

**Resham Lal Vs. State**

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**Court :** Delhi

**Decided On :** Aug-12-1999

**Reported in :** 1999VAD(Delhi)723; 81(1999)DLT165

**Judge :** Madan B. Lokur, J.

**Acts :** [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 374; [Indian Penal Code \(IPC\), 1860](#) - Sections 161; [Prevention of Corruption Act, 1947](#) - Sections 5(1 & 2)

**Appeal No. :** Crl. Appeal No. 411 of 1977

**Appellant :** Resham Lal

**Respondent :** State

**Advocate for Pet/Ap. :** Mr. P.R. Thakur and; Mr. Naveen Thakur, Advs

**Judgement :**

**Madan B. Lokur, J.**

1. The appellant preferred an appeal under Section 374 of the Code of Criminal procedure. 1973 (hereinafter referred to as Cr. P. C.) against an order of conviction and sentence dated 29th November 1977 Passed by the Special Judge, Delhi, in Corruption Case No. 22/1977.

2. The appellant was convicted of an offence under Section 161 of the IPC and under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#). He was sentenced to rigorous imprisonment of one year under Section 5(2) read with Section 5(1)(d) of the [Prevention of Corruption Act, 1947](#) (hereinafter referred to as the Act) and a fine of Rs. 100/- and in default of payment of the fine, further rigorous imprisonment of three months. For the offence under Section 161 of the IPC, he was sentenced to rigorous imprisonment for one year. Both the sentences were to run concurrently.

3. The allegations against the appellant were that on the night of Diwali in 1976, the complainant Sundri Devi was attacked at her tea shop by some persons at about 11.00 p.m and she sustained some injuries. The next day, she and her husband made a report in the Police Post at Rani Bagh also known as Police Post Shakur Basti. She was also admitted to Hospital and remained there for three days. According to the complainant, she went to the Police Post on 2/3 occasions to find out the progress made on her complaint, and she was told that no progress had been made since her medical report had not been received from the Hospital and until that report is received, no action can be taken. On 13th November, 1976 when she again went to make enquiries, she was given the same reason for no progress having been made. She pleaded with the Munshi in the Police Post for taking speedy action in obtaining the medical report, on which the Munshi informed her that she would have to pay Rs. 5/- for a special constable to be deputed for the purpose and another Rs. 10/- as bribe to him, that is, the Munshi.

4. On these facts, the complainant lodged a complaint with the Anticorruption Branch of the State on 15th November, 1976. On the basis of the complaint a trap was laid and two public servants, that is, Dalip Singh PW. 3 and B.K. Saran PW 9 were associated with the raiding party. There complainant and the public witnesses were explained the procedure to be followed and the steps to be taken in connection with trapping the person taking the bribe. In brief, they were shown that when currency notes treated with phenolphthalein powder are touched with the fingers and then the fingers are dipped in a colourless solution of sodium carbonate, the said solution turns pink. They were told the plan to be followed which was that treated notes would be offered as the bribe and upon acceptance

thereof, a signal was to be given to Inspector K.L. Sethi, PW. 11.

5. As per the pre-arranged plan, Sundri Devi was given one currency note of the denomination of Rs.10/- and another of Rs. 5/-, both treated with phenolphthalein powder. She was to hand over these treated notes to the appellant as a bribe. Before this, B.K. Saran PW. 9 was expected to present himself before the duty officer at the Police Post at Shakur Basti and pretend that he had come to lodge a complaint of the loss of a bunch of keys. Dalip Singh, PW 3 was to remain outside the reporting room in the verandah or corridor so that he could give a signal to the raiding party. Sundri Devi was, of course, expected to be in the reporting room at the time of giving the bribe.

6. The trap was set and carried out as per the plan, Inspector K.L. Sethi, PW. 11, who was in charge of the raiding party, on receiving the signal from Dalip Singh entered the reporting room along with his staff. He disclosed his identity to the appellant and challenged him by saying that he had taken a bribe. It is alleged that the appellant took out the currency notes from his shirt pocket, tried to put them in his mouth to swallow them but he was prevented from doing so, and in this scuffle he received a minor injury on his face. After the appellant was overpowered his hands were dipped in two glasses of sodium carbonate solution which turned pink. Similarly, the area around the right hand pocket of his shirt was also dipped in a glass of sodium carbonate solution which also turned pink. The solutions were then transferred to three bottles which were duly sealed and the thumb impressions of the witnesses and the complainant were taken on the seals.

7. The appellant in his statement under Section 313 of the Cr. P.C. denied the prosecution version. According to him, B.K. Saran had come to lodge a report about the loss of a bunch of keys. At that time, he also noticed the complainant Sundri Devi and asked her why she had come. She informed him that she had come in connection with the medical report of the injury that she had received. According to the appellant he replied that he would check up the record and inform her. At this Sundri Devi extended some money to the appellant which he declined to accept. The appellant then unbuttoned the right side front pocket of his shirt and took out a pencil in order to write down the report of B.K. Saran. At this point,

Sundri Devi put two currency notes in his pocket. Since this greatly angered the appellant he took out the currency notes, twisted them and threw them away. While in the process of doing so, his hands struck against a boil on his right cheek which resulted in some blood being discharged. It was at this point of time that K.L.Sethi, PW. 11 entered the reporting room and challenged the appellant.

8. The appellant further stated that one Dr. Vats who is a medical practitioner at Rani Bagh was behind the incident because of some personal animosity.

9. On these basic facts and the evidence on record, the learned Special Judge found the appellant guilty and convicted him as aforesaid.

10. The question that, therefore, arises for consideration in his appeal is whether the appellant demanded any bribe from Sundri Devi and whether he had taken the two currency notes voluntarily or whether they had been put into his pocket against his wishes merely to entrap him.

11. Learned Counsel for the appellant addressed detailed arguments on 6th August, 1999 and also took me through the evidence on record. No one appeared on behalf of the State even though the appeal was shown in the cause list on 23th July, 1999 and 6th August, 1999.

12. Learned Counsel for the appellant made a three-fold submission. He submitted that firstly, the appellant did not demand a bribe from Sundri Devi. It was then submitted that there was no evidence to suggest that the appellant had voluntarily taken any money from Sundri Devi and finally, the events which occurred when he raiding party entered the reporting room were not very clear and the benefit of this must go to the appellant.

13. As regards the first submission of learned Counsel for the appellant, it may be seen that in her complaint to the Anti Corruption Branch, Sundri Devi stated that she had gone to the Police Post on 13th November, 1976 at about 9.30 p.m. and the Munishi on duty had told her that she would have to pay Rs. 5/- for a constable to be deputed to collect the medical report and a further amount of Rs. 10/- as bribe. According to the learned Counsel, on 13th November, 1976, the appellant

was on duty till about 8.00 p.m. after which Constable Raghubir Singh took over the duty at 8.05 p.m. Consequently, it could not have been the appellant who demanded the bribe. Learned Counsel for the appellant also submitted that the learned Special Judge erred in observing that since it was a winter night, Sundri Devi (who is a simple and illiterate lady) had made an error about the timing and that she actually reached the Police Post not later than 8.00 p.m and since she had come at that time, she must have talked only to the appellant. Learned Counsel urged that there is no factual basis for this assumption.

14. I am in agreement with learned Counsel for the appellant and am unable to appreciate this conclusion arrived at by the learned Special Judge. However simple and illiterate Sundri Devi might be, she could not have made such an error about the time as made out by the learned Special Judge. Sundri Devi was working in a tea shop and according to her she closes the tea shop at about 9.00 p.m. or 9.30 p.m. Since closing the shop at night was a daily routine with her she must be having a good idea about the time at which she daily closes the shop. If on a particular day she had closed her shop an hour (or more) earlier than usual, she would definitely have known about it and made a specific mention of it. The learned Special Judge was, therefore, in error in presuming that Sundri Devi had no idea about the time at which she closed her shop on 13th November, 1976 and that she had closed her shop before 8.00 p.m. that day. There is absolutely no evidence to support this conclusion of the learned Special Judge. On the contrary, the normal course of conduct of Sundri Devi would belie such a conclusion.

15. In her deposition in Court, Sundri Devi said that she could not say if the appellant was present in the reporting room on 13th November, 1976 and she was unable to recollect who he was. She also could not say if the policeman who had asked for the amount of Rs. 15/- was the appellant or somebody else. In answer to one question, Sundri Devi stated that whenever she went to the Police Station, money was demanded from her. 'On the night of 13.11.1976 also, demand for bribe had been made. It was the man who was present in the reporting room at that time'. From the evidence on record it appears that Sundri Devi went to the Police Station on 7th, 9th and 10th November, 1976 and the appellant was not on duty on any of these dates. According to the learned. Special Judge, Sundri Devi,

being an illiterate lady, may not be remembering the actual dates. Even if it is so, if she had met the appellant on any of these occasions, she would have certainly been able to identify him as the person who had demanded a bribe from her. Moreover, there is nothing on record to suggest that if she had gone to the Police Post on dates other than those mentioned by her, the appellant would have been on duty on those dates and at that point of time. The findings of the learned Special Judge in this regard are purely conjectural.

16. In this view of the matter, I am quite satisfied that the appellant did not demand any bribe from Sundri Devi.

17. With regard to incident on 15th November, 1976 B.K. Saran, PW. 9 had turned hostile and did not support the prosecution version. According to him, the appellant declined to accept the currency notes, in fact, they were put into his pocket by Sundri Devi whereupon the appellant took them out and threw them on the floor. The other panch witness, namely, Dalip Singh, PW.3 was not actually in the reporting room when the appellant is supposed to have taken the two currency notes. As such, his evidence is of no help in deciding whether the appellant took the money voluntarily or it was put into his pocket.

18. However, when Dalip Singh and the raiding party entered the reporting room, Dalip Singh says that on being challenged by K.L. Sethi, PW. 11, the appellant took out the notes from his shirt pocket and tried to put them in his mouth. According to the learned Special Judge this act of the appellant shows that he had taken the money voluntarily, otherwise there was no need for the appellant to try and put the currency notes in his mouth.

19. In this regard, the evidence of K.L. Sethi, is to the effect that the appellant did in fact manage to put the currency notes in his mouth and it is only after a struggle that he (appellant) threw them out from his mouth and it was in this struggle that the appellant sustained a facial injury.

20. There does appear to be some discrepancy between the evidence of Dalip Singh and K.L. Sethi as to what transpired when the raiding party entered the reporting room. While Dalip Singh says that the appellant was trying to put the

currency notes in his mouth, K.L. Sethi says that he did manage to do so. Dalip Singh says that there was a struggle between the appellant and K.L. Sethi and the notes fell down on the floor during the scuffle; on the other hand, K.L. Sethi says that during the scuffle he caught hold of the appellant by his neck and then the appellant took out the notes from his mouth and threw. Dalip Singh does not mention any facial injury having been caused to the appellant while K.L. Sethi makes a mention of it. When Sundri Devi was asked about how the currency notes were recovered from the appellant she stated that she cannot say how the notes were recovered by K.L. Sethi from the appellant.

21. From the evidence of Dalip Singh it appears that he may not have entered the reporting room simultaneously with the raiding party or that the incident of nabbing the appellant was so swift that both Dalip Singh and Sundri Devi were unable to accurately describe the events. Be that as it may, there does appear to be some uncertainty as to what actually transpired in the reporting room on 15th November, 1976 and the benefit of this doubt must undoubtedly go to the appellant; more so in view of the evidence of B.K. Saran that the appellant declined to accept the currency notes and threw them away before the raiding party entered the reporting room.

22. Learned Counsel for the appellant also brought to my notice the evidence of Dr. A.K. Bachawat, PW. 8 who had examined the appellant. Dr. Bachawat did confirm the fact that the appellant had an abscess on his chin which had burst, causing a simple injury. The evidence of Dr. A.K. Bachawat lends some credence to the case set up by the appellant but it has not even been adverted to by the learned Special Judge.

23. In the light of the material available, it is not necessary for me to discuss whether there was any animosity between Dr. Vats and the appellant and whether he was behind the 'trap'.

24. In view of the above discussion and looking to the totality of the facts and circumstances on record, I am satisfied that there is not enough evidence to secure the conviction of the appellant. The appeal against the order dated 29th November, 1977 passed by the Special Judge, Delhi in Corruption Case No.

22/1977 is accordingly, allowed and the appellant is acquitted. The bail bond is discharged. The fine, if already paid by the appellant, be refunded to him.

Appeal allowed.

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