

Karim Kunju Vs. State

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Court : Kerala

Decided On : Aug-17-1971

Reported in : 1972CriLJ292

Judge : K. Sadasivan, J.

Appellant : Karim Kunju

Respondent : State

Judgement :

ORDER

K. Sadasivan, J.

1. These revision petitions are preferred by the accused in Sessions ' Case No. 13 of 1970 on the file of the Assistant Sessions Judge, Alleppey. Crl. R. P. 119 of 1971 is by accused Nos. 2 and 4 and Crl. R. P. 127 of 1971 is by accused 1 and 3. They were convicted by the learned Assistant Sessions Judge and sentenced under Section 120B read with Section 489B and Section 489C of the I. P. C. All the accused (accused Nos. 1 to 4) have been convicted under Section 120B read with Section 489B and sentenced to rigorous imprisonment for a period of two years each. Accused Nos. 1 and 3 have been further convicted under Section 489C and sentenced to rigorous imprisonment for a period of two years each. Accused No. 1 has further been convicted under Section 420 read with Section 511 of the I. P. C. and sentenced to rigorous imprisonment for two years. The

sentences have been directed to run concurrently. The conviction and sentence have been confirmed in appeal by the Sessions Judge of Alleppey.

2. The prosecution case stated briefly is as follows : Accused 1 to 4 along with accused 5 and 6 who have been acquitted, were charged by the Central Bureau of Investigation, Special Police Establishment, Cochin for offences falling under Sections 489C, 489B and 420 read with Section 120B and 489B and 489C read with Section 511 I. P. C. The prosecution alleged that the six accused persons conspired together in room No. 41 of Nara-simhapuram Lodge at Alleppey. and at the surrounding places on 31-8-1969 and on 1-9-1969 with the object of committing acts falling under Sections 489C and 489B and 420 I. P. C., and entered into an illegal agreement with Pw 1 Ramanandan Sub-Inspector of Police /CBI/SPE/ Cochin who had posed himself as the son of a rich planter to exchange counterfeit currency notes of 2 rupee denomination for genuine notes of the same denomination. The agreement was that the accused would part with such counterfeit notes worth Rs. 75,000 in exchange for genuine notes of the same denomination worth Rs. 25,000.

Pw 1 had earlier met the 3rd accused at Pachalam near Ernakulam and had enquired of him if he could supply counterfeit notes in exchange for genuine notes. Pw 1 who had disguised himself as the son of a planter, told the 3rd accused that counterfeit notes were required for distribution among the employees of his estate towards their wages. 3rd Accused told Pw 1 that he was not possessed of any counterfeit currency but to his knowledge such false currency could be had from accused Nos. 1, 2, 4 and 5 who were residing at Alleppey. This interview between Pw 1 and the 3rd accused took place on 30-8-1969. As instructed by 3rd accused, Pw 1 went to Alleppey the next day and presented himself at the Narasimhapuram Lodge at about 7 p. m. 3rd accused was already waiting there and he took Pw 1 to room No. 41 of the Lodge where accused Nos. 1. 2. 4 and 5 were present. He introduced Pw 1 to them. 3rd accused then told Pw 1 that he had discussed the matter already with them and that further details could be talked over by Pw 1 himself. Pw 1 accordingly told the accused that he had come to purchase counterfeit notes. 5th accused then told Pw 1 that they had only counterfeit notes of 2 rupee denomination and they were prepared to exchange two such notes for

one genuine note. Pw 1 then wanted them to show him specimen notes that they had. At the bidding of 5th accused 4th accused took out from the pouch of his belt a bundle containing about one hundred 2 rupee currency notes and handed them over to Pw 1 who on scrutiny found that they were counterfeit notes of good imitation. Pw 1 returned the notes and told the accused that he could raise Rs. 25,000 immediately if they were prepared to exchange at the rate of 3 counterfeit notes for one genuine. The accused thereupon went out of the room and conspired between them for some time and came back to the room and told Pw 1 that the offer was acceptable to them. It was suggested to Pw 1 that he should come the next day in the same room at about the same time with Rs. 25,000 and that the accused on their part would come with Rs. 75,000 counterfeit notes. Thus they parted.

3. The next day i. e., 1-9-1969 in the morning Pw 1 reported the matter to the Superintendent of Police. Special Police Establishment Cochin giving a gist of the information collected by him. A case (R. C. 20 of 1969) was thereupon registered by the Dy. S. P. Special Branch. Under directions from the Superintendent of Police, Pw 1 made 21 bundles of paper cut to the size of 10 rupee notes interspersing in each bundles some genuine 10 rupee currency notes and entrusted the bundle to the Superintendent of Police. On further direction from the Superintendent of Police Pw 1 accompanied by Inspector of Police Pw 2 started for Alleppey and reached near the gate of Central Income-tax Office at about 3 p. m. At about 3-30 p. m, the Dy. S. P. and another Inspector of Police Pw 15 who had reached there and all the four of them in mufti went to the room of A Ward Income-tax Officer (Pw 3) who had already received instructions from the Assistant Commissioner of Income-tax to render the necessary assistance to Pw 17 the Dy. S. P. On entering the room with his colleagues Pw 1 disclosed their identity to Pw 3 who immediately called Pw 4, B Ward Income-tax Officer to his room. Pw 17 had brought with him four bundles of genuine 5 rupee notes, two bundles of genuine 10 rupee notes and twenty-one bundles of paper cut to size interspersed with 10 rupee notes. These 27 bundles (M. Os. 21 to 27) were wrapped up in a plastic bag with a zip-opening to make it appear that the 27 bundles enclosed in the bag contained Rs. 25,000, though really they contained only Rs. 5,000. the rest being paper cut to size and interspersed.

4. Pw 17 explained the gist of Ext. P1 report to Pws 3 and 4 and the action he proposed to take and requested their help in the matter. He was also able to satisfy Pws 3 and 4 through Pw 1 that genuine currency notes were ready with them for exchange. Pw 2 was instructed to accompany Pw 1 and watch the transaction and give a signal by lighting a cigarette at the appropriate time. Pws 1 and 2 were then sent to the Narasimhapuram Lodge at about 5-15 p. m. to effect the test purchase. Pws 3 and 4 were also directed to be present at the Lodge. Pw.17. after making all these arrangements, left the Income-tax Office with Pw 15 and went to the Lodge and stayed in room No. 13. Room No. 13 was opposite to room No. 41 in the same block.

5. Pws 1 and 2 reached the Lodge at about 5-30 p. m. and went to room No. 41. The 3rd accused was present there. He was convinced that Pw 1 had brought money as promised. He then left the room promising to bring the other accused with the counterfeit notes. At about 6-15 p. m. accused 1 and 4 came. Pw 17 who was waiting in room No. 13, saw the arrival of accused 1 and 4. On entering the room 1st accused enquired of Pw 1 if he had brought the money. Pw 1 answered that he had brought the money and opening the zip of the bag, showed him the bundles enclosed in the bag. Asking Pw 1 to wait there till 8 p. m. the 1st accused went out with accused No. 4 saying that they would bring the amount (Rs. 75,000). At about 7 p.m. Pws 3 and 4 came and they were also accommodated in room No. 13. At about 8-30 p. m. accused 1 to 3 arrived in an Ambassador car and went straight to room No. 41. 1st accused had with him a leather suit case. Inside the room 1st accused opened the suit case. A folded coloured bed sheet was spread over the top of the bundle inside the box. 1st Accused removed a portion of the bed sheet and showed Pw 1 bundles of 2 rupee notes packed in the suit case. After giving a glimpse of it to Pw 1 he closed the suit case. He then suggested to Pw 1 that as the place was a busy centre and so many people were waiting outside it was safer to go to some other place and effect the exchange. Pw 2 the Sub Inspector then opened the door and came to the verandah and showed the signal by lighting the cigarette. Immediately Pw 17 rushed to the room followed by one or two other police officers and Pw 3 and 4. Pw 17 deputed a constable to watch the Ambassador car. The driver, 6th accused was kept under surveillance- The 4th accused somehow, made good his escape through an opening in the wall.

Accused 1 to 3 also tried to escape, but could not succeed. Pw 17 then opened the suit case and took out 30 bundles appearing to be bundles of 2 rupee currency notes. 100 in each bundles. But on scrutiny it was found that it was all a flop. Each bundle contained only two currency notes, one placed at the top and the other at the bottom. Thus in all, there were only 60 notes out of which 5 alone were counterfeit. The mahazar etc., were prepared and all the articles were taken into custody. The case was eventually charged after completing the investigation.

6. The charge was denied by the accused. 1st accused however, admitted that M. Os. 30 and 31 (Two 10 rupee currency notes and ten 5 rupee currency notes) were seized from him by the Dy. S.P. He had gone to the Narasimhapuram Lodge for taking coffee and from there he was called to a room where the police officers were waiting and when he reached the door of the room, he saw some note bundles kept on the table. Mos. 30 and 31 were recovered from his person. The 2nd accused stated that he had gone to room No. 41 on the date of occurrence and he was arrested from the Lodge. He had gone there to take his coffee. 3rd accused stated that he is a businessman having his office at Mullakkal Bazaar. On 1-9-1969 at about the time of the alleged occurrence he was taken from there by Pw 11 to the Narasimhapuram Lodge saying that somebody was waiting for him there and he was arrested. 4th accused did not make any statement. 5th accused denied having ever gone to Narasimhapuram Lodge and any knowledge about the alleged conspiracy. He was in the hospital undergoing treatment for T. B. 6th accused admitted that he brought 4 persons to his Lodge in his taxi, but he had nothing to do with the conspiracy. The learned Judge rejecting the plea of the accused, has entered the conviction on accused 1 to 4 which has been confirmed in appeal by the Sessions Judge.

7. Before entering on a discussion of the evidence and circumstances of the case it is worthwhile to note that the alleged criminal conspiracy reveals uncommon features. The conspiracy itself, as found by the courts below, was one between the police officer Pw 1 on the one hand and the accused on the other. The trial Judge has discussed this aspect of the case in paragraph 36 of his judgment. The learned Judge would observe:

If the evidence of Pw 1 can be accepted, there is a clear proof of the alleged conspiracy.... After entering into the alleged agreement with accused 1 to 5 Pw 1 submitted his report Ext. P1 to the Superintendent of Police... and the agreement for exchange of Rs. 75,000/- counterfeit notes for Rs. 25,000 worth genuine notes alleged to have been entered into between Pw 1 and accused 1 to 5. ...relating to the agreement alleged to have been entered into between Pw 1 on the one part and at least A1 to A3 on the other.' Thus the courts below have proceeded on the footing that the conspiracy was one entered into between Pw 1 and the accused . In other words, the crime itself was got up and engineered by the police officer himself. Such trapping has more than once come in for severe criticism at the hands of the Supreme Court. For instance, in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* : 1954 CriLJ910 the Supreme Court made the following observations.

It may be that the detection of corruption may sometimes call for the laying of traps, but there is no justification for the police authorities to bring about the taking of a bribe by supplying the bribe money to the giver where he has neither got it nor has the capacity to find it for himself. It is the duty of the police authorities to prevent crimes being committed. It is no part of their business to provide the instruments of the offence. We cannot too strongly disapprove of the step which the police authorities took in this case in the matter of providing the sum of Rs. 25,000 to Nagindas who but for the police authorities thus coming to his aid would never have been able to bring the whole affair to its culmination.

8. In the case on hand the accused were attracted or lured into the crime by the police officer. He suggested to them the way to make easy money if they were able to procure some counterfeit currency notes. For three such notes he was prepared to pay them one genuine note. Thus the bargain was struck by which he promised to give them genuine notes worth Rs. 25,000 in return for counterfeit notes worth Rs. 75,000. As observed by the Supreme Court in *Ramanam Singh v. Bihar State* : 1956 CriLJ1254 .

Whatever the criminal tendencies of a man may be, he has a right to expect that he will not be deliberately tempted beyond the powers of his frail endurance and

provoked into breaking the law : and more particularly by those who are the guardians and keepers of the law. However regrettable the necessity of employing agents provocateurs may be (and this is unfortunately often inevitable if corruption is to be detected and bribery stamped out.) It is one thing to tempt a suspected offender to covert action when he is doing all he can to commit a crime and has every intention of carrying through his nefarious purpose from start to finish, and quite another to egg him on to do that which it has been finally and firmly decided shall not be done. The very best of men have moments of weakness and temptation, and even the worst, times when they repent of an evil thought and are given an inner strength to set Satan behind them; and if they do, whether it is because of caution, or because of their better instincts, or because some other has shown them either the futility or the wickedness of wrongdoing it behoves society and the State to protect them and help them in their good resolve : not to place further temptation in their way and start afresh a train of criminal thought which had been finally set aside.

For the detection of offences like the one before me and for stamping out such criminal tendency from the mind of man it is inevitable sometimes to lay out traps, but the present one is not the laying of a trap in the usual way. Before the police officer entered the scene there was no conspiracy in the offing and there was no scheme of any sort among the accused to commit the crime. There was no meeting of minds and no consensus ad idem as between them so as to provide the background for a conspiracy. From the evidence it has come out that the idea first struck the police officer and he went to the 3rd accused at Pachalam and suggested it to him. The officer was then in the guise of the son of a rich planter. The 3rd accused told him that he had no false currency with him and to his knowledge some people at Alleppey had such currency with them. Accordingly they went to Alleppey and Pw 1 waited in the Narasimhapuram Lodge. The other accused were brought there and it was there that the conspiracy as such was hatched. The participants in the crime were Pw 1 the officer on the one side and the accused on the other.

There are two kinds of traps, 'a legitimate' trap where the offence has already been born and is in its course, and an 'illegitimate trap' where the offence has not

yet been born and a temptation is offered to see whether an offence would be committed, succumbing to it, or not. Thus, where the bribe has already been demanded from a man and the man goes out offering to bring the money, but goes to the police and the Magistrate; and brings them to witness the payment, it will be a 'legitimate trap', wholly laudable and admirable, and adopted in every civilized country without the least criticism by any honest man. But where a man has not demanded a bribe and is only suspected to be in the habit of taking bribes, and he is tempted with a bribe, just to see whether he would accept it or not and to trap him, if he accepts it, it will be an illegitimate trap and unless authorised by an Act of Parliament it will be an offence on the part of the persons taking part in the trap who will all be 'accomplices' whose evidence will have to be corroborated by untainted evidence to a smaller or larger extent as the case may be before a conviction can be had under a rule of court which has ripened into a rule of law. (Lukose v. State of Kerala 1967 Ker LT 968 : AIR 1968 Ker 60.

9. In a recent case Hira Lal v. State of Haryana 1971 CrL LJ 290 : AIR 1971 SC 356 the Supreme Court had again to consider the moral and legal aspects of laying out such traps. In that case, some gamblers approached the Sub Inspector one Kundan Lal and offered to pay him a sum of Rs. 1100/- per mensem as illegal gratification, provided he promised to shield them in their gambling activities. The Inspector sat mum and then the person left the station, promising to turn up at 3 p. m. with the money. The Inspector in the meantime made an entry of the incident in the Station Diary, and also took into confidence the Superintendent of Police thereafter, he organised a trap party which included 3 other persons. These members of the party sat in the adjoining room at about 2-45 p. m. when the appellant took out a bundle of currency notes and offered them to Kundanlal. The three other persons associated in the trap, entered Kundan Lal's room and the case was registered. The Court observed:

Kundan Lal was himself a participant in the offence as the offer was made to him and he accepted the offer though, according to him, it was with the object of working out a case against the appellant of offering a bribe. He was, therefore, an interested witness.-----It is obvious that, according to the appellant's version Kundan Lal stood to gain considerably if he could secure the conviction of the

appellant for the offence of offering a bribe. Kundan Lal would not only get the credit for working out such a case, but, if the defence version is true, he could also pocket a sum of Rs. 410/-, while producing Rs. 1100/- out of the money recovered from the appellant's possession as representing the amount of bribe offered to him.----- Kundan Lai took the extraordinary step of laying the trap himself, instead of the trap being arranged by some senior officers.(Kundan Lal was only a junior officer).

So also in the present case, Pw 1 who is a junior Sub Inspector aged only 27 fell a victim to the temptation of acquiring for himself the credit of detecting a counterfeit case and to achieve this end he made the accused tools in his hands. The so called conspiracy was originated by him and he was its promoter from beginning to end. The trap laid by him must therefore be characterised as an 'illegitimate trap'. The result is that himself and all the rest of his colleagues who co-operated with him for the success of the scheme will have to be dubbed accomplices. Law is settled by a series of decisions that no conviction can be based on the evidence of an accomplice unless it is corroborated in material particulars. Learned State Prosecutor argued that the trap witness is not an accomplice, but only an interested witness in the sense that he is interested to see that the trap laid succeeds. Such witnesses should be equated with partisan witnesses. The evidence of such witnesses is not tainted. It would only make a difference in the degree of corroboration required rather than the necessity for it. It is no doubt, true that as regards the evidence of a partisan witness it is open to a court to convict an accused person solely on the basis of that evidence if it is satisfied that that evidence is reliable. But here also it is appropriate to look for corroboration. The Supreme Court observed in *Bhanuprasad v. State of Gujarat* AIR 1968 SC 1323 at p. 1326 that

Where the witnesses are -not accomplices but are merely partisan or interested witnesses, who are concerned in the success of the trap their evidence must be tested in the same way as any other interested evidence is tested and in a proper case, the court may look for independent corroboration before convicting the accused person.

10. Thus in the case of an interested or partisan witness as different from an approver or accomplice the evidence can be accepted even without corroboration if the court thinks that it is acceptable. In the case of an accomplice or approver on the other hand, the evidence cannot be accepted without corroboration. The law has been laid down by the Supreme Court in the following words:

It cannot be laid down that the evidence of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say the court shall have first to consider the evidence of the approver de hors the corroborated pieces of evidence and reject it if it comes to the conclusion that his evidence is unreliable. but if it comes to the conclusion that it is reliable then it will have to consider whether that evidence is corroborated by any other evidence. In most of the cases the said two aspects would be so inter-connected that it would not be possible to give a separate treatment, for as often as not the reliability of an approver's evidence, though not exclusively would mostly depend upon the corroborative support it derives from other unimpeachable pieces of evidence. (Major E. G. Barsay v. State of Bombay AIR 1961 SC 1762).

11. We have seen on a scrutiny of the background under which the trap was laid, that it was an 'illegitimate trap' and Pw 1 and his associates who participated in the success of it, are accomplices, Without effective corroboration therefore their evidence cannot be accepted. Such evidence must be corroborated by other untainted evidence. We look in vain for such evidence in the present case. Some arguments were addressed on the untainted nature of the evidence of Pws 3 and 4 the Income-tax Officers who assisted Pw 1 in the working of the trap. Being associates in the 'illegitimate trap', they also have to be treated as accomplices. Even otherwise their evidence is unacceptable. First for the reason that they were more enthusiastic than Pw 1 himself in the success of the trap. They were thus, partisan witnesses, interested in the success of the venture to a ludicrous extent because for hours together, they were shadowing Pw 1. Even in the room in the Narasimhapuram Lodge they were made to wait for several hours.

