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Ram Nath Vs. State

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Court : Delhi

Decided On : Jul-29-1994

Reported in : 1994IIIAD(Delhi)1223; 1994(31)DRJ238

Judge : Anil Dev Singh, J.

Acts : Prevention of Corruption Act, 1947 - Sections 5(1)

Appeal No. : Criminal Appeal Nos. 280 and 281 of 1979

Appellant : Ram Nath

Respondent : State

Advocate for Pet/Ap. : R.K. Naseem,; Meena Chaudhary and; Seema Gulati, Advs

Judgement :

Anil Dev Singh, J.

(1) This judgment will dispose of two criminal appeals being Cr.A.No-280 and 281 of 1979-These appeals are directed against the judgment and order of the learned Special Judge, Delhi, dated November 15,1979 whereby both the appellants were convicted under Section 161 of the Indian Penal Code and Section 5(2) read with Section 5(l)(d) of the Prevention of Corruption Act,1947 and sentenced to undergo three years rigorous imprisonment and a fine of Rs.500.00 on each count

concurrently.

(2) Prosecution set up the following case against the appellant:

(3) In the year 1977, both the appellants, Azad Singh and Ram Nath, were posted as Sub-Inspectors at P.S. Roshanara Road, New Delhi. On September 19,1977 Subash Chand lodged a complaint with P.S.Roshanara Road about the theft of his three wheeler scooter bearing registration No.DLR 1873. Consequently a case under Section 379 Indian Penal Code was registered vide Fir No.500 of 1977 and investigation was entrusted to the appellant Azad Singh. On September 20,1977 at about 4 P.M. Azad Singh came to the house of Subash and told him that he will let him know the whereabouts of his scooter provided he agreed to give a party to him. On his demand, Subash entertained Azad Singh with a bottle of beer. Thereafter Azad Singh accompanied by Subash went to P.S.Ashok Vihar where the scooter was kept. The scooter was then brought by the duo to P.S. Roshanara Road. Subash wanted to take possession of the scooter but was advised to seek orders from the court for release of the same. On September 21, 1977 Subash filed an application before the Metropolitan Magistrate for release of the scooter on superdari. The application of Subash was accepted and it was directed that the scooter be released to him on his furnishing a bond turn a sum of Rs.8000.00 . Subash thereafter met Azad Singh on the same day at 3.30 P.M. and gave him the release order. Azad Singh asked Subash to pay a sum of RS. 100.00 to him as a condition precedent for the release of the scooter. Si Ram Nath who was also present at that time stated that Rs 100.00 was highly inadequate and at least Rs.400.00 should be paid. Subash paid RS.100.00 to Azad Singh as demanded by the latter but the scooter was not released. Azad Singh and Ram Nath asked Subash to bring a bottle of whisky by 7 P.M., up to which time Azad Singh was to wait for him in Roshanara Police Station and in case he came after 7 P.M. the bottle was to be given to Ram Nath. Piqued by their demands Subash Along with his brother Bimal approached Shri D, Dsp, Ps Subzi Mandi and told him about the demand made by Azad Singh and Ram Nath, appellants. The statement of Subash Ex Public Witness 1/B was recorded at the police station. Thereupon Shri Vohra contacted Shri P.R.S. Brar, Additional Superintendent of Police who also came to the Ps Subzi Mandi.

(4) A raiding party was organized which included Vohra, Brar and two public witnesses, namely Satish Kumar and Raj Kumar besides Subash and his brother Bimal. The statement of Subash was read out to him in their presence and he signed the same. A bottle of whisky was also produced by Subash and the members of the raiding party appended their signatures on the label thereof. At 7.30 P.M. the raiding party visited P.S.Roshanara Road but the appellants were not present. Both Dsp and Additional S.P. left the Police station for their residence with the instructions to the remaining members of the raiding party that the former be informed about the arrival of the appellants so that raid could be conducted. Around 11.15 P.M. Ram Nath came back to Roshanara Police Station but Azad Singh did not return. Subash informed the Dsp about the arrival of Ram Nath and again the same raiding party was organized. Subash accompanied by Bimal approached Ram Nath and handed over to him the bottle of whisky in presence of the public witnesses who had entered his office with Subash. At this juncture Bimal gave the requisite signal and the rest of the raiding party appeared. By this time Ram Nath had already placed the bottle in a box and had locked the same. Officers namely Vohra and Brar asked Ram Nath to open the box. Ram Nath who was in possession of the key opened the box and the bottle of whisky, which he had placed in the box was seized. This bottle bore the signatures of the members of the raiding party. Ram Nath was arrested and was sent for trial on completion of the investigation. On April 7,1979 charge under Section 161 Indian Penal Code and Section 5(2) of the Prevention of Corruption Act was framed against him by the Special Judge. On May 5,1979 Additional Public Prosecutor made an application for summoning Azad Singh for being tried along with Ram Nath for having committed an offence under Section 161 Indian Penal Code as well as an offence under Section 5(2) of the Prevention of Corruption Act. The plea was accepted by the Special Judge. Accordingly, both the appellants were tried together in respect of the following charges:

RAMNath 'Firstly, that on 21.9.77 at about 11.45 P.M. at Police Station Roshanara Road while you being a public servant posted as Sub Inspector, at Police Station Roshanara Road accepted or obtained from Subhash Chand a bottle of Imperial Whisky as gratification other than legal remuneration as a motive or reward for doing a favor to said Shri Subhash Chand to wit to help him in releasing the three

wheeler scooter No.DLR 1873 and thereby committed an offence punishable under Section 161 Indian Penal Code and within the cognizance of this Court. Secondly that at the above said date time or place you being a public servant as aforesaid obtained from Subhash Chand a bottle of Imperial Whisky as gratification other than legal remuneration by corrupt and illegal means or otherwise abusing your position as public servant and thereby committed an offence of criminal misconduct punishable under Section 5(2) read with Section 5(l)(d) of the Prevention of Corruption Act and within the cognizance of this Court.' Azad Singh 'Firstly, that on 21st September, 77 at about 3.30 P.M. at Police Station Roshanara Road while you being a public servant posted as a Sub Inspector at Police Station Roshanara Road accepted or obtained from Subhash Chand Rs.100 as gratification other than legal remuneration as a motive or reward for doing a favor to the said Shri Subhash Chand to wit and help him in releasing the three wheeler scooter No.DLR 1873 and thereby committed an offence punishable under Section 161 Indian Penal Code and within the cognizance of this Court. Secondly that at the above said place, date and time you being a public servant as aforesaid obtained from Subhash Chand Rs.100 as gratification other than legal remuneration by corrupt and illegal means or otherwise abusing your position as a public servant and thereby committed an offence of criminal misconduct punishable under Section 5(2) read with Section 5(1) (d) of the Prevention of Corruption Act within the cognizance of this Court'

(5) The trial of the appellants resulted in the aforesaid judgment and order of the learned Special Judge dated November 15, 1979 whereby they were convicted and sentenced in the manner as stated above. It is against this order that the appellants have approached this Court in appeal.

(6) Learned counsel appearing for the appellants submitted that prosecution story was not convincing and the statements of the prosecution witnesses suffer from material inconsistencies which throw considerable doubt on the veracity of the prosecution case. According to the learned counsel, Azad Singh appellant could not have been convicted on the solitary statement of Public Witness -1 Subhash who was the bribe giver. Learned counsel further contended that no other prosecution witness had seen him giving the alleged bribe to Azad Singh. What

transpired between Azad Singh and Public Witness -1, the bribe giver, is not known to any third person, submitted the learned counsel. Learned counsel further submitted that Public Witness -1 being the complainant and an interested witness, his statement implicating ing Azad Singh, cannot be accepted without corroborative evidence which in the present case is lacking. In so far as the case against Ram Nath, appellant is concerned, he submitted that on September 21,1977 Ram Nath had left the Police Station Roshanara at 12.06 noon and returned only at 11.30 p.m. and thereforee, the prosecution case that the complainant went to the Roshanara Police Station at 3 or 3.30 p.m. where he met Azad Singh and Ram Nath is false. According to the learned counsel when Ram Nath, appellant, was not present at the police station at the time of the alleged visit of the complainant, there was no question of his asking for a bottle of whisky or his telling Azad Singh that Rs.100 paid by the complainant on demand of Azad Singh was highly inadequate and at least Rs.400.00 should be paid. The bottle of Whisky, was neither recovered from Azad Singh nor the box in which the bottle was placed belonged to him, contended the learned counsel. In this regard, learned counsel referred to the statement of Public Witness -10 H.C. Amar Pal Singh, according to whom the wooden box had not been allotted to the appellant Ram Nath. learned counsel also attacked the genuiness of rukka Ex. Public Witness 1/3 and described it as a suspicious document. Learned counsel submitted that the initial complaint made by Subhash to Public Witness -9 Shri D.N.Vohra, D.S.P., Police Station, Subzi Mandi did not contain any reference to Ram Nath, appellant. It Was only subsequently that a fresh complaint was recorded by virtue of which Ram Nath, appellant was also implicated. Learned counsel further contended that the prosecution case that Ram Nath enquired from Subhash as to whether he had brought the bottle of Whisky and on getting the reply in the affirmative, he took the bottle from the complainant, placed it in the wooden box and locked the same, was absolutely false. Learned counsel asserted that none of the prosecution witnesses were able to say definitely as to who had the key of the box from which the bottle of whisky was allegedly recovered. He also pointed out that the other contents of the box were not seized with the result that the prosecution failed to establish that the box belonged to Ram Nath.

(7) On the other hand, learned counsel for the State submitted that the prosecution evidence clearly establishes the guilt of the appellants. According to learned counsel, there was ample evidence to show that Azad Singh had demanded a sum of Rs.100 as illegal gratification from Subhash who paid the same to him. Apart from this, both Azad Singh and Ram Nath demanded a bottle of Whisky from the complainant as reward for release of his scooter, which had been stolen and for which an Fir being No.500/77 was lodged. It was also submitted that the bottle of Whisky which was accepted by Ram Nath as bribe from Subhash, was recovered from the former. It was also the submission of the learned counsel that the box in which the bottle was placed was locked and the same was opened by Ram Nath who was having the key of the lock. In this regard, she has invited my attention to the statements of Public Witness -1, Public Witness -3, Public Witness -5 and Public Witness -9. Since the bottle was recovered from the possession of Ram Nath, appellant, learned counsel submits,the presumption under section 4 of the Prevention of Corruption Act, 1947 (corresponding to section 20 of the Prevention of Corruption Act, 1988) should be drawn against Ram Nath.

(8) I have considered the submissions of the learned counsel for the parties and I have perused the record.

(9) At the outset, it needs to be noticed that the only allegation against Azad Singh, appellant of which cognizance was taken by the Additional Sessions Judge, is that he accepted or obtained from Subhash, complainant, Rs.100 as gratification other than legal remuneration as a motive or reward for releasing the three wheeler scooter. To sustain the charges against him, the prosecution relied upon the solitary statement of Subhash who was the bribe giver. I he testimony of Subhash in so far as the allegation of demand and acceptance of RS.100.00 by Azad Singh, is concerned, finds no corroboration from any other evidence. Subhash according to his own showing is a bribe giver and is an abettor within the meaning of Section 165A of the Indian Penal Code thereforee conviction of Azad Singh cannot be founded on the solitary statement of the complainant. In Panalal Damodar Rathi vs . State of Maharashtra. : 1979 CriLJ936 , the Supreme Court declined to rely on the testimony of the complainant on the ground that there was no corroboration of his testimony regarding the demand for money by the

appellant as the punch witness Public Witness -3 had not spoken of the same.In this regard, the Supreme Court observed as follows:-

'OMISSION by Public Witness -3 to refer to any mention of money by the appellant would show that there is no corroboration of testimony of the complainant regarding the demand for the money by the appellant. On this crucial corroborated aspect thereforee it has been found that the version of the complainant is not corroborated and thereforee, the evidence of the complainant on this aspect cannot be relied upon.'

(10) Similarly in Lachman Dass vs . State of Punjab : 1970 CriLJ526 . the Supreme Court held that at least some punch as who over hear the version or see something to which they can depose or there ought to be some other evidence before the word of complainant from whom demand for bribe was. made by the public servant can be accepted. In Jaswant Singh vs . State of Punjab : 1973 CriLJ664 the Supreme Court while accepting the above principle held as follows:-

'AS Public Witness -1 is the complainant, his evidence will have to be considered with great caution and it will not be ordinarily safe to accept his interested testimony unless there is material corroboration found in other evidence adduced by the prosecution.'

(11) Thus the legal position is that complainant in a trap case is an interested witness. thereforee, his evidence will have to be considered with great caution and it will not be safe to accept his interested testimony unless material corroboration is found in other evidence of the prosecution..

(12) As already seen, the statement of the complainant in the present case alone cannot be made the basis for the conviction of Azad Singh, appellant as there is no corroboration with regard to his assertion that Azad Singh demanded and accepted a sum of RS.100.00 from him as bribe for showing favor to him in the matter of release of his scooter. Besides, it is admitted by the complainant that during emergency and six months prior to the occurrence Azad Singh appellant had removed the shop of the former which he was running on the pavement. thereforee, it will not be safe to uphold the conviction of Azad Singh on the solitary

statement of the complainant.

(13) Now coming to the case of Ram Nath, appellant, it will be necessary to recount the prosecution version on the basis of which the charges have been leveled against him. The case of the prosecution against Ram Nath, appellant is that Subhash Public Witness 1 armed with the order of the Metropolitan Magistrate dated September 21, 1987 directing the release of the scooter on his furnishing bond in the sum of Rs.8000.00 went to the police station Roshanara Road on September 21, 1977 at 3 or 3.30 p.m. for collecting his scooter, when Azad Singh asked him to pay RS.100.00 which was paid but Ram Nath interjected and said that the amount was less and he should pay Rs.400.00 . Besides, both Ram Nath and Azad Singh made a demand for a bottle of whisky. Thereafter a trap was laid, the details whereof have already been given earlier. At about 11.30 p.m. or so the complainant and other members of the raiding party went to the office of Ram Nath, appellant. On seeing the complainant. Ram Nath enquired as to whether he had brought the bottle of whisky. The complainant replied in the affirmative and gave the bottle of whisky. This bottle was the one on the label of which the members of the raiding party had appended their signatures to facilitate the identification thereof. This bottle, which was said to be in a wrapper and a banker-chief was tide around it, was received by Ram Nath, appellant who placed the same in a wooden box which was lying in his office. After placing it in the box, he locked the same. After the bottle had been accepted by the said appellant, a pre-determined signal was given by Public Witness -3 Bimal, whereupon Public Witness -9 Vohra, Deputy Superintendent of Police and Public Witness 5 Brar, Additional Superintendent of Police came to the office of Ram Nath, appellant. On enquiry by Public Witness 5 about the bottle of whisky. Ram Nath opened the lock of the box and from the box he took out the bottle of whisky Ex.P2. The bottle of whisky was found to be the same and the label thereof bore the signatures of the members of the raiding party. Now the question is whether the prosecution has been able to prove the case against Ram Nath, appellant beyond reasonable doubt. The statement of Public Witness -1 Subhash fully supports the prosecution case but as already noticed, he being a bribe giver, his statement has to be scrutinised with great care & caution and ordinarily such a statement has not to be accepted unless corroborated in material particulars by other evidence adduced by

