

Ajit Singh and anr. Vs. State

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Court : Delhi

Decided On : Jan-19-2000

Reported in : 2000(2)ARBLR740(Delhi); 2000CriLJ1503; 84(2000)DLT123; 2000(53)DRJ420

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 161; [Prevention of Corruption Act, 1988](#) - Sections 5(1)

Appeal No. : Crl. Appeal Nos. 30 & 31 of 1978

Appellant : Ajit Singh and anr.

Respondent : State

Advocate for Def. : Ms. Sima Gulati, Adv.

Advocate for Pet/Ap. : Ms. Reena Garg, amices Curia

Judgement :

ORDER

Dalveer Bhandari, J.

1. These appeals are on board for quite some but no one has appeared for the appellants. therefore, I appoint Ms. Reena Garg, Advocate, (107 Lawyers

Chambers, Delhi High Court) to assist the Court.

2. These appeals arise out of one incident. I, therefore, proceed to dispose of both the appeals with this common order.

3. Brief facts which are necessary for disposal of these appeals are recapitulated as under .

4. Kesho Ram, complainant, had a cow tethered along with the calf in his plot, but the cow suddenly broke lose and strayed out of the plot. His daughter Anita was trying to take the cow again into the plot when in the meantime, the Municipal Staff of the Cattle Pound, Khureji reached there in a truck and they tried to load the cow in the truck. The girl informed Kesho Ram at the house. He rushed to the place where the truck was parked. Some neighbours also reached there. The all implored the Municipal staff to leave the cow saying that the cow was not a stray animal. The supervisor, Ajit Singh, however, told, Kesho Ram that if he wanted his cow to be released, he should immediately come to the Cattle Pound. Kesho Ram along with one Tilak Ram went to the Cattle Pound. There after some talks Suraj Bhan Sharma demanded Rs. 30/- as bribe from him for the release of the cow. Kesho Ram did not have any money in hand. So, on the suggestion of Suraj Bhan Sharma, accused, he gave his wrist watch to Suraj Bhan as security. Kesho Ram was anxious for the release of the cow immediately because the calf was restless for the milk. On 1.5.1976 Kesho Ram met Suraj Bhan Sharma accused and told him that he had not been able to arrange for the money so far and that he would do the same by 3.5.1976. The accused Suraj Bhan replied that he could pay the sum of Rs. 30/- on 3.5.1976 and take back the watch.

5. As Kesho Ram was not willing to pay the bribe, he approached the Anti Corruption Branch at Tis Hazari where his statement Ex. PW 11/A was recorded by Chander Sain, Inspector, PW. 15. Two Panch witnesses Ravinder Parshad Jain and Chander Shekhar, who were clerks, one in the office of the Joint Director of Agriculture and the other in the office of the Deputy Commissioner were sent to the Anti Corruption Branch to join the raiding party as witnesses. The complainant supplied three currency notes of the demonstration of Rs 10/- each to the Inspector, Anti Corruption. The Investigating Officer rubbed powder Phenol Ptyalin

on these currency notes and in order to give a demonstration of the effect thereof, he got prepared a colourless solution of sodium carbonate and asked Ravinder Parshad Jain (PW .2) to touch the currency notes tainted with Phenol Ptyalin powder and dip that hand in the solution of sodium carbonate. That solution became pink. Thereafter, the said currency notes were returned to the complaint with a direction that he should pay the money to Mr. Sharma, the Munishi of the Cattle Pound in the course of such a conversation that it should appear to be given as bribe. The witnesses were also instructed to witness this transaction and then to give a signal by rubbing hand on the head. The Investigating officer made sure that the complainant Kesho Ram was not possessed of any other money and a watch.

6. The raiding party then came to the Cattle Pound at Khureji at about 4.30 p.m. The two Panch witnesses Ravinder Parshad and Chander Shekhar went inside on the pretext of inquiring about their missing cow. Kesho Ram then talked to Munshi Suraj Bhan accused. Munshi Suraj Bhan asked Phool Singh accused that he should take Rs. 30/- from him and return the watch. He was told that the watch was lying with the tea vendor Ranbir Singh. Ranbir Singh happened to have gone in the street for serving tea to somebody. When Kesho Ram complainant was standing at the gate, Ranbir Singh was noticed coming back towards his shop, Phool Singh called him, took the watch Ex. P.1 from him and made over to the complainant. He paid Rs. 30/- in the shape of currency notes Ex. P. 3 to P. 5 to Phool Singh accused which he accepted in his right hand. Then, he made over the amount of Rs 30/- to Ranbir Singh, tea vendor at his shop and started washing his hands with water from a bucket. On receiving signal, the Investigating officer came on the scene. He disclosed his identity and demanded the bribe money from Phool Singh. Phool Singh accused informed him that the money had been over to Ranbir Singh, tea vendor. Ranbir Singh produced these three currency notes Ex. P. 3 to P. 5 to the Inspector after taking out the same from his pocket. Ranbir Singh and Phool Singh were then brought inside the Cattle Pound. There, in the Cattle Pound then, the numbers of these currency notes were compared with the numbers recorded in the raid report Ex. PW.2/A. As the numbers tallied, the same were reduced into possession vide memo Ex. PW 1/A and the same was attested by the Panch witnesses and the complainant. A solution of sodium carbonate was

