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Ganpat Singh Vs. the State

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Court : Rajasthan

Decided On : Oct-18-1965

Reported in : AIR1967Raj10; 1967CriLJ121

Judge : I.N. Modi, J.

Acts : Evidence Act, 1872 - Sections 5; Indian Penal Code (IPC), 1860 - Sections 161

Appeal No. : Criminal Appeal No. 523 of 1964

Appellant : Ganpat Singh

Respondent : The State

Advocate for Def. : Amritraj Mehta, Dy. G.A.

Advocate for Pet/Ap. : Thanchand, Adv.

Disposition : Appeal allowed

Judgement :

I.N. Modi, J.

1. Accused Ganpalsingh has been convicted of an offence under Section 161 I.P.C and Section 5(2) of the Prevention of Corruption Act, and sentenced to one year's rigorous imprisonment and a fine of Rupees 100/ and in default of payment

of fine to a further rigorous imprisonment for a period of three months, by the learned Special Judge, Jaipur District, Jaipur by his judgment dated the 31st August, 1964. He now appeals.

2. The case for the prosecution may shortly be stated as follows

The accused Ganpatsingh was Head Constable in charge of the police outpost Asalpur within the jurisdiction of police station Phulera, On the 30th September, 1961, there was a quarrel between Nanu P.W. 2 son of Bhima D W on the one side and Lalaram P.W. 6 on the other. Both Nanu and Lalaram are residents of GudaBerisalsingh. On the 1st October, 1961, at 12 mid-day. Bhima and his son Nanu filed a report Ex. P-8 at the police outpost Asalpur in which it was complained that there was a quarrel between Nanuda and Lalaram as a result of the former's cattle trespassing into the latter's field during the course of which Lalaram struck Nanuda with a fist on his forehead and thereby caused him an injury on that part of his body, which was of a simple nature. The accused, it is alleged, then sent for Lalaram through D. W. Gumansingh a police constable, at Asalpur, and when Lalaram arrived at the police outpost at about 11 a.m. the accused abused him and also beal him with a 'Danda' and held out a threat to him that he would be sent to jail. It may be pointed out at this place that Lalaram had also made a report Ex, P-6 complaining that Nanuda's cattle had trespassed into his field and & verbal altercation arose between them during the course of which Nanuda had beaten his brother Moola's son with a lathi. This report was registered at 1 p.m. on the 1st After both these reports were recorded in the daily Roznamcha, the accused came to the conclusion that the offence reported fell under Section 323 I.P.C., and, therefore, the parties should seek their remedy in the competent court. The thumb marks of both Nanuda and Lalaram were taken on the respective entries in the Roznamcha.

Be that as it may, the accused is then alleged to have demanded a bribe of Rs. 200 from Lalaram. The deal was settled, however, for a sum of Rs. 80 only. Lalaram paid him Rs. 20 which he had with himself and he took a further sum of Rs. 20 from his brother Moola who had also followed to the outpost after his brother. As for the balance of Rs. 40/-. he promised to pay it after one or two days

when he would have arranged for the same. Lalaram's version further is that he had been detained at the police outpost by the accused until about 4-30 on the 1st and then allowed to go. After he and his brother had gone out of the police outpost, they met Surajmal P.W. 10, Sarpanch of village Boraj and related the whole story to him, Surajmal advised him not to pay any bribe to the accused and instead asked him to accompany him to Jaipur where it was settled they would lodge a complaint before the Anti Corruption Department.

3. The story further is that Surajmal wrote out the report Ex. P-5 addressed to the Superintendent of Police, Anti-Corruption Department, Jaipur, in which it was stated that there was a quarrel between Nanuda and Lalaram on the 30th September, 1961, and both parties had made their reports at the police chowki. And thereafter, on the 1st October, 1961, constable Gumansingh went to his house to call him at about 9 A.M.. and abusively asked him to accompany him to the police chowlci. Thereafter, he went to the chowki where Ganpatsingh accused and P. W 9 Ghisusingh were sitting. Thereafter he was abused and threatened and they said that he wouldhave to go to jail for a period of seven years. Lalaram then inquired whether they would be able to save him Thereupon they said that he will have to pay Rs. 200. Then Lalaram and his brother made entreaties for the reduction of the amount whereupon the whole matter was settled for Rs 80. It was further stated that out of this amount Rs. 40 were paid then and there and as for the remaining Rs. 40, a promise was made that it would be paid on the 2nd October, 1961. It was further stated that this incident was known to the people at large at the railway station Asalpur. Soon after they had left the chowki, they met the Sarpanch of Village Boraj, Surajmal, to whom they related the entire story to which he said that, they should not pay the remaining amount of Rs. 40 in any case, and that Lalaram should arrange for the remaining sum and that, if he succeeded in doing that, he should bring the money to him (Surajmal). With considerable difficulty Lalaram was able to arrange for the sum of Rs. 40 through the intervention of his brother-in-law (Sister's husband) Kalia P. W. 4 and took the money to Surajmal. Thereafter, they had proceeded to Jaipur. It was prayed in this application that in view of the aforementioned facts and circumstances, a trap be laid to catch the accused Ganpatsingh red-handed.

It further appears that, four currency notes (Exs. 1 to 4) Nos. B/51 455717. A/82 047527, F/47 351603 and H/85 035220 of Rs. 10 each were presented by Lalaram to the Superintendent, Anti-Corruption Department, Shri Panne Singh who initialed them, and made them over to the Assistant Superintendent of Police, Anti Corruption Department, R. Shekhar P.W. 11 and asked him to arrange for a trap. The latter accordingly proceeded to Asalpur on the 2nd October but nothing could be done on that day as his jeep had gone out of order on the way and therefore, he returned to Jaipur. He again came to Asalpur on the 3rd at about 10 A. M. On enquiry he was told by Lalaram that, the accused had left for Sambhar and was expected back by the evening train on that very day. The story further is that, about 4 P.M. in a Bajra field some 50 yards away from the Asalpur railway station, the Assistant Superintendent of Police gave the notes Exs. 1 to 4 Lalaram in the presence of two Motbirs Ramesh Chandra P. W. 1 and Jagannath P. W. 5 which bore the initials of the Superintendent of Police Shri Panne Singh and prepared the Memo Ex. P-1 in that behalf. It is said that it was arranged that, Jagannath and Ramesh Chandra should accompanv Lalaram and watch the giving of the bribe to the accused, and that as soon as the money had been passed to the accused, Lalaram should place his hand on his head which was to serve as a signal to the Assistant Superintendent of Police to proceed to the spot.

Lalaram and the two Motbirs went inside the station platform. The train arrived at 6-45 P M., on that day from which Ganpat Singh got down, Lalaram and the two Motbirs came out of the exit gate simultaneously withthe accused and the Assistant Superintendent of Police and his staff had remained outside the station platform and followed the accused and Lalaram and the Motbirs some 10 to 16 paces behind. At a distance of about 20 to 26 paces from the exit gate, there was a Khejra tree. There the accused, it is alleged, ask ed Lalaram whether he had brought the money. Lalaram replied in the affirmative. Thereafter the latter handed over the currency notes to the former. The accused, according to Lalaram, put the notes in the front pocket of his trousers, while according to the Motbirs he put them below the front portion of his belt. As soon as the notes had been passed on, a signal was given by Lalaram by placing his hand on his head whereupon the Assistant Superintendent of Police Shekhar rushed to the spot. He seized the accused in his a arms and caught hold of OUR of his hands, then announced to

him that, he was the Assislant Superintendent of Police, Anti Corruption Department, and called upon him to hand over the currency notes which he had received from Lalaram. The accused denied having taken any bribe from Lalaram. Meanwhile the accused, it is said, somehow, managed to slip the notes from under his bell or according to the alternative version from the pocket of his trousers down on the ground. The Assistant Superintendent of Police asked him to pick up the notes but he refused. Thereafter, he himself picked them up, and after sending for a petromax lamp from the shop of one Hanuman D.W. nearby, be found that the numbers of the notes tallied with those noted down in the memo Ex. P-1. The Assistant Superintendent of Police then made the first information report Ex. P-10 which was registered at the Police Station, Jaipur.

The necessary sanction for the prosecution of the accused was accorded by Shri Santram Deputy Inspector General of Police. The accused was then challaned in the Court of the Special Judge, Jaipur District, