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Punni Ram Vs. the State

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Court : Delhi

Decided On : Jun-01-2001

Reported in : 2001IVAD(Delhi)985; 2001CriLJ3373; 92(2001)DLT904

Judge : Mr. Justice R.S. Sodhi

Acts : Indian Penal Code (IPC), 1860 - Sections 161, 313 and 325; Prevention of Corruption Act, 1947 - Sections 5(1 and 2)

Appeal No. : Crl.A. No. 181/1993

Appellant : Punni Ram

Respondent : The State

Advocate for Def. : Mr. U.L. Watwani, Adv.

Advocate for Pet/Ap. : Mr. Sandeep Sethi and; Mr. A.Q. Butt, Advs

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No.181/1993 seeks to challenge the Judgment and Order of the learned Special Judge in CC No.17/1987 whereby the learned Special Judge by his Order dated 29.10.1993 held the appellant guilty and convicted him under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of

Corruption Act, 1947 and further by a separate Order sentenced the appellant to undergo RI for one year with a fine of Rs.500/- under Section 161 IPC and in default of payment of fine to undergo further SI for 45 days; to undergo RI for one year with a fine Rs.1,000/- under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and in default of payment of fine to undergo further SI for 30 days. Both the sentences were directed to run concurrently.

2. Brief facts of the case, as noted by the learned Special Judge, are that 'On 30th July, 1985 Kuldeep Verma s/o, late Shri Laxman Dass, r/o B-7, Extension 4, Safdarjang Enclave, New Delhi reported in the Anti-Corruption Branch, Delhi that in June, 1985 Mrs.Veera his wife had purchased a silk-sarifrom Shop No.39, Sarojini Nagar Market for a sum of Rs.250/-. Since that saree was not of silk, he and his wife had gone to return that saree along with the Purchase Receipt on 2nd July, 1985 and asked the shop-keeper to take back that saree but there was an exchange of harsh words. The shopkeeper & his servants man-handled Kuldeep Verma and he sustained injuries. A.S.I. Punni Ram (accused) of P.S. Vinay Nagar, New Delhi at the Police Station threatened Kuldeep Verma that either he should compromise the matter with the shopkeeper, otherwise he would arrest Kuldeep Verma and his wife but Kuldeep Verma refused to compromise with the shopkeeper. On 3rd July, 1985 the accused (ASI Punni Ram) called him to Police Station and told that shopkeeper was paying Rs.10,000/- to him for making a case against Kuldeep Verma and as to how much amount was Kuldeep Verma going to pay to avoid the case, but Kuldeep Verma did not agree, on 26th July, 1985 the accused/ASI Punni Ram called him in the Police Station and told that a case had been registered under Section 325 I.P.C. against the shopkeeper etc. and demanded 'Kharcha Paani'. On being asked about 'Kharcha Paani', the accused/ASI Punni Ram demanded Rs.1,000/- as bribe and on showing helplessness to pay the amount by Kuldeep Verma, the accused agreed to accept Rs.500/- at 6.00 P.M. at his residence on 30-7-85. Kuldeep Verma reluctantly agreed to pay Rs.500/- as illegal gratification to the accused/ASI Punni Ram. This complaint was reduced into writing by Inspector O.P. Tewari (as Ex.P.W. 7/A).

3. On the complaint (Ex.P.W.7/A) Inspector O.P. Tewari organized a raid associating S/Shri Shiv Dutt and Hoshiar Singh Dahiya, L.D.Cs of the Directorate

of Industries, Delhi Administration, as Panch Witnesses and a trap was laid at the residence of the complainant Kuldeep Verma after observing legal formalities like reading over the complaint Ex.P.W.7/A to the Panch Witnesses; giving of 5 currency notes of the denomination of Rs.100/- each by the complainant, numbers of which were noted down correctly in the pre-raid report, and applying the phenolphthalein power (hereinafter called P.Powder) to those currency notes; Thereafter right hand of Panch Witness Shiv Dutt was touched with the tainted currency notes and demonstration was given by making a solution of Sodium Carbonate wherein the fingers of Mr.Shiv Dutt was dipped and the colour of the solution turned into pink; giving of instructions to the complainant that the money should be given to the accused after the talk and within the hearing and presence of the Panch witness to remain close to the complainant in order to see the transaction and over-hear the conversation between the complainant and the accused and further to give signal by rubbing his hand on his head, after the bribe money was passed on the accused by the complainant. All these proceedings were reduced into writing as Ex.P.W.3/A.

4. At about 5-35 P.M. the members of the raiding party left for the residence of the complainant and reached there at 6-20 P.M. In this drawing room of that house, complainant and Panch witness Shiv Dutt were made to sit while other members of the raiding party were outside the drawing room, after 7 P.M. accused Punni Ram ASI reached the house of complainant on his bicycle along with a Tahiti and went inside the Drawing Room. At about 7-30 P.M. Panch witness Shiv Dutt gave agreed signal and then Inspector O.P.Tewari along with Hoshiar singh went inside the drawing room and identity was disclosed to the accused who thereafter was apprehended by Inspector O.P.Tewari. Inspector O.P. Tewari also challenged the accused regarding the acceptance of bribe money, whereupon accused kept mum and then started apologising. Panch witness Shiv Dutt and complainant informed that the accused ASI had kept the money in the back hip pocket of his pant, the search of which was taken by Panch witness Hoshiar Singh and currency notes (Ex.P-1 to P-5 were recovered there from and their numbers were tallied with the numbers already noted in the pre-raid report and were found to be correct. The right and left hand wash as well as pant pocket wash of the accused were taken and were preserved in three bottles Ex.P-6 to P-8, which were sealed with the seal

of ACP of A.C.Branch. Pulanda of the Pant (Ex.P-9) was prepared and was sealed with the seal. The seal after use was handed over to Panch Witness Shiv Dutt. Currency notes Ex.P-1 to P-5 were taken in possession vide memo Ex.P/.W.3/B, whereas left and right hand wash bottles were taken in possession vide memo Ex.P.W.3/C & D. Pant Pulanda was taken in possession vide memo Ex.P.W.3/E. A case under Section 161 of the IPC and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act was got registered vide F.I.R.No.24/85.

5. Further investigation of this case was conducted by Inspector Hari Singh who prepared the site plan Ex.P.W.12/A with its marginal notes, took into possession one Tahiti Ex.P-10 and papers from the accused vide memo Ex.P.W.3/G, recorded the supplementary statement of complainant Kuldeep Verma as well as statement of Shiv Dutt (as Ex.P.W.12/B) and or Hoshiar Singh - Panch Witness (as Ex.P.W.6/A) correctly. Since he was transferred before obtaining necessary Sanction Order for prosecution of the accused, further investigation was conducted by Inspector Mahipal Singh who prepared and put up the charge-sheet in court, against the accused for the above-stated offences.'

6. The star witness of the prosecution, in this case, is PW-7, who deposed to the effect that his wife had purchased a saree from a shop No.39, Sarojini Nagar, New Delhi, which was defective. thereforee, on 2.7.1985, his wife accompanied by her friend went to the shop to return the same. The shopkeeper misbehaved, which incident was narrated by her to this witness, who thereafter went to the shop with the original bill. The shopkeeper took it and tore it, and man-handled this witness. In the meantime, police reached the spot and this witness was taken to the hospital. This case was marked to ASI Punni Ram. The grievance of this witness is that the accused Punni Ram connived with the shopkeeper and began forcing this witness to enter into a compromise and refused to register the complaint. Next morning on 3.7.1985 the witness claims to have gone to the Police Station and given a written complaint to the SHO. ASI Punni Ram then contacted him on the phone and asked him to come to the Police Station where he made a demand of bribe saying 'KUCHH PAISE DO TO KAM KAREIN'. On 26.7.1985, the accused made a phone call informing the witness that a case under Section 325 IPC has been registered against the shopkeeper and that the shopkeeper had offered

Rs.10,000/- to register a counter case against this witness and his wife. He further adds that on 26.7.1985, when he went to the Police Station, the accused told him that case under Section 325 IPC has been registered against the shopkeeper and asked him for Rs.1,000/- as 'KHARCHA PANI' in connection with the investigation in the said case. The witness refused to bribe. Thereafter, the accused reduced the amount to Rs.500/-, which the witness agreed to try and arrange. On 29.7.1985, the accused again made a phone call asking for money when this witness told him that same has been arranged, which can be collected on 20.7.1985 after 6 p.m. Kuldeep Verma, the witness, did not want to bribe and, thereforee, approached the DCP, Anti Corruption Branch, who thereafter set up the trap. Kuldeep Verma goes on to state that 'the accused came to my house at about 7.00 p.m. The accused sat on the sofa in my drawing room. The accused told me that he will record the statement of witnesses in support of my case only after I paid the money to him. Thereupon, I paid him Rs.500/- being the same currency notes which were treated with powder. He put the same into his hip pocket with his left hand. At that point, PW Ship Dutt went out and gave a signal to the raiding party.'