the prosecution. Now what has to be considered is whether corroboration of the statement of the complainant is forth-coming from other evidence. To find corroboration it will be necessary to refer to the testimony of other prosecution witnesses. Public Witness -9 Vohra stated that when he and Brar went to the room of Ram Nath appellant, the latter was present. The release order Ex.PW- 1/A was in his hand, which was taken into possession vide memo Ex.PW2/A. Ram Nath appellant on being asked about the bottle of whisky, took out the key from the pocket of his trouser and opened the lock of the box from where he took out the bottle Ex.P-2. Public Witness -9 further stated that the bottle of whisky which was produced by Ram Nath, appellant was found to bear the signatures of the members of the raiding party. He also stated that he and Brar had signed on the red portion of the label, while other members of the party had signed on the white portion of the label. Public Witness -5 P.R.S.Brar, a member of the raiding party, who was posted as Additional Superintendent of Police (North District) and was also discharging the functions of Superintendent of Police, P.S. Subzi Mandi, deposed that a bottle of whisky was brought by Subhash which was signed by him and other member of the raiding party. According to him during the raid this bottle of whisky was recovered from Ram Nath. In this regard Brar stated as follows:-

'ONE of the four persons who had gone inside came out of police station and again went inside. That was the signal for us as a confirmation that transaction has taken place. Thereupon I and Shri Vohra went inside. Sub- Inspector Ram Nath was present. Subhash Public Witness told us that he has given the bottle of whisky to Ram Nath accused. He further told us that the same is lying in the wooden box. The box was lying locked. Ram Nath accused took out the key and opened the box. The bottle of whisky Ex.P2 which was signed by me was recovered from that wooden box.....'

(14) Thus from the statement of Brar, it is apparent that the bottle of whisky which bore the signatures of the members of the raiding party and was required to be given to Ram Nath and Azad Singh or either of them, was recovered from the wooden box lying in the office of Ram Nath and Ram Nath himself took out the key and opened the box. There is no allegation that Public Witness -5 bore any animus against Ram Nath or had motive to harm him. Corroboration of the testimony of

Subhash regarding Ram Nath's complicity in the crime can also be found in the statement of Public Witness Bimal. He stated that Vohra enquired from Ram Nath accused about the bottle of whisky that was taken by him, whereupon Ram Nath accused denied the allegation. However, when Subhash disclosed that the bottle of whisky was in the box of the accused. Ram Nath himself opened the lock of box and took out the bottle of whisky.

(15) The statements of other two witnesses, Public Witness -4 Raj Kumar and Public Witness -2 Satish who were also the members of the raiding party need to be noticed. Raj Kumar who had turned hostile, was cross-exam'ned by the prosecution with the leave of the Court. Even he admitted in the examination-in chief that Ram Nath accused had opened the box and bottle Ex.P2 was recovered from it and the bottle was the same which was signed by the raiding party. I am inclined to accept this part of the testimony of the witness in the light of the other evidence relating to the recovery of bottle of whisky from Ram Nath. It is well settled that the testimony of a witness who has been declared hostile cannot, as a matter of law, be treated as having been washed off from the record altogether. After reading and considering the evidence of the witness as a whole and having regard to the other evidence on the record, I am of the opinion that he can still be believed in regard to that part of his testimony relating to recovery of the bottle of whisky from Ram Nath, as I find that part of his testimony to be trustworthy (See: Sat Pal vs . Delhi Administration : 1976 CriLJ295).

(16) In so far as the statement of Public Witness -2 Satish is concerned, he supported the prosecution story in his examination-in-chief but turned turtle when cross- examined, in his cross-examination he stated that he did not hear the conversation which took place between Public Witness -1 Subhash and Ram Nath, appellant, as he was at the door of the office of Ram Nath and was moving out when Subhash entered the same. Even if the statements of Satish and Raj Kumar are ignored it will not affect the substratum of the prosecution story against Ram Nath as from the statements of other prosecution witnesses, it is established that bottle of whisky which bore the signatures of the raiding party on the label thereof, was recovered from Ram Nath. This fact finds support from the box being opened by Ram Nath with the key which was produced by him. The fact that Ram

Nath received and obtained the bottle of whisky from Subhash is reinforced by the further fact that the application /release order Ex.PW-1/A was in the hand of the accused Ram Nath at the time of the raid and the same was taken into possession vide Ex.PW-2/A.(See statement of Public Witness -9 at page 210 of the trial Court record). The recovery of bottle was witnessed by Public Witness -5 Brar against whom no allegation of any hostility between him and the appellant has been made by the defense.

(17) Learned counsel for the appellants made a scathing criticism against the prosecution case. He submitted that there was no reason why the complainant should have made a complaint to Vohra instead of going to the Anti Corruption Branch. He contended that the complainant was in the habit of making complaints against police officers and the Anti Corruption Department knowing this fact too well would net have entertained the present false complaint. He also pointed out that on an earlier occasion the complainant had filed a complaint against Constable Daryao Singh and similar types of allegations were made against him but the prosecution against him did not succeed and the Anti Corruption Department was aware of that case. He also submitted that Ram Nath held in-curred displeasure of Vohra as he had got the fridge of Vohra repaired for which he demanded money from him, and even on an earlier occasion there was exchange of hot words between Vohra and Ram Nath, appellant.

(18) I have considered the submissions of the learned counsel and I am of the opinion that these do not demolish the fact that the bottle of whisky was recovered from Ram Nath Along with Ex.PW-l/A which was an application of Subhash for release of the scooter. Moreover Vohra has explained the .reason as to why he did not ask the complainant to approach the Anti Corruption Department. In his statement he has pointed out that this was not done because firstly he was empowered to investigate and secondly the time was short as the complainant was required to bring the bribe on September 21,1977 itself by 8 p.m. The mere fact that Vohra did not ask Subhash to go to the Anti Corruption Branch, which is located in Tis Hazari Courts, is of no consequence. In so far as the question of repair of his refrigerator is concerned, Public Witness -9 has denied that he had got the same repaired through Ram Nath, appellant. Ram Nath has not produced

the mechanic who is alleged to have repaired the fridge belonging to Public Witness -9 nor the name of the mechanic has been divulged. It is the mere ipse dixit of the defense which cannot be accepted. Even if the deposition of Public Witness 9 is ignored, corroboration to the statement of the complainant can be found in the statement of Public Witness -5 Brar who has no axe of his own to grind and has no animus against Ram Nath. What is against him is that he is a police officer and was a member of the raiding party. But this cannot be a ground to discard his testimony in the present case. Even Public Witness Raj Kumar who was declared hostile admitted the recovery of the bottle of whisky Ex.P2 from Ram Nath. The statement of Brar no doubt requires careful examination, being a member of the raiding party, but it cannot be believed that he would be so much interested or obsessed with the success of the raid that he would have gone to the extent of manufacturing evidence of recovery of bottle of whisky, bearing the signatures of the members of the raiding party on its label, from Ram Nath appellant.

(19) Learned counsel for appellants also contended that Public Witness -9 sent the endorsement for registration of the case only after the raid had been conducted when he should have registered the case immediately on the complaint being made by Subhash regarding the demand of bottle of whisky by the accused. Learned counsel further submitted that the statement of Subhash recorded originally in the P.S. Subzi Mandi did not carry any allegation against Ram Nath but the said statement was destroyed and the same was substituted by Ex.PW-l/B, a fresh Fir, containing false allegations against him. I find no force in the argument of the learned counsel as it is merely based on assumptions without any factual basis. However, it is correct that Fir was registered after the raid but the reason why Fir was not registered immediately on recording the statement of Subhash is given by Brar. He stated that he was of the opinion that the entire transaction should take place before the Fir could be registered. In this regard he stated as follows:-

'I know that mere demand of bribe by a public servant is an offence. I did not suggest Shri Vohra to get the case registered before laying out the trap. I did not suggest it because I thought that the entire transaction should take place before it

could be done.....'

(20) There is also no reason to assume that originally a different statement of Subhash than the one which was treated as Fir was recorded and the present statement has been substituted for it. Learned counsel for the appellants tried to sustain his argument by contending that Public Witness -9 in his testimony stated that the statement of Subhash was recorded before the arrival of Public Witness -5 Brar, while according to the testimony of Brar, the statement of Subhash was recorded after his arrival. Out of this small inconsistency learned counsel for the appellants wants to make good his argument. But I do not think any such conclusion can be drawn. Public Witness -9 has taken a stand that the statement of Subhash was recorded by him in police station Subzi Mandi before the arrival of Public Witness - 5.- He, however, stated that on arrival of Public Witness -5, the statement of the complainant was read over to him in presence of other members of the raiding party. The fact whether the statement was recorded before the arrival of Public Witness -5 or after his arrival is not very material and does not throw doubt on the case of the prosecution in so far as Ram Nath is concerned. This is hardly a controversy of any significance.

(21) Learned counsel then submitted that the box in question did not belong to Ram Nath as the same had not been allotted to him. thereforee, he contended that the recovery of the bottle from the box cannot be construed as recovery from the possession of Ram Nath. This submission needs only to be noticed to be rejected. Whether the box was allotted to Ram Nath or not is immaterial as according to the prosecution evidence the box was opened by Ram Nath with the key which was in his possession. thereforee, the statement of Public Witness-1 Mohrrar Malkhana H.C. Amar Pal to the effect that the box was not allotted to Ram Nath is of no avail to the defense.

(22) It was also submitted by learned counsel that Ram Nath had left office on September 21, 1977 at 12.06 noon and came back only at 11.30 p.m. and thereforee, there was no occasion for him to meet Subhash when he is alleged to have visited police station Roshanara on the same day at 3.30 p.m nor there was any occasion to make a demand from Subhash. In this connection it was

submitted that Ram Nath, appellant on the said date had appeared before the Court of Shri O.P. Dwivedi, M.M. and his evidence was recorded in the second session and he could be free by 4 p.m. According to the learned counsel,the said appellant thereafter went to the house of one Balbir Singh of Kamla Nagar to enquire into his complaint, which took about 45 minutes and then he proceeded to Kamla Nagar to enquire into complaint of R.S.Goel, Joint Secretary, UPSC. From there he went to Okhla Railway Station in the company of S.Jagat Singh and Janak Raj for recovery of a two wheeler scooter, case property of Fir No-375/77 and reached Roshnara police station only at 11.30 p.m. Along with S.Jagat Singh and Janak Raj with the said scooter. Learned counsel also pleaded that after arrival at the police station, he made Jagat Singh and janak Raj to sit in his office and leaving them there he proceeded to duty officers' room to record his arrival at 11.30 p.m. and also visited the Moharrir Malkhana to deposit the two wheeler scooter. According to the learned counsel both S Jagat Singh and Janak Raj were present when the raid took place and they categorically stated that the bottle of whisky was not received by Ram Nath from Subhash nor the same was kept by him in the wooden box. Rather it was Subhash who had kept the bottle in the wooden box in the absence of Ram Nath. He further submitted that both Jagat Singh and Janak Raj wanted their statements to be recorded but their requests were not acceded to. As regards the submission of learned counsel that he was away from office from 12.06 noon to 11.30 p.m. on September 21, 1977 and this was recorded in the daily diary,it is pointed out by the learned Special Judge in his judgment under appeal that according to the Punjab Police Rules as applicable to the Union Territory of Delhi, it is not necessary for an officer who is on investigation duty to make such entries. The appellant according to his own showing was making an investigation with respect to loss of scooter of Shri Jagat Singh and had gone to attend the complaints of certain other persons. It is not the case of the appellant that while leaving the police station he had made entry indicating the various cases which he had to investigate. In these circumstances,the assertion of the appellant that he was free from the Court of Shri O.P. Dwivedi, M.M. at 4 p.m. on September 21, 1977 and was not present in the police station at 3.30 p.m. appears to be a self serving plea. In so far as the submission of the learned counsel that the statements of Jagat Singh and Janak

Raj, who were present in the office of Ram Nath at the time of raid, were not recorded despite their request is concerned, it is apparent from the statement of Public Witness -5 and Public Witness -9 that Jagat Singh and Janak Raj were not present in the office room of Ram Nath, though present in the police station, and no request was made by them for recording their statements. Public Witness -9 stated that when the raiding party entered the room neither Jagat Singh nor Janak Raj were sitting in that room. He also denied the suggestion that Jagat Singh and Janak Raj had corroborated the defense version that in the absence of Ram Nath accused the bottle of whisky was kept by Subhash while the box was lying open. Similarly Public Witness -5 in an obvious reference to Jagat Singh and Janak Raj stated that one sikh gentleman and a clean shaven man were not sitting in the room but were in the police station at that time and it was incorrect to suggest that both these persons wanted to make statements or that they were asked by them to go away. Public Witness -5 Brar also discounted the suggestion that both these persons told them that in the absence of the accused, Subhash had kept the bottle of whisky in the unlocked wooden box. (See pages 195 and 218 of the trial Court record). Thus from the statements of PW-5 and Public Witness -9 it is obvious that neither Jagat Singh nor Janak Raj were sitting in the room .of Ram Nath accused at the time of raid nor did they ask Public Witness -5 or Public Witness -9 to record their statements. The statements of Dw Jagat Singh and Dw Janak Raj cannot be given any credence since they were not present in the room of Ram Nath and Subhash could not have placed the bottle of whisky in the box as the same was found locked by Public Witness -5 and PW-9 on their arrival inside the room and especially when the key of the box was produced by Ram Nath with which the lock was opened by him. It is not a case of mere recovery of bottle of whisky from Ram Nath. The circumstances under which the same was recovered clearly show that he obtained and accepted the same by way of bribe from Subhash for showing favor to him by releasing the scooter.

(23) Having regard to the above discussion and keeping in view the circumstances of the case I am of the confirmed opinion that ingredients of the offence under section 161 Indian Penal Code and section 5(2) read with section 5(l)(d) of the Prevention of Corruption Act stand satisfied qua Ram Nath, appeallant. Accordingly, the conviction as recorded by the learned Special Judge against Ram

Nath is upheld. However, in view of the facts that the case was launched in the year 1977,the conviction was recorded in the year 1979, and the appeal against conviction is being decided after 15 years and for all these years the appellant must have suffered mental agony and sword of democles kept hanging on his head, it will be in the interest of justice that his substantive sentence is reduced to the sentence already undergone by him. Accordingly the conviction of Ram Nath, appellant as recorded by the learned Special Judge by his judgment and order dated November 15,1979 is maintained but the substantive sentence is reduced to the period already undergone by him. Fine imposed on him is,however, maintained.

(24) Before parting with the appeal, I wish to observe that on the material placed before me, there is a suspicion of guilt against Azad Singh but the suspicion, however, strong cannot take the place of proof. It also needs to be noticed that the learned Special Judge did not frame any charge against him for having demanded or received the bottle of whisky from the complainant. In the circumstances, thereforee, the conviction recorded against him by the learned Sessions Judge by his judgment and order dated November 15, 1979 is set aside and is acquitted of the charges framed against him.

(25) In the result, Cr. appeal No-281 of 1979 filed by Azad Singh, appellant is allowed and the conviction and sentence recorded against him by the Special Judge by his order dated November 15,1979 is set aside while Cr.A.No-280 of 1979 filed by Ram Nath is partly allowed to the extent indicated above,namely, that conviction recorded by the Special Judge is maintained but the substantive sentence is modified to the period already undergone.

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