

Rajinder Parshad Vs. State

Rajinder Parshad Vs. State

SooperKanoon Citation : sooperkanoon.com/692492

Court : Delhi

Decided On : Sep-04-1990

Reported in : 1990(3)Crimes287; 43(1991)DLT28; 1990(19)DRJ332

Judge : V.B. Bansal, J.

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

Appeal No. : Criminal Appeal No. 103 of 1979

Appellant : Rajinder Parshad

Respondent : State

Advocate for Def. : Mr. M.S. Siddiqui

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

Judgement :

V.B. Bansal, J.

(1) This appeal of Rajinder Parshad is directed against his conviction under Section 161 Indian Penal Code and under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) (for short the Act) and the sentence of R.I for two months under Section 161 Indian Penal Code and R.I. for 2 years with a

fine of Rs 100.00 under Section 5(2) read with Section 5(l)(d) of the Act vide judgment and order dated 23rd April, 1979 of Special Judge, Delhi. He has also been ordered to undergo imprisonment for one month in case of default of payment of fine with a further direction that the sentences shall run currently.

(2) Before discussing the submissions made at the Bar it would be appropriate to have a brief resume of the facts.

(3) Som Nath s/o Shri Diwan Chand Gulati r/o A-59, New Moti Nagar was carrying on the business of sale of Chhole Batoore at shop No. M-27, in Gali No. 8, Anand Parbat, New Delhi having taken the said shop on rent at the rate of Rs 125.00 per month Sube Singh was working as Sanitary Inspector while Rajinder Parshad was working as Assistant Sanitary Inspector in the area of Anand Parbat and the shop of Som Nath was within their jurisdiction.

(4) For about two months prior or 9th June, 1978 both Sube Singh and Rajinder Parshad had been insisting that complainant Som Nath should pay them Rs. 10.00 per month as is being paid by other shopkeepers as he has been making in sanitary conditions by throwing water etc. on the road. The complainant, however, was not agreeable even if he was challenged. On 25th May, 1971 again a demand was made from Som Nath to pay monthly amount of Rs. 10.00 to which he did not agree and so was challaned. Som Nath appeared in the court of metropolitan magistrate on 6th June 1978 and on his pleading guilty he was fined Rs. 10.00 which he paid Rajinder Parshad again requested complainant to agree to the making of payment of Rs. 10.00 from the month of May onwards otherwise he would be challaned but he refused to agree. On a demand of the money being again made by Rajinder Parshad on 8th June, 1978 he was told to come to his shop the next day during lunch period to get the same.

(5) On 9th June, 1978 Som Nath complainant went to the Anti Corruption Branch and his statement was recorded by Inspector Balraj Nanda. After observing all formalities the members of the raiding party reached the shop of the complainant and waited for the arrival of the appellant who however, did not turn up and so the members of the raiding party returned when the complainant promised that he would again make a report as and when the demand of bribe is made from him.

(6) On 13th June, 1978 Som Nath complainant met Inspector Balraj Nanda in his office and made a sta

(7) Inspector Balraj Nanda organized a raiding party in which Chaman Lal, Superintendent Food and Supplies Department and Jagdish Chander, U.D.C. of the Deputy Commissioner of Delhi re joined.

(8) Complainant produced one currency note of Rs. 20.00 to be given to Rajinder Parshad. A demonstration was held in the presence of the witnesses when the currency note was treated with Phenolphthalein powder. Jagdish Chander witness was asked to touch the treated currency not with his right hand which was then dipped in a colourless solution of Sodium Carbonate which turned Pink This solution was desitroyed. This marked currency note was handed over to Som Nath complainant who kept it in the right front pocket of his shirt. Instructions were given to Som Nath to pass on the treated currency note of Rs. 20.00 to Rajinder Parshad after having a conversation with him in such a manner that it is heard by the shadow witnesses. The public witness were asked to be present near the complainant to hear their conversation and thereafter to give the singal by keeping his band over his head.

(9) Members of the raiding party reached in Gali No 8 Anand Parbat. The complainant moved ahead and was followed by other members of the raiding party. Half shutter of the shop of the complainant was closed. He opened the shutter when three persons were standing at his shop. Som Nath complainant went ahead of his shop and on return gave the currency note of Rs. 20.00 to Rajinder Parshad tolling him that he was making the payment for the month of May and June 1978 at the rate of Rs. 10.00 . This currency note was kept by Rajinder Parshad in his left hand.

(10) After giving of the agreed signal other members of the raiding party moved ahead and after disclosing his identity Inspector Balraj Nanda challenged Rajinder Parshad who kept mum. The currency not of Rs 20.00 was recovered from the hand of Rajinder Parshad the number of which tallied with the number which had earlier been noted in the raiding, note prepared by Inspector Nanda. The hands of Rajinder Parshad were dipped in colourless solution of Sodium Carbonate which

turned pink. The solution was preserved. The currency note was also taken into possession after preparing the seizure memo.

(11) Statements of the witnesses were recorded and the accused was arrested.

(12) Sube Singh and Rajinder Parshad were tried for the offences under Section 161 read with Section 34 Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Act read with Section 34 IPC.

(13) In support of its case the prosecution examined nine witnesses. Accused when examined under Section 313 Criminal Procedure Code . denied the allegations and pleaded that they are falsely implicated in, this case. Plea of Rajinder Parshad had been that since the complainant had been challaned for keeping insanitary conditions he has falsely been implicated in this case. It is also pleaded that on 3rd June, 1978 at about 3.00 P.M. he was presented at the shop of Ram Asre where he often used to go for taking tea. He was further stated that Som Nath took him to his shop and handed over currency note by saying that it may be paid to Chhida when no one was present. He, thus . claimed that a sum of Rs. 40.00 was to be paid by the complainant to make this payment which he agreed to pay in the Installment of Rs. 10.00 and the amount of Rs. 20.00 was paid by the complainant as payment of two Installments. Similar had been the plea of Sube Singh. They examined four witness in their defense.

(14) Sube Singh was acquitted while the appellant was convicted and sentenced as referred to above.

(15) After hearing Mr. O P. Soni learned counsel for the appellant and Mr. M.S. Siddiqui learned counsel for the respondent. I am of the considered view that the conviction of Rajinder Parshad appellant cannot be maintained and he is entitled to the acquittal giving him benefit of doubt.

(16) Section 165-A of the Indian Penal Code has made the person offering bribe guilty of abetment of bribe and in this way he becomes an accomplice. thereforee Som Nath (Public Witness 4) the complainant of this case is a accomplice, who, as per the prosecution story, offered bribe to Rajinder Parshad in pursuance of a

demand made by him and Sube Singh. The law is well settled that the testimony of a complainant in bribery case should be corroborated in material particulars by independent evidence connecting the accused with the commission of the offence. Reference in this regard can conveniently be made to the case *Panalal Damodar Rathi v. State of Maharashtra* 1979 S.C. 1191. It is also well settled that for the purpose of coming to the conclusion as to whether the accused accepted the amount or not the totality of the evidence led at the trial is required to be appreciated. In this way, the prosecution evidence, the suggestions made by the defense in cross-examination of the witnesses, the version given by the defense and the defense evidence, if any examined at the trial is required to be considered in its totality to see if the only conclusion could be that the accused accepted the amount as bribe.

(17) I am not unmindful of the fact depending upon the circumstances of a given case the court may find the testimony of the complainant to be so impressive so as to inspire confidence finding corroboration in respect of recovery from the police officers that the court may come to the conclusion holding a person guilty. However, in the instant case there are circumstances indicating that the complainant is not a truthful witness and the counterperson given by the accused appellant is probable and may be true considering the same by preponderance of probabilities.

(18) According to the case of the prosecution demand of bribe was made by Sube Singh and the appellant from Som Nath complainant. It was so stated by Som Nath (Public Witness 4) during trial. According to him on 8th June, 1978 both Rajinder Parshad and Sube Singh came to him when a demand for illegal gratification of Rs. 20.00 was made by him. He was, however, confronted with his statement made to the police where the presence of Sube Singh was not stated. The complainant has been disbelieved by learned trial judge and not placing reliance upon his testimony co-accused Sube Singh has been acquitted. It is, thus, clear that Som Nath complainant is not a wholly reliable witness and his evidence needs to be scrutinised thoroughly.

(19) It is the admitted case of the prosecution that in the month of May Som Nath complainant was challenged by Sube Singh who was accompanied by Rajinder Parshad appellant for creating insanitary conditions near his shop in Street No. 8, Anand Parbat. It is also the admitted case of the prosecution that in pursuance of the said challan Som Nath complainant appeared before metropolitan magistrate on 6th June, 1978 and on his plea of guilt he was fined Rs. 10.00 which amount he had paid. The case of the prosecution has been that even after his conviction the complainant was asked by Rajinder Parshad appellant and Sube Singh to make payment of illegal gratification of Rs 20.00 i.e. Rs. 10.00 for the month of May and Rs. 10.00 for the month of June. It is very difficult to believe that a person would still be asked to pay illegal gratification for a month in which he has already been challaned and fined on conviction.