prepared. When the hand of Phool Singh was dipped in that solution, the colour did not change. Another solution of sodium carbonate was prepared and when the left hand of Ranbir Singh was dipped therein, the colour became pink. The left side pocket of the pyjama which Ranbir Singh was wearing was also dipped in a solution of sodium carbonate and that too became pink. Vide report Ex. PX, the contents gave positive test for Phenol Ptyalin and sodium carbonate.

7. After obtaining sanction for the prosecution of the accused persons, all these three accused were challenged.

8. Charges were framed against all these three accused under Section 161 read with Section 34 IPC and under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 read with Section 34 IPC.

9. The prosecution examined fifteen witnesses in support of its case.

10. The learned Additional Sessions Judge while acquitting Phool Singh accused by giving him the benefit of doubt, convicted Suraj Bhan, Munshi and Ajit Singh under Sections 161/34 IPC and under Section 5(1)(d) of the Prevention of Corruption Act read with Section 34 IPC. The learned Additional Sessions Judge considering the small amount of bribe and the circumstances of the accused, imposed the minimum sentence provided under the law on Suraj Bhan Sharma and Ajit Singh, accused. Under Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act read with Section 34 IPC each accused was sentenced to rigorous imprisonment for one year and a fine of Rs. 100/- in default of the payment of fine, each convict-accused had to suffer further rigorous imprisonment for three months.

11. Reliance has been placed on the judgment of the Supreme Court in the case of Sarup Chand v. State of Punjab; reported in 1987(1) Crimes 818. In this case the appellant was convicted by the trial court under Section 161 IPC and under Sections 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The conviction was upheld by the High Court. While maintaining the conviction the Supreme Court had reduced the sentence to the period already undergone on the ground that six years have passed from the date of the incident and this is the first

time the appellant had committed an offence. In the instant case, 23 years have lapsed since the date of the incidence and the appellant has not been involved in other criminal cases.

12. The learned amices Curiae also relied on the judgment of this Court in the judgment of Inder Parkash Shingal v. State; 38 (1989) DLT 5. In this case also the accused appellant was convicted under Section 161 Indian Penal Code and Section 5 (1) (d) & 5(2) of the Prevention of Corruption Act, 1947. The Court reduced the sentence of the imprisonment of appellant to the period already undergone on the ground that the appellant has faced the agony of trial for about 18 years now.

13. The learned amices Curiae placed reliance on some of the decided cases in which their Lordships of the Supreme Court in the case of B.G. Goswami v. Delhi Administration; 1973 SCC 796, observed as under :

'Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question. In modern civilised societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after seven years of the agony and harassment of these proceedings when he is also going to lose his job and has to earn a living

for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same.'

14. This case has been followed in a number of subsequent judgments by the Supreme Court and various other courts. In Ramesh Kumar Gupta Vs . State of M.P. : 1995 CriLJ3656 , while referring to the judgment of B.G. Goswami v. Delhi Administration (supra), the sentence of imprisonment was reduced to the period already undergone, in a case where the accused was convicted under Section 161 of the Indian Penal Code.

15. In the instant case, the incident had taken place in 1976. The basic facts regarding the delay are quite akin to the facts of Shri Ramesh Kumar Gupta Case (supra). The appellant had undergone some part of the sentence and faced trauma of criminal proceedings for almost 23 years.

16. On consideration of all the relevant facts and circumstances of this case, in my considered opinion the ends of justice shall be met by upholding the conviction of the appellants. However, the sentence of imprisonment of the appellants is reduced to the period already undergone.

17. The appeals are accordingly disposed of.

18. I would like to place on record my appreciation for the able assistance provided by Ms. Reena Garg, learned amices Curiae in this case.