant felt annoyed and had told him that the would see him. On April 19,1974 the complainant had again shown her displeasure and annoyance for the delay in the installation of the machine and had stated that she would see him and would report regarding delay. The further defense version is that on April 11, 1974 the appellant did not go to the house of the complainant in the morning. On that day he attended to faults of telex machines NO. 3140, 3230 and 2734. At about 4.55 p.m. when he was attending to machine No. 2734 installed at a house in Greater Kailash he received a telephonic message from Shri Banwari Lal DW Directing him to attend to the telex machine No. 2722 installed at the complainant's

premises, to set that machine right and to obtain the satisfaction slip. The appellant then went to the house of Smt. Mahadevan reaching there at 5.30 p.m. On being told by Smt. Mahadevan that the machine was not in working order he examined the machine and found the same alright. He gave a message to Canada on the suggestion of the complainant from the machine, installed. They both then went inside the drawing room. There was some conversation between him and the complainant regarding the availability of parts of perforated system. He (the appellant) then asked Smt. Mahadevan for O.K. Report. She went to an adjoining room and brought the envelope on which the name of Shri Banwari Lal Supervisor was written and the envelope had a monogram of the firm of Smt. Mahadevan. Smt. Mahadevan handed over that envelope to him. He took that in his left hand as he was holding tools in his right hand. He felt that the envelope was a bit heavy. He opened it to see its contents and found that it contained currency notes. He then threw the same and the currency notes fell on the sofa and the envelope fell down on the ground near the sofa. Immediately thereafter he was apprehended and was falsely implicated in the case.

3. Bawa Gurcharan Singh. Learned counsel for the appellant, contended that the learned Special Judge did not correctly appreciate the evidence as adduced by the prosecution and the defense on the record of the case. He referred to certain discrepancies as appearing in the statement of the prosecution witnesses and some other facts and circumstances of the case as borne out on the record. It was submitted that Smt. Mahadevan Complainant as PW 3 stated that if she wanted that the telex machine should work properly, she should pay him Rs. 500/- but that in her complaint Ex. PW 1/A as lodged to the police she had stated that the appellant had demanded a sum of Rs. 500/- 'from her for services rendered' to her for the installation of the telex machine. The complaint of Smt. Mahadevan Ex. PW 1/A read as a whole makes it clear that Smt. Mahadevan stated therein that the appellant was insisting on Smt. Mahadevan paying Rs. 500/- to him for his having installed the telex machine at her premises on April 9, 1974 and that he had also told Smt. Mahadevan that the telex machine would not give proper service if she did not pay the money to him. The learned special Judge was thus right in holding that there was no real contradiction in the two statements of Smt. Mahadevan.

4. It was next pointed out that Smt. Mahadevan in her statement as PW 3 had stated that it was possible that she made some calls from the machine on April 9, 1974 and April 10, 1974. She also stated that the appellant spent 10-15 minutes in checking the machine on the evening of April 11, 1974 and then told her that the machine was alright. This, the counsel stated, was contradicted by Smt. Mahadevan's statement in her complaint Ex. PW 1/A wherein she had stated that the machine did not work from April 9 1974 to April 11, 1974. These statement cannot be said to be (sick irreconcilable). The fact that the appellant had to spend ten/fifteen minutes on the machine, is itself suggestive of the fact that the machine had some defect and he then set that right. The statement of PW 3 read as a whole is to the effect that the machine was not perfectly right and had a defect in it and it did not give proper service. Under the circumstances Smt. Mahadevan's statement in her complaint Ex. PW 1/A that the machine did not work from April 9, 1974 to April 11, 1974 cannot be said to be in conflict with her statement in the Court as PW 3.

5. Bawa Gurcharan Singh next referred to the statement of the complainant, Smt, Mahadevan as PW 3 that after she and the appellant came inside the drawing room and took their seats on the sofa the appellant asked her to pay to him the money which she had promised to pay to him in the morning and further that the appellant had also stated that the money would be shared by the officials of the Telex Department. It was submitted that this statement of here was not corroborated by Madan Mohan Lal (PW 2) who was silent about any talk having taken place between Smt. Mahadevan and the appellant in the drawing room. It was submitted that it was improbable that the appellant would have made a demand for illegal gratification from Smt. Mahadevan while another person, namely. Madan Mohan Lal Verms, PW 2, was present in the drawing room and the daughter of the complainant had also admittedly been coming and going inside the drawing room that time. it was also submitted that if the appellant was to ask for money from the complainant he would have demanded the same from the complainant in the telex room where none else was present besides both of them instead of demanding the same in the drawing room where PW 2 was also present at that time. I do not think that these are any substantial circumstances on which the sworn statement of the complainant, Smt. Mahadevan, which is corroborated

by the FIR Ex. PW 1/A as lodged by her and also by the statement of Madan Mohan Lal Verma, PW 2, deserved to be rejected. It may be pointed out here that Madan Mohan Lal, PW 2, has also clearly Stated that the complainant, Smt. Mahadevan, had taken out five currency notes of the denomination of Rs. 100/- each and had handed them over to the appellant who took them in his right hand. He further stated that the appellant after taking the currency notes put them in his left hand and then placed them on the sofa on his left side. It is also worth nothing that PW 2 has not been questioned if any conversation regarding the demand of money by the appellant from the complainant took place prior to the passing of the money. He has not stated anywhere in his statement that no such talk took place. Further the appellant might have thought of demanding the money from the complainant only after finishing the small job on the telex machine little knowing that another person would be present in the drawing room where he was then taken to by Smt. Mahadevan. Different persons behave differently in a particular situation. The appellant could make the demand of the money unmindful of the presence of PW 2. It was also pointed out that PW 2 had supported the version of the appellant that he had asked the complainant to give him O.K. Report and further that no money was recovered from the person of the appellant and the currency notes were found only lying on the sofa and that that supported the version of the appellant that he had only asked for the O.K. Report and that the complainant had handed over an envelope to the appellant which the appellant was told as containing the O.K. Report. There is no merit in this submission. PW 2 has no doubt stated that the appellant had asked the complainant to give him the O.K. Report. That, however, did not carry the defense of the appellant any further. The appellant may have asked the complainant for the O.K. Report as well. Madan Mohan Lal Verma. PW 2 has stated that Smt. Mahadevan had taken out five currency notes of Rs. 100/- each and handed them over to the appellant. The other three prosecution witnesses, namely, Smt. Mahadevan (PW 3), Tilak Raj (PW 1) and Inspector Kochar (PW 5) have stated that the five currency notes of the Rs. 100/- each were found kept on the sofa. No suggestion was given to any of these four witnesses of the prosecution that any envelope had been handed over by the complainant to the appellant and the currency notes were found kept inside the envelope. As per the prosecution case no envelope was taken into possession

from the spot or was found there. That went to belie the defense version that the complainant had told the appellant that she was giving O.K. Report to him kept in an envelope.

6. It was next submitted that the statement of all the three prosecution witness, namely, PW 1 , Tilak Raj PW 2, Madan Mohan Lal Verma and PW 3, Smt. Mahadevan under Section 161 Cr PC Were recorded much later, namely, on May 7, 1974, whereas the occurrence took place on April 11, 1974 and that this delay in recording the statements of these prosecution witnesses under Section 161 Cr PC reduced that evidentiary value of the statements of these witnesses in the Court. No doubt there has been a delay on the part of the Investigating agency in recording the statement of these witnesses expeditiously after the occurrence. However, I am of the view that on that ground alone the case of the prosecution does not deserve to be thrown out. This is a case in which a complaint (Ex. PW 1/A) had already been made by Smt. Mahadevan against the appellant which is the FIR of the case All the witnesses of the prosecution are independent witnesses and had no animus against the appellant. Under these circumstances their statements do not deserve to be discarded on account of the delay in recording their Statements by the police.

7. Bawa Gurcharan Singh lastly contended that the learned Special Judge was not right in rejecting the defense version that the appellant was rejected by Shri Banwari Lal, DW 2, on telephone at about 4-00 p.m. and that the appellant was dropped at the house of the complainant at about 5.30 p.m. by Hans Raj, driver of the department's van. Shri Banwari Lal, Engineer Supervisor (Aelex Out-door) DW 2, has stated to the effect that on April 11, 1974 he received a telephonic message from Mrs. Mahadevan at about 4.00 a.m. That her telex machine was out of order and that he should send Parmeshwari Lal, technician (appellant), to her house to set the same right. He rang up Parmeshwari Lal , appellant, at the place where the telex machine 1734 was installed as Parmeshwari Lal had gone there and told him to attend to machine NO. 2722 of the complainant. Hans Raj DW 3, is the driver of a vehicle of the Telephone Department. He has stated that on April 11, 1974 (sick) had taken Parmeshwari Lal, appellant, and one P.D. Sharma, another (sick) from the office in his vehicle and they attended to telex machine No. 2734 in Greater

Kailash area. He then took the appellant in his vehicle to a house in Golf Link where the telex machine No. 2772 was installed. He then went along with P.D. Sharma to attend to the next job and from there he along with P.D. Sharma returned to their office reaching the office at about 6.30 or 6.45 and he made the entry Ex. DW 2/C in the Log Book on his return to the office. The suggestion of the defense is that the prosecution version that the appellant had come to the house of Smt. Mahadevan in the Morning of April 11, 1974 and as per the talk that took place between them at that time the appellant came to the house of Smt. Mahadevan in the evening of that day at about 5.00 p.m. to take the bribe money of Rs. 500/- is wrong and that the appellant came to the house of Smt. Mahadevan on the morning of April 11, 1974 having been directed to go there by the Supervisor, Banwari Lal, for attending to the Telex machine. The learned special Judge has noted that the statement of Smt. Mahadevan that the appellant had come to her house on the morning of April 11, 1974 and it was then decided that the appellant would again come to her house at about 6.00 p.m. to collect the bribe money stood corroborated by her complaint Ex. PW 1/A wherein she had given time of 6.00 p.m. of the proposed visit of the appellant to her house on the evening of April 11, 1974. The learned Special Judge has observed that it would be too much to think that Smt. Mahadevan had stated all this thing in her complaint Ex. PW 1/A falsely and approached the police long thereafter on the mere expectation that she would be able to get the appellant to her house at about 6.00 p.m. on that day by making a telephonic call to Banwari Lal. DW, at about 4.00 or 4.30 when she must have known that the appellant was a technician doing field job and visiting different places daily. This approach of the learned Special Judge appears to be quite correct and he was right in adopting this approach more so as the material as brought on the record clearly pointed out that the defense version was a made up one. Hans Raj driver of the vehicle, DW 3, in his cross-examination stated that he made entry Ex. DW 2/C in the Log Book on his return to the office at 6.30 to 6.45 p.m. He Also stated that he used to make entries giving the numbers of all the telex machines as attended to by the technicians who traveled by his vehicle and that he used to enquire the numbers of those machines from the technicians there and then used to enter the number of those telex machines the Log Book. He, however, admitted that the number of