(20) The case of the prosecution has been that when contacted by appellant Rajinder Parshad, complainant Som Nath told him on 8th June, 1978 to come to his shop on the next day to collect money on which a raid was conducted but the accused did not turn up. Another raid was organized on 13th June, 1978 after the making of an on demand by the appellant on 12th June, 1978 when it was stated that appellant would come between 12.30 and 1.30 PM. at the shop of the complainant to collect the money. Shri Chaman Lal (Public Witness 5) and Jagdish Chander (Public Witness 6), two independent witnesses, were sent along with the complainant to over hear the conversation between Som Nath and the appellant and also to witness the passing of the money. In this way, there is the testimony of four witnesses, i.e. complainant Som Nath (Public Witness 4), Chaman Lal (Public Witness 5), Jagdish Chander (Public Witness 6) and Inspector Balraj Nanda (Public Witness 9).

(21) Som Nath has claimed that starting from the office of the Anti Corruption Branch at about 12.00 noon he along with the members of the raiding party reached his shop and found Rajinder Parshad standing. He has also claimed that Rajinder Parshad asked him to give the amount when he went to another shop after telling him to wait and that on coming back after a few minutes he gave Rs. 20.00 to Rajinder Parshad by saying 'Is Maha Ke Aur Pichley Maha Ke Das Rupaye Ke Hisab Se Di Raha Hoon': According to this witness the other members

of the raiding party were following him. It is, however, pertinent to note that Chaman Lal (Public Witness 5) and Jagdish Chander (Public Witness 6) have not made a statement about their having heard the appellant making a demand of money though they have claimed that there was some conversation between Som Nath complainant and Rajinder Parshad appellant, to the same effect has been the statement of inspector Balraj Nanda (Public Witness 9) It is well settled that people may improve or try to deviate from the statements made earlier and the only check on such improvements would be the contemporary documents prepared at the spot. In the instant case also Inspector Balraj Nanda has prepared raiding report simultaneously when the raid was conducted. A perusal of the raiding report clearly indicates that there was no talk between Rajinder Parshad appellant and Som Nath complainant before he went to a shop nearby. It is an important document which contradicts the statements of the witnesses with regard to a conversation between the appellant and Som Nath. As already referred to both the independent witnesses and Inspector Balraj Nanda have not corroborated the testimony of Som Nath about the making of a demand of money by the appellant.

(22) As already referred to in the earlier para the complainant has claimed having given Rs. 20.00 to Rajinder Parshad by way of payment of Rs. 10.00 for the month of May and Rs. 10.00 for the month of June. Chaman Lal (Public Witness 5) has also claimed that the complainant told that the accused that 'with great difficulty he managed Rs. 20.00 , i.e. Rs.10.00 for the previous month and, Rs 10.00 for the current month'. Similar has been the statement of Jagdish Chander (Public Witness 6). A bare reading of the statements of these witnesses make it abundantly clear that they have nowhere stated that it was a demand of illegal gratification by the appellant or that this amount was paid to him as illegal gratification. Submission of learned counsel for the respondent has been that it was not a legal remuneration payable to the appellant and the amount having been received by Rajinder Parshad a presumption can safely be raised against him that he accepted illegal gratification and so the burden lies on him to rebut the same by leading cogent convincing evidence that it was not the illegal gratification and the amount was received by him otherwise being due to him in some other connection. I do not agree with this submission.. Mere recovery of bribe money

divorced from the circumstances under which it was paid would not be sufficient to convict an accused particularly when substantive evidence is not reliable. Reference in this regard can safely be made to case Suraj Mal v. State (Delhi Admn.) 979 (4) SCC 725;28(1980) Dlt (DB) 172, This judgment was approved in a later judgment Hazari Lal v. The State (Delhi Admn 1980 SC 873 had been that a sum of

