

Om Parkash Vs. State

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Court : Delhi

Decided On : May-28-1998

Reported in : 1998IVAD(Delhi)93; 1998(4)Crimes227; 75(1998)DLT69; 1998(47)DRJ569; 1998RLR478

Judge : Mohd. Shamim, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(2) (1); [Indian Penal Code \(IPC\), 1860](#) - Sections 160

Appeal No. : Crl.A.No. 340 of 1977

Appellant : Om Parkash

Respondent : State

Advocate for Def. : Mr. M.S.Butalia, P.P.

Advocate for Pet/Ap. : Mr. Sandeep Sethi, Adv

Judgement :

ORDER

Mohd. Shamim, J.

1.This appeal is directed against the judgment and order dated September 28, 1977 passed by a Special Judge, Tis Hazari, Delhi whereby the learned lower court

found the convict/appellant (hereinafter referred to as the appellant for the sake of brevity) guilty under Section 5(2) read with Section 5(1)(d) of Corruption Act, 1947 (hereinafter the Prevention of referred to as the 'Act') and sentenced him to undergo RI for one year and to pay a fine of Rs. 100/-. In case of his failure to clear the fine he was further directed to undergo RI for two months. The appellant was also found guilty under Section 161 I.P.C. and was sentenced to undergo RI for one year.

2. Brief facts which led to the presentation of the present appeal are as under: that one Sanjay Lalwani (PW1) was studying in B.Com. IInd Year, Hindu College, Delhi University, Delhi. He was in that capacity in occupation of Room No. 80 of the Hostel. He was also having a motor cycle bearing registration No. RMM 6616 for his convenience. On August 20, 1976 at about 5.30 p.m. he was going to Mall Road via Malka Ganj, Delhi on the aforementioned motor cycle. While he was passing Maurice Nagar crossing all of a sudden a cyclist came from the apposite direction. Despite his best possible efforts he was not in a position to avoid the collision in between his motor cycle and the said cycle and his motor cycle hit the cycle. The cycle rider Shri Mahesh Chand Sharma (PW9) sustained some injuries on his person as a result of the said accident. He moved ahead despite the said accident. However, he stopped his motor cycle and returned to the place of the accident. He found over there two police officers in uniform, one of them was a constable i.e. the present appellant, and the other one was a Sub Inspector of police known as Pal Singh (who has been acquitted by the lower court). They caught hold of Sanjay Lalwani. He was asked to park his motor cycle by the side of the road. He requested them that he would like to take the injured Shri Mahesh Chand Sharma to the hospital for the purpose of treatment. However, Shri Mahesh Chand Sharma declined to accept his offer on the ground that the injuries were ordinary and simple. The appellant and the said Sub Inspector Pal Singh thereupon asked him to give them Rs. 100/- to finish off the matter. However, he told them that he was not in possession of Rs.100/-. He was having at that time only Rs. 40/-. The police officers referred to above, refused to accept less than Rs.100/-. They further suggested that they should be paid Rs. 40/- in the present set of circumstances and he should make arrangement for the remaining amount. They also asked him to leave his motor cycle over there (at the spot) and to bring

the remaining amount. He was assured that after he had paid the amount he would be free to take back his motor cycle. He thereupon delivered four currency notes of Rs. 10/- each to the appellant who on his turn handed over the same to SI Pal Singh. SI Pal Singh thereupon recorded his statement and that of PW9 Mahesh Chand Sharma. He then returned to the hostel. He is against making payment by way of bribe. Consequently he along with his friend Shri Gajender Singh (PW3), a student of B.A.IInd Year, St. Stephen's College, approached the officers of Anti Corruption Branch.

3. The statement of PW1 Sanjay Lalwani was recorded by Shri M.L.Sahni, Dy.S.P. vide Ex. PW1/A. He produced six currency notes in the denomination of Rs. 10/- each. The numbers of the said currency notes were recorded in the raid report Ex. PW1/B. The same were thereafter returned to PW1 with the instructions to pass on the same to the appellant on demand. He was further instructed that the money was to be passed on after talks with the appellant in such a way so as to indicate that the same was being accepted by the appellant by way of bribe. PW3 Gajender Singh was asked to follow the complainant closely to hear the talks and to witness the payment of the bribe money. PW1 was further told to give a signal to the raiding party by trying to start his motor cycle on the passing of the money to the appellant.

4. Sanjay Lalwani (PW1) and Gajender Singh (PW3) returned to the spot on a motor cycle while the raiding party reached there in a taxi. The appellant and his associate Shri Pal Singh were found present near the Delhi School of Economics. Sanjay Lalwani talked to the appellant as advised in the presence of PW3 Gajender Singh and gave the above said six currency notes to the appellant. PW1 Sanjay Lalwani thereupon gave the pre-arranged signal. On receipt of the signal PW12 Shri M.L.Sahni rushed to the spot. The tainted currency notes were recovered from the pant pocket of the appellant in the presence of PW11 Shri Vijay Malik. The numbers of the tainted currency notes were compared with the numbers as recorded in the raid report Ex. PW1/B and were found to be correct. Statements of PW9 Mahesh Chand Sharma and PW1 Sanjay Lalwani which were recorded by way of compromise Ex. PW1/F and Ex. PW1/E were taken into possession vide memo Ex. PW1/G. The appellant and co-accused SI Pal Singh

were arrested and taken into custody. The statements of prosecution witnesses were recorded and all the formalities were completed. Sanction to prosecute the appellant and coaccused SI Pal Singh obtained. The same was granted by Shri P.S. Bhinder, DIG on October 28, 1976 (vide Ex. PW5/A). After completion of the investigation a charge sheet was submitted before the learned Special Judge.

5. The learned Special Judge after appraisal of oral as well as documentary evidence was of the view that the prosecution had failed to prove the charges leveled against accused Pal Singh and as such, acquitted him of both the charges. He, however, found the appellant guilty under Section 5(2) read with Section 5(1)(d) of the Act and Section 161 of the Indian Penal Code beyond any shadow of doubt and thus convicted him thereunder. The appellant was thus sentenced to undergo RI for one year with a fine of Rs. 100/- under Section 5(2) read with Section 5(1)(d) of the Act. In case of default in the payment of fine he was further directed to undergo RI for two months. He was also sentenced to undergo RI for one year under Section 161 of the Indian Penal Code.

6. Aggrieved and dis-satisfied with the said judgment and order the appellant has approached this Court by way of present appeal.

7. Learned counsel for the appellant Mr. Sandeep Sethi, Advocate has contended with great zeal and fervour that there is absolutely no evidence against the appellant on record. It is all the more so when the learned Special Judge was of the view that the prosecution has failed to bring home the guilt to the co-accused Pal Singh. It is astonishing as to how the same evidence was considered as sufficient enough to substantiate the charges leveled against the appellant. Learned counsel has further contended that the scientific method for the detection of a crime which could have been applied by treating the tainted currency notes with phenolphthalein was given a go-by in the present case for the best reasons known to the prosecuting agency. It casts serious doubts with regard to the veracity of the case of the prosecution. Independent witnesses, though available, were not joined at the time of laying the raid. This fact by itself is sufficient enough to discard the case of the prosecution. The statements of the prosecution witnesses are replete with material contradictions which render nugatory the entire

case of the prosecution.

8. Learned PP Mr. Butalia has urged to the contrary.

The case of the prosecution as set up in the statement of Sanjay Lalwani (PW1) in the report Ex. PW1/A before the police is that the appellant demanded a sum of Rs. 100/- to finish off and hush up the accident case. Curiously enough the same Sanjay Lalwani has got a different tale to tell at the time of his statement before the Special Judge. According to him, he was asked by the appellant and his associate SI Pal Singh that he will have to pay Rs. 100/- to PW9 Mahesh Chand Sharma, cyclist, by way of compensation, and Rs. 100/- to the appellant by way of bribe. However, PW9 Mahesh Chand Sharma, on the other hand, has very categorically stated that he did not demand any thing from PW1 Sanjay Lalwani. According to him, he neither demanded any money from PW1 Sanjay Lalwani nor Sanjay Lalwani offered him any thing by way of compensation.

9. It is manifest from above that as per the prosecution version PW1 Sanjay Lalwani paid Rs. 40/- initially just after the accident which he was in possession of, and the remaining amount of Rs. 60/- was paid by him to the appellant as per his alleged demand. It implies thereby that although Rs. 100/- were passed on to the appellant, yet what was recovered from the appellant were only six currency notes in the denomination of Rs. 10/- each. This I feel sets at naught the entire case of the prosecution.

10. It has been admitted by PW1 Sanjay Lalwani on being cross-examined by accused Pal Singh that he and the accused Om Prakash and PW Mahesh Chand were present at the time when the appellant demanded the sum of Rs. 100/- from him. Curiously enough as I have already observed above PW9 Mahesh Chand Sharma has not at all supported the case of the prosecution on this point. According to him, no demand was made by the appellant Om Prakash in his presence. Similarly, Ved Vrat (PW2) has deposed to the fact that no talks with regard to bribe took place in his presence. To the same effect is the statement of PW6 Sunil Kumar. According to him, no money was passed on to the appellant Om Prakash by PW Sanjay Lalwani.

11. The case of the prosecution as set out in the raid report is that PW1 Sanjay Lalwani was asked to talk to the appellant as well as to the co-accused Pal Singh, and after having talks to pass on the money to them in such a way as if the same was being given by way of bribe. Whereas Gajender Singh (PW3) was deputed to hear the talks and to witness the passing of the money. According to him, he did not hear any talks in between PW1 Sanjay Lalwani and the appellant. He further goes on to state that PW1 Sanjay Lalwani did not ask for any money to be passed on to the appellant. The same is contradictory to and inconsistent with the statement of PW1 Sanjay Lalwani.

12. The appellant Om Prakash as per the statement of PW1 Sanjay Lalwani after having accepted the currency notes in his right hand kept them in the right hand side pocket of his pant. He has then deposed to the fact that Ex.P7 is the pant which was got removed from the person of the appellant Om Prakash and the same was taken into possession vide memo Ex. PW1/D. Surprisingly enough PW12 M.L.Sahni, Investigating Officer in the present case has deposed to the fact that the pant worn by the appellant Om Prakash was never taken into police custody. The two statements are poles apart and set at naught the entire case of the prosecution.

13. Admittedly as is evident from above, as per the prosecution case, the appellant Om Prakash after having accepted the tainted currency notes kept the same in the pocket of his pant. Thus the said pant was an important piece of evidence and must have been taken into police .custody. It does not appeal to the reason as to why such an experienced and senior person just like PW12 M.L.Sahni did not choose to take the said pant into custody. The mystery is further deepened and is not unravelled when PW1 Sanjay Lalwani has deposed to the fact that the said pant Ex. P7 was taken into custody vide memo Ex. PW1/D. If Sanjay PW1 is to be believed and there is no reason as to why he should not be believed on this point, particularly when the pant was exhibited as Ex. P7 and taken into custody vide memo Ex. PW1/D. In the above circumstances the question arises as to where the said pant has gone to? This casts serious doubts regarding the case of the prosecution.

14. According to PW12 M.L.Sahni he remained at the spot up to 12.00 mid night and completed the investigation. To the same effect is the statement of PW11 Vijay Malik. However, no other witness examined from the side of the prosecution supports the said version. According to PW3 Gajender Singh the raiding party remained at the spot for about 5/7 minutes. According to PW6 Sunil Kumar his statement was not recorded at the spot. It was recorded on the next day at the police station, Anti Corruption Branch. Similarly as per the statement of PW9 Mahesh Chand Sharma the police officers left the spot within 3/4 minutes after their arrival along with the accused persons. Furthermore, the statement of PW9 Mahesh Chand Sharma was not recorded at the spot and was recorded after 12 days though he was very much present at the spot as per his own statement and those of other witnesses. Even PW3 Gajender Singh has averred during his cross-examination by A.P.P. that he went to the Anti Corruption Branch after the occurrence on the next day to sign some papers. This goes to show that documents were prepared on the next day at the police station. This again goes to show that the prosecution version is not correct and is to be looked upon with suspicion.