the telex machine installed at the house of Smt. Mahadevan, namely No. 2722 was not entered is the entry Ex. DW 2/C. The reason as given by him for not entering this number while numbers of others telex machines as attended to by the technicians who traveled by his vehicle were given in Ex. PW 2/C is that he had forgotten to ask the numbers of the telex machine from Parmeshwari Lal, appellant which he attended to at the golf Link House. The learned Special Judge was right in taking the view that this was wholly unsatisfactory Explanation DW 3. Had the appellant been dropped by Hans Raj, DW 3, at the house of Smt. Mahadevan, Hans Raj would have certainly taken out the numbers of the telex machine that was to be attended to by the appellant at the house and had entered that number also in the relevant entry Ex. DW 2/C in his Log Book. Besides that had Banwari Lal DW received a complaint from Smt. Mahadevan about her telex machine as has been stated by him, he would have made an entry about the complaint in the complaint register. No attempt was, however, made on behalf of the appellant to get any such entry proved on the record. Banwari Lal, DW 2, in his cross-examination stated that normally complaints received from subscribers are entered in the (sick) section, but he did not know whether any entry was made in the traffic section regarding the alleged complaint of Smt. Mahadevan as received by him, it has also come in defense evidence that technicians are paid over-time if they work after office hours. Banwari Lal, DW 2, admitted that as per an entry in the register Ex. DW 2/B the appellant was not paid any over-time charges although he is shown to have worked over-time. This also goes to show that an attempt was made by the appellant to create false evidence of his having visited the house of Smt. Mahadevan after 5.30 p.m. on April 11, 1974. Hans Raj, DW 3, also stated that he took P. D. Sharma and the appellant at the Golf Link House and from there the other technician Shri Sharma was taken in the van to attend to the next job and from there they both returned to the office. From his statement it appears that ordinarily he was expected to pick up the appellant from the house of Smt. Mahadevan and he was also to be dropped back at the office. DW 3 in his cross-examination stated that he did not return to the house of Smt. Mahadevan to pick up the appellant; he thought that the appellant must have gone back himself (to the office). This Explanation of the witness was also rightly considered as unsatisfactory. I do not agree with Bawa Gurcharan Singh, learned counsel for the

appellant, that the learned Special Judge had wrongly disbelieved the defense evidence. It was submitted that the statement of Shri Banwari Lal, DW 2, that he got a ring from Smt. Mahadevan at about 4.00 p.m. requesting him to send the appellant to her house for setting the telex machine right was corroborated by the statement of Tilak Raj. PW 1, who has stated that Smt. Mahadevan had made a telephonic call from her house immediately after the raiding party (sick) her house. It was pointed out that the denial of Smt. Mahadevan of missing any call at the time showed that she was suppressing the truth. There is no merit in this contention. Tilak Raj PW 1, in the next breath stated that he did not hear the ring, nor the talk on the telephone and, therefore, he could (sick) say anything regarding the suggestion if the ring was given to Banwari Lal Supervisor of the Telex Department to send Parmeshwari Lal, technician. This witness was also unable to say if any officer of the CBI was also standing nearby when Smt. Mahadevan, according to him gave the ring. The learned Special Judge was thus right in saying that no support to the defense version could really be said to be forthcoming from the statement of PW 1, Tilak Raj on taking an overall view of that facts and circumstances as borne out on the record and as pointed out by me above, the learned Special Judge was right in (sick) the defense version. Further the fact that the defense version has (sick) found to be a made up one, this circumstance also lent some support to the case of the prosecution. In conclusion in view of what has been said above, I find myself in agreement with the conclusion of the trial court that charges under Section 161 of Indian Penal and Section 5(2) read with Section 5(1)(d) of the act stood proved against the appellant beyond a reasonable doubt. I accordingly maintain the conviction of the appellant there under. The sentence as awarded by the trial court to the appellant also cannot be said to be excessive. The appeal is accordingly dismissed. The appellant is on bail. A copy of this judgment be sent to the Court of the Sessions Judge who shall cause the appellant to be taken into custody and shall send him to Central Jail, Tihar for undergoing his unexpired period of sentence.