(23) In this case the plea of the appellant had been that a sum of Rs. 40.00 was payable by Som Nath to one Chhida working as a sweeper in the area where Rajinder Parshad and Sube Singh were employed and at the instance of Chief Sanitary Inspector Ram Singh they both pressurised Som Nath to make this payment as a result of which he agreed to pay this amount in monthly Installment of Rs. 10.00 each. It is in pursuance of this agreement that a sum of Rs. 20.00 was paid to Rajinder Parshad appellant to be handed over to Chhida. Thus, there are two versions about the receipt of money by the appellant, i.e. one being paid as illegal gratification and the other that this was the amount due to Chhida to whom it was to be given by the appellant. The question for consideration is as to whether the appellant has been able to prove by preponderance of probabilities that the version put forward by him is plausible and may be correct. There is no evidence to corroborate the testimony of the complainant with regard to the demand of illegal gratification by Rajinder Parshad appellant. I am conscious of the fact that there cannot be any corroboration with regard to the demand of illegal gratification prior to the raid being organized since at that time nobody takes along with him witnesses to create evidence about the making of a demand of illegal gratification. However, corroboration for this demand can be found in the subsequent conduct of making a complainant, organising a raiding party and demanding and payment of illegal gratification. As already discussed Som Nath complainant has been partially disbelieved with regard to his claim about the making of a demand of bribe by Sube Singh-co-accused of appellant who has since been acquitted.

(24) According to the prosecution story money was already available with the complainant Som Nath when he reached his shop at about 12:40 P.M. and found the appellant standing outside his shop. It has, however, been admitted by the complainant and two punch witnesses Chaman Lal (PW 5). Jagdish Chander

(Public Witness 6) and 1.0 Inspector Balraj Nanda (Public Witness 9) that the appellant had gone ahead in a shop and thereafter returned. The defense version put forward by the appellant had been that in fact he was present in - the shop of Ram Asre from wherefrom he was brought by the complainant. He has fully been corroborated in this regard by Ram Asre who has been examined as Dw 3.

(25) Learned counsel for the respondent has attacked the testimony' of this witness being interested in the appellant of account of his submission that after the posting of Rajinder Parshad in the locality he was never challenged though earlier he was challenged. The appellant was posted only as Asstt. Sanitary Inspector working under Sube Singh Sanitary Inspector who was the person competent to challan shopkeepers. In these circumstances: merely because he was not challaned by Rajinder Parshad or Sube Singh cannot be a ground to disbelieve him. It is also pertinent to note that in June 1978 the duty hours of the appellant were from 6:30 A.M. to 2.30 P.M. It is difficult, to believe that he would reach the shop of the complainant and would continue waiting for him when the complainant was not present. It is more probable that he was sitting in the shop of Ram Asre wherefrom he was called by the complainant otherwise there was no occasion for Som Nath complainant to go to the nearby shop if Rajinder Parshad appellant was already present at his shop.

(26) Chhida (DW4) was examined by the appellant who had stated that he used to take Chhole Bature from the shop of Som Nath when he was working as a sweeper under Rajinder Parshad and his duty hours were from 6,30 A.M. to 2.30 P.M. He has claimed that a sum of Rs. 20.00 was 'due to Som Nath from him towards the price of Chhole Bature and he gave a currency note of Rs. 100.00 to Som Nath who after deducting Rs. 20.00 gave him Rs. 38/ only by saying that he may take the balance of Rs. 40.00 later on as balance amount was not available, with him. He has 'also. 'claimed that he made a request to Ram Singh, Chief Sanitary Inspector and Rajinder Parshad to help him in getting his money back and that at the instance of Rajinder Parshad Som Nath agreed to pay the, amount in monthly Installment of Rs. 10/'. His testimony finds corroboration from the statement of Ram, Singh Chief Sanitary Inspector (Public Witness 7). It was clearly stated by this witness that in June 1978 an oral complaint was made

to him by Chhida about a person of street No, 8 not returning his money and that he asked Inspector and Assistant Sanitary Inspector to help the accused. He has also claimed that 3 or 4 days later he was informed by those persons that they got the matter settled and the payment shall be made in monthly Installments. The testimony of Ram Singh remains unchallenged.

(27) The demand of bribe of appellant having been proved beyond reasonable doubt the recovery of the money from the accused as bribe has to be viewed with suspicion. Considering all the evidence I have no hesitation in coming to the conclusion that by preponderance of probabilities the appellant has proved that he had not accepted any illegal gratification and that the money received by him was to be paid to Chhida to whom. it was due from Som Nath complainant. Prosecution has, thus, not been able to bring home guilt against the appellant beyond reasonable doubt.

(28) As a result the appeal is accepted, Conviction and sentence of The appellant are set aside. Giving him the benefit of doubt the appellant is acquitted.

(29) Rajinder Parshad appellant is not. bail. His bail bond stands discharged. Fine. if paid, shall be refunded.