

Khushi Ram Vs. State

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Court : Delhi

Decided On : Mar-01-1995

Reported in : 1995IIAD(Delhi)77; 1995(33)DRJ558

Judge : Mohd. Shamim, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(2)

Appeal No. : Criminal Appeal No. 256 of 1979

Appellant : Khushi Ram

Respondent : State

Advocate for Pet/Ap. : R.M. John and ; O.P. Faizi, Advs

Judgement :

Mohd. Shamim, J.

(1) This appeal is directed against the judgment and order dated 30th October, 1979 passed by Shri V.S.Aggarwal, Special Judge, Delhi whereby he found the accused/appellant (hereinafter referred to as appellant for the sake of brevity) guilty of an offence under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act and sentenced him to undergo two years rigorous imprisonment with a fine of Rs.100.00 under Section 161 of the Indian Penal Code. It was further ordered that in case of default of payment of fine the appellant would undergo

rigorous imprisonment for one month. He was further sentenced to undergo rigorous imprisonment for a period of two years under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act with a fine of Rs.100.00 . On his failure to clear the fine he was ordered to undergo rigorous imprisonment for one month. Both the above said sentences were to run concurrently.

(2) The case of the prosecution as adumbrated in the complaint dated 16th November, 1977 is as under: that Shri Tarif Singh (hereinafter referred to as complainant for the sake of brevity) came to the Anti Corruption Branch and contacted on 16th November, 1977 Inspector Roop Chand over there. He got his statement recorded vide Ex.P.W.11/A. He stated therein that he was working as a Jr.Engineer and posted at Karol Bagh Zone, Municipal Corporation of Delhi. Shri R.S.Chauhan is the Zonal Engineer. He is in charge of the Building Department. Shri R.S.Chauhan has been pressing him to collect money from those persons who were raising unauthorised construction in the aforesaid area. On his refusal to do so he started harassing the complainant. The appellant is an office in charge. He in collusion with Shri R.S. Chauhan, Zonal Engineer, who harassed the complainant. He was so much harassed that he was not allowed to withdraw even his salary in the month of September and October, 1977. Moreover, in order to pressurize him further all work was withdrawn from him with effect from 4th November, 1977 onwards. The complainant was frequently called to explain his conduct. Consequently the complainant approached Shri Chauhan as well as the complainant. On 15th November, 1977 at 5.00 P.M. Shri R.S.Chauhan demanded a sum of Rs.1,500.00 from the complainant. The appellant asked the complainant to grease the palm of Shri Chauhan in order to put an end to his problems in future. The appellant further told the complainant that out of the aforesaid amount of Rs.1,500.00 Rs.1,000.00 will be paid to Shri Chauhan and Rs.500.00 would fall to his share. It was further agreed upon that the money should be paid at noon time on 16th Novembr, 1977. The appellant further told the complainant that if per chance he was not available in that eventuality the payment should be made to Shri Chauhan. The statement after having been written was read over to the complainant who found the same correct and signed the same in token of its correctness. Shri J.N.Malhotra and Shri S.N.Govila Public Witness s.8 and 9 were summoned to act as shadow witnesses. The complainant produced 15 currency

notes of Rs.100.00 each. The same were treated with phenol patheline powder. The currency notes were thereafter returned to the complainant. The complainant was instructed that he was to pass on the said currency notes to the appellant after having talks with him and on his demand. The shadow witnesses were instructed to hear the conversation and to be near the complainant and to watch the transaction. Further instructions were issued that after having witnessed the said transaction they should give a signal by rubbing their hands on their heads. The raiding party was thereafter organized. It left from the Anti Corruption Branch at 4.00 P.M. and arrived near Tibia College by a government vehicle. The complainant went inside the office to call the appellant outside to a juice shop. The shadow witnesses were asked to reach the juice shop as soon as the complainant came out with any person. Accordingly the complainant went inside. He met over there only the appellant as Shri Chauhan was not available. Complainant told the appellant that he had brought a sum of Rs.1,500.00 as agreed upon and he should come out to accept the same. Accordingly the appellant came out along with the complainant to the juice shop. Both the shadow witnesses also reached there. The complainant told the appellant that he was proceeding on leave and he should not be harassed, rather he should be helped. The complainant thereafter took out Rs.1,500.00 from the pocket of his shirt and handed over the said amount to the appellant. He accepted the same in his right hand and then told him not to worry. Immediately the shadow witnesses gave the required signal whereupon Inspector Roop Chand and other members of the raiding party reached there. Inspector Roop Chand disclosed his identity and accosted the appellant as to whether he had accepted Rs.1,500.00 by way of bribe. The appellant kept quiet. The appellant tried to free his right hand from Inspector Roop Chand and threw down the currency notes on the ground. Inspector Roop Chand picked up the said notes and tallied their numbers with the numbers mentioned in the raid report Ex.P.W.8/A. The said currency notes (Ex.P-1 To Ex.P-15) were seized vide Ex.P.W.8/B. Right hand of the appellant was washed with a solution of Sodium Carbonate which turned pink. The right hand wash was transferred into a bottle Ex.P-16. It was sealed and labelled vide Ex.P.W.8/C. The report vide Ex.P.W.12/B was sent to the police station for registration of a formal FIR. The hand wash was sent to the Central Forensic Scientific Laboratory for analysis. After obtaining the result of the

scientific test a sanction was obtained under Section 16 of the Prevention of Corruption Act and the challan was filed.

(3) The defense as set set up by the appellant in his statement under Section 313 of the Code of Criminal Procedure is that he is an innocent person. He has been falsely implicated in the present case. He never demanded any money from the complainant. The fact is that one Charan Singh is the real brother of the complainant. He was working as a Jr.Engineer in September, 1974 at Rajouri Garden. The appellant was working over there as office in charge, Building. The appellant made certain adverse notes against the said Charan Singh. On the complaint of the appellant the said Charan Singh was transferred from that zone and since then he is under suspension. Thus the complainant bore an illwill and grudge against the appellant. The complainant is a thoroughly corrupt and inefficient official. Consequently his Explanationns were called. He has to deal with the said Explanationns in his official capacity. He thereby incurred the displeasure of the complainant. Since the complainant was thoroughly inefficient and corrupt the work was withdrawan from him. On the date of the occurrence he came out after the office hours and met one Mohinder Singh, Jr.Engineer. The complainant offered the appellant a glass of juice. The complainant at that time placed a bundle of currency notes in his right hand whereupon he withdrew his hand having found the same currency notes. As a result of which they fell down.

(4) Learned counsel for the appellant Mrs. Rebecca John has vehemently contended that the learned lower court fell into a grave error by coming to the conclusion that the prosecution proved the guilt of the appellant beyond any shadow of doubt. There is absolutely no incriminating material on record against the appellant. Thus the learned lower court was not justified in holding the appellant guilty under Section 161 of the Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. The entire evidence led by the prosecution does not lead us anywhere, rather it is a pointer to the fact that the appellant is innocent and he has been falsely implicated in the present case.

(5) Learned Pp Mr.Faizi has urged to the contrary.

(6) It is well settled principle of criminal jurisprudence that the prosecution in order to bring home the guilt to the accused must come out with a version which is reasonable and probable and fits in with the circumstance of a given case and is not in any way inconsistent with the innocence of the accused. In case the case as set up by the prosecution does not inspire confidence and on the very face of it, and at the first blush appears to be improper and unreasonable in that eventuality it is liable to be flung to the winds on this short ground alone.

(7) With the above background let us now see as to whether the prosecution in the instant case has come out with a version which on being put to a reasonable and prudent man would treat the same as worthy of credence.

(8) The case of the prosecution is that one Shri Chauhan, Zonal Engineer of Karol Bagh Zone asked the complainant to collect money from persons who were raising unauthorised constructions in the area and on his refusal to do so he incurred the wrath of the said Shri Chauhan who in order to penalise him started harassing him. The appellant was working as office in charge at that time. He, too, in collusion with Chauhan harassed the complainant. The complainant in order to passify and gain favor of the said two persons i.e. Shri Chauhan and the appellant approached them on 15th November, 1977 at 5.00 P.M. Shri Chauhan at that time demanded a sum of Rs.1,500.00 from the complainant. The appellant asked the complainant to grease the palm of Shri Chauhan in order to put an end to his problems. The appellant further informed the complainant that out of the said amount, Rs.1,000.00 would be paid to Shri Chauhan and he would get Rs.500.00 only. It was further agreed upon that the money would be passed on 16th November, 1977 at noon time. The appellant is further reported to have told the complainant that if per chance he was not available in that eventuality the money should be passed on to Shri Chauhan and Shri Chauhan had agreed to the said proposal. Surprisingly enough the above version of the prosecution has been set at naught through their own application vide Ex.P.W.12/DA where through they sought the discharge of Shri Chauhan. They have stated in the said application Ex.P.W.12/DA that during the investigation it transpired that Shri R.S.Chauhan was not present in his office on 15th November, 1977 at 5.00 P.M. as he was away and busy in a meeting with Zonal Engineer. Shri R.S.Chauhan is further

reported to have complained against the complainant on the said date to the Zonal Engineer. Thus according to the prosecution the allegations with regard to the demand of bribe on 15th November, 1977 had not been proved at all instead enmity had been proved. Thus the prosecution during the course of the investigation found Shri R.S.Chauhan to be innocent and sought his discharge from the court and he was discharged accordingly.

(9) Thus if the prosecution itself found its own version as unworthy of credence and suspicious in nature then it does not appeal to the reason how the co-accused could have been convicted and found guilty by the lower court on the same version? Admittedly as per the prosecution version the talks with regard to the bribe took place in the office at 5.00 P.M. on 15th November, 1977. It was Shri R.S.Chauhan who is alleged to have demanded the bribe and it was he who was to accept the same. On 16th November, 1977 and later on, the bribe money was to be apportioned in between the two in the sum of Rs.1,000.00 and 500.00 . Once the prosecution on investigation came to the conclusion that the said version was not correct and Shri R.S.Chauhan was not a party to the talks which ensued in between the complainant on the one hand and R.S.Chauhan and the appellant on the other hand then this court feels that the entire prosecution version falls to the ground as it has no legs to stand upon.

(10) The learned counsel for the appellant has then contended that the complainant was hostile and inimically disposed towards the appellant as well as Shri Chauhan. Exhibits D.W.3/A, D.W.3/B and D.W.3/C are the complaints which the appellant made against the said Charan Singh.

(11) A close scrutiny of the above documents reveals that the complainant was thoroughly inefficient and a corrupt person. He was not a conscientious worker. He shirked the work. Consequently the authorities were impelled and compelled to take action against him. He was censured and called to explain his conduct more often than not. Ultimately even the work was withdrawn from him.

(12) The next limb of the argument of the learned counsel for the appellant is that the appellant never demanded any money from the complainant and the complainant himself put the currency notes in the right hand of the appellant vide

statement of Public Witness .8 Shri J.N.Malhotra. In fact even Public Witness .11 Shri Tarif Singh has nowhere in his statement has stated that the accused demanded the money from him. He has simply contented himself by stating that he took out the money from his pocket i.e. a sum of Rs.1,500.00 and extended his hand towards the complainant who accepted the said money in his right hand. Thus he does not talk of the demand. The other shadow witness namely, S.N.Govila has simply stated that the complainant told him that as settled and agreed upon he had given the money which he had brought. Thus according to the prosecution witness there was no demand from the side of the appellant. It also cast suspicion with regard to the authenticity of the case of the prosecution.

(13) The complainant on being cross examined has also admitted that he was also suspended once in February, 1978. It has further been admitted by him during the course of his cross examination that Charan Singh is his brother and he is a Jr.Engineer. On being asked as to whether the appellant complained against Shri Charan Singh on 6th November, 1974 and on the basis of the said complaint he was transferred on 12th November, 1974 he again pretended his ignorance and did not deny the said fact.

(14) It is a well established principle of the criminal jurisprudence that an accused need not prove his defense beyond doubt. It is sufficient enough for him in case he comes forward with a version which is probable and reasonable and fits in with the circumstances of a given case.

(15) In the above circumstances, I am of the view that the appellant is entitled to succeed. The appeal is allowed. The judgment and order dated 30th October, 1979 passed by the learned Additional Sessions Judge are hereby set aside. The appellant is on bail. His bail bonds are cancelled.

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