15. A perusal of the record further reveals that the person of the appellant Om Prakash was searched twice (vide Ex. PW1/D and Ex. PW1/DX). For the best reasons known to the prosecution, no satisfactory Explanationn as to why he was searched twice was given by Shri M.L.Sahni (PW12). This also raises suspicion with regard to the truth of the case of the prosecution.

16. Learned counsel for the appellant has then contended that admittedly the investigation in the present case was not conducted on scientific basis. The tainted currency notes which were to be passed on to the appellant were not treated with phenolphthalein powder. Phenolphthalein powder is normally used while conducting raids in corruption cases in order to make it sure that whatever was passed on to an accused was only by way of bribe and in no other way. Such bribe money which is proposed to be given to an accused person is treated with phenolphthalein powder so that when the accused accepts the tainted currency notes his hands are smeared with phenolphthalein powder and subsequently when washed with the solution of sodium carbonate if it turns pink that creates an

evidence in favor of the prosecution that the accused accepted the tainted currency notes by way of bribe. No satisfactory Explanationn was given by the Investigating Officer, Shri M.L.Sahni (PW12) as to why the scientific method of detecting the crime by applying phenolphthalein powder to the tainted currency notes was not adopted in the present case. It was observed, in this connection, by the Hon'ble Supreme Court in Raghbir Singh Vs . State of Punjab, : 1976 CriLJ172 ,' It is clear from the aforesaid discussion that the evidence led on behalf of the prosecution is not such as to inspire confidence in the mind of the court and we must say that we are not at all satisfied that the appellant either demanded bribe of Rs.50/- from Jagdish Raj or that Jagdish Raj paid bribe of Rs.50/- to the appellant by handing over five marked currency notes to him or that five marked currency notes of Rs.10/- each were recovered from the pocket of the appellant when his person was searched by the raiding party. We may take this opportunity of pointing out that it would be desirable if in cases of this kind where a trap is laid for a public servant, the marked currency notes, which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by Chemical process and the court does not have to depend on oral evidence which is sometimes of a dubious character for the purpose of deciding the fate of the public servant. It is but meet that science-oriented detection of crime is made a massive programme of police, for in our technological age nothin more primitive can be conceived of than denying the discoveries of the sciences as aids to crime suppression and nothing cruder can retard forensic efficiency than swearing by traditional oral evidence only, thereby discouraging liberal use of scientific research to prove guilt'.

17. It is clear from above that there is no other statement except that of PW1 Sanjay Lalwani with regard to the demand and acceptance of the bribe. His statement is in the nature of an accomplice. Thus it would not be safe to place reliance on his statement unless the same is corroborated by independent evidence. This is all the more so when his statement is contradictory to and inconsistent with the statements of PW9 Mahesh Chand Sharma and PW3 Gajender Singh.

18. The appellant Om Prakash in his statement recorded under Section 313Cr.P.C. has stated that after the accident PW1 Sanjay Lalwani escaped on his motor cycle. The appellant thereafter chased him on his motor cycle and apprehended him near market of Miranda College Hostel and brought him back. This defense version of the appellant is corroborated by the statements of PW2 Ved Vrat, a police constable, and PW9 Mahesh Chand Sharma.

19. Considering the above facts and circumstances I am of the view that the prosecution has failed to bring home the guilt to the appellant beyond any shadow of doubt. He is thus entitled to an order of acquittal. Consequently, the appeal is allowed. The conviction and sentence awarded to the appellant vide the impugned judgment and order dated September 28, 1977 passed by the learned Special Judge, Delhi, are hereby set aside. The fine, if deposited by the appellant, be refunded to him.

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