7. The eyewitness to the occurrence is PW-3 Shiv Dutt, who states that he was working as LDC in Directorate of Industries, Delhi. ON 30.7.1985, he along with Hoshiar Singh was directed to report to the AC Branch at 4 p.m. Accordingly, he along with Hoshiar Singh went to meet Inspector O.P.Tiwari. Kuldeep Verma was also present in that room. Statement of Kuldeep Verma had already been recorded and was read over in their presence and a trap laid. This witness goes on to say that 'Then at about 5.30 p.m., the raiding party, comprising of the complainant, myself, Hoshiar Singh Inspector Tewari, Inspector Hari Singh and other staff left AC branch. We left for Safdarjang Enclave and went to the house of Kuldeep Verma, but I do not remember the municipal number. Except the family members of Kuldeep Verma, no outsider was there. We waited for sometime, for the arrival of concerned ASI to whom the bribe was to be given, for about 15 minutes. Then the raiding officer instructed the complainant to give a ring to the police station to find out whether the concerned ASI is available at the police station or he has already left for the house of the complainant. Complainant had a talk with the ASI on telephone but the concerned ASI refused to come to the

house of the complainant. Inspector Tewari then instructed the complainant to go to the police station and bring the concerned official to his house. Mr.Verma then left for the police station on his motor-cycle.

8. Mr.Verma came back about half an hour thereafter, along with ASI Punni Ram, the accused present in the court. On hearing the sound of the approaching motor-cycle, the members of the raiding party took positions at different places. Some of them took position in the adjoining bed-room some towards the gate leading to kitchen and the rest by the side of main gate. I remained sitting in the drawing room itself where the complainant also came and sat down. Complainant was sitting on the sofa whereas myself and the accused occupied two chairs lying in front of the sofa, there being a small table in between. The complainant introduced me as a witness in his case. The accused then started recording my statement. The accused while recording my statement was having a pen in his right hand and was reclining on the table with the help of the elbow of the left hand. When my statement was almost over, the complainant took out the tainted money from his pocket and put it in the left hand fist of the accused but the accused but the accused gave the tainted money back to the accused. Thereafter, we all got up. Complainant again took out the money and told the accused 'Ye Paise Aappki Chair Pani Kai Hain'. The accused, however, did not take the money but the complainant put the money in the hip pocket of the pant of the accused and I immediately gave the agreed signal. Immediately the raiding party reached there and apprehended the accused present in the court.

9. Inspector Tewari disclosed his identity and showed his identity card to the accused. Inspector Tewari challenged the accused that he had taken the bribe of Rs. 500/- but the accused declined. The tainted money was then recovered from the hip pocket of the pant of the accused which was taken out by Inspector Tewari.'

10. To a Court question 'Whether the accused was aware of the fact that the money is being in his pocket when the complainant put the money in the pocket of the accused

11. Ans. When we all got up, the complainant was opposite us. When the complainant wanted to give the money to the accused but he declined, the accused then turned towards the gate to move out and at that moment the complainant put the money in his hip pocket.'

12. In his cross-examination this witness states that it is incorrect that the accused demanded the money and accepted the same. The next witness is Hoshiar Singh (PW-6), who in his cross-examination states that 'In my presence, complainant had made a ring to ASI Punni Ram. Thereafter, complainant himself went out on his motor-cycle to bring the ASI concerned. Thereafter, complainant came back on the motor-cycle along with ASI Punni Ram.'

13. PW-11 Inspector O.P.Tewari, ACP, Head Quarters states that on 30.7.1985, he was posted as Inspector, AC Branch, Delhi. At around 4 p.m. one Kuldeep Verma came to his office and made a complaint, which was recorded regarding the bribe demanded by ASI Punni Ram of Police Station Vinay Nagar, South District. The complaint is Ex.PW-7/A. He states that 'after 7 p.m. accused Punni Ram ASI now present in court came to the house of the complainant on his bicycle along with a Tahiti and went inside the drawing room. At about 7.30 p.m. after getting signal from Panch witness Shiv Dutt, I along with Hoshiar Singh went to the drawing room and disclosed my identity to ASI Punni Ram, who was apprehended by us. ..... Hoshiar Singh Dahiya took the search of hip pocket of pant of the accused from where currency notes Ex.P-1 to P-5 were recovered.'