They are witnesses procured by Pw 1 from the very inception- Of all the people in the locality why these Income-tax officers alone were pitched upon remains a

mystery.

12. Even if their evidence is accepted in full, no offence is thereby established. What exactly was the conspiracy for? The accused were invited by Pw 1 into the scheme for trafficking in false currency and when the evidence of Pw 1 is eschewed on the ground that he is a 'particeps criminis'. we get only one party to the conspiracy. In respect of the conspiracy as such and the details connected therewith, we have only the statement of Pw 1 and that is unacceptable without effective corroboration. What Pws 3 and 4 swear to is the seizure of the bundles from the accused; as to what transpired before that they are not prepared to enlighten the court. The bundles as we have already seen were deceptive in their appearance and contents. The currency notes tagged on only on the top and at the bottom of each bundle. The rest of the bundle contained only blank paper cut into size of 2 rupee currency notes interspersed of course with a few more currency notes. Pw 1 also was not ready with the currency notes to the value of Rs. 25,000 as he had promised. Only a glance of the bundle was allowed to be had by the accused. Thus on either side the intention was only to defraud the other. Among the notes interspersed in the bundle there were only 5 counterfeit notes. The rest were genuine currency. From the person of the 3rd accused some notes were seized which were counterfeit. The accused were charged in the circumstances with cheating in that they cheated Pw 1 but that charge has rightly been found against by the courts below. How could there be any cheating at all? Two persons entering into an agreement to commit a crime and if one resiles from the agreement, could it be said that he has cheated the other? The conspiracy also must be found to have not been proved in the case. The alleged agreement was that Pw 1 would be ready with Rs. 25,000 worth genuine currency and that the accused should go to him with false currency notes to the value of Rs. 75,000. ready to exchange one for the other. But what the accused brought was blank paper cut into the size of 2 rupee currency notes and Pw 1 had not brought any notes at all. He only pretended to have brought the currency notes. Thus the offence if at all, had reached only the stage of preparation and had not proceeded further so as to reach the stage of indictable attempt. With respect to the charge that the accused, the 3rd accused in particular were found to be in possession of counterfeit currency notes the question would arise whether they were in such

possession with the intention to use them as genuine. The prosecution must prove that they were in such possession knowing or having reason to believe the same to be forged or counterfeit. In the case of the 3rd accused the notes were kept by him in his bag. He did not intend to exchange them for genuine notes. From the very fact that even at the time of the alleged transaction he had kept the notes in his own bag would lend strength to the contention that he had kept them in the belief that they were genuine notes. So also the few counterfeit notes recovered from the bundles, which were interspersed with a few genuine notes-That also would lead to the same inference that they were not conscious of the fact that some of the notes were counterfeit. There is also the broad aspect of the whole transaction that their intention if at all, was to pass on the counterfeit notes as counterfeit only and not as genuine notes. The offence is committed only when the false currency is distributed as if it is genuine currency. But here, even if the prosecution version is accepted, the parties were dealing with each other in the belief and with the knowledge that they were exchanging false currency for genuine. The representation, made by PW1 to the accused was that he wanted some counterfeit, notes to be distributed among his labourers towards their wages. Thus, the accused were approached by them for collecting false currency and the accused in their turn, tried to dupe or outwit him by supplying blank paper cut into size, looking like currency notes for outward purposes-Thus, it was tit for tat much ado about nothing. All that could be said about the case is that it was the maiden attempt of a young inexperienced struggling police officer to acquire the credit of having detected a crime. In that struggle he had himself to envisage and chalk out the crime and present it to the unwary accused in a camouflage. Masquerading might sometimes be necessary for detection of crimes. But when the crime itself is not born or originated, masquerading would look inappropriate and unbecoming of the investigating police. The police officer himself paving the way for the commission of the crime is unrighteous and ill-suited to the conditions of a civilized society.

13. The conviction and sentence passed in the present case, have, therefore, to be set aside and the accused acquitted. I do accordingly. Conviction and sentence are set aside and accused (Petitioners) acquitted.