14. In the statement under Section 313, the accused Punni Ram took a stand that 'I was investigating the case F.I.R.No.402/85 under Sec.325 I.P.C., of Police Station Vinay Nagar. This case was registered on the complaint of Kuldeep Verma PW-7. I got Kuldeep Verma medically examined, and on 22.7.85, I received opinion from the doctor that the injuries sustained by Kuldeep Verma were grievous in nature. Accordingly, on the basis of my endorsement, the above referred case was registered against Shyam Lal and others. Since the offence of 325 I.P.C. was bailable, so, I released Shyam Lal on police bail. The other co-accused secured their bail from the Court of the Learned Metropolitan Magistrate. Kuldeep Verma was feeling bad as to why Shyam Lal and others were not lodged

in the lock-up. He made complaints against me to the S.H.O. and other authorities and after detailed enquiry, the allegations of Kuldeep Verma were found to be false and those complaints were filed, and I continued to be the investigating officer of that case. I had been requesting Kuldeep Verma to produce and examine any witness in support of his case, which he was avoiding on one pretext or the other. On 30.7.85, at about 6.30 p.m., I received a telephone call from Kuldeep Verma in the room of the Duty Officer, and when I attended the call, I found that the caller on the other side was Kuldeep Verma. Kuldeep Verma asked me to come to his house, as his witness was reluctant to come to the police station, and so, his statement should be recorded at his house. I told him that I had just come to the police station and was not having any conveyance and would not be able to come at that time. Thereafter, Kuldeep Verma came on his motor-cycle to the police station and requested me to accompany him to his house so that the statement of the witness could be recorded, and in the good interest of the investigation of that case, I accompanied him and at his house, Shiv Dutt PW was introduced to me as witness. I recorded the name and the particulars of the said witness and had completed his statement, and after completion of the statement, when I was to leave the house, I was garaged by the plain clothed persons who came to be known as officials of Anti-Corruption Branch. I had neither demanded no accepted money. Although the complainant had tried to give me the money, but I had declined. I neither demanded nor accepted the money from the complainant and was falsely arrested and involved in the present case.'

15. The argument advanced by the learned counsel for the appellant is that this is a case where the accused had been sought to be implicated in a total false case and that there was neither a demand nor receipt of bribe and that the complainant had deliberately, in order to implicate the accused, thrust the money into the hip pocket of the accused inspire of his refusal to accept the same. He submits that the complainant is not a reliable witness inasmuch as the factum of the accused reaching the house of the witness, according to the complainant (PW-7) and ACP (PW-11), is that the accused came to the house of the complainant on his bicycle to record the statement of Shiv Dutt, whose statement was to be recorded purportedly being the witness to the case under investigation by the accused. The case of the accused was that he was called from the Police Station and brought to

the house of the complainant by the complainant on his motor cycle where he recorded the statement of Shiv Dutt (PW-3) and towards the fag end of the recording of the statement, the complainant tried to give money to the accused, which was returned and thereafter it was again thrust into the hip pocket when the accused was surrounded and money recovered. Both PW-3 and PW-6 say that the complainant brought the accused on his motor cycle to his house. Further the prosecution has not placed on record the statement, recorded by the accused, of PW-3 although PW-12 says that he took into possession such a document from the accused. This witness categorically states 'It is correct to suggest that a half-written statement but without signatures, was taken into possession along with the Tahiti. Those papers including the said half-written statement are not on the judicial file.' The prosecution's story does not inspire confidence. The sub-strata of the story is that the accused demanded a bribe of Rs.500/- and that he came to the house of the complainant on his bicycle to claim his bribe. It is also the case of the prosecution that no statement of PW-3 was recorded. This is borne out from the statement of PW-7, the complainant. However, there is evidence to the contrary that the statement was recorded of PW-3 and taken into possession by PW-12. To this effect PW-3 is categoric. Further, PW-3, who is the only eye-witness negates the part of demand and receipt of bribe. He states that the complaint was trying to thrust this into the hands of the accused and ultimately thrust into his pocket. It appears to me that the case put up by the defense is plausible and that the accused herein has been made a victim of the complainant's grudge against him for not handling his complaint in accordance with his wishes. It would be dangerous to convict the appellant on the basis of material placed on record since the Explanationn rendered by him finds corroboration in the prosecution's evidence and there is a ring of truth. I am inclined to accept the same.

16. Criminal Appeal No.181/1993 is allowed and the appellant is acquitted of all charges.

17. The appellant is on bail. His bail bond and surety stand cancelled. The record of the trial court be sent back forthwith.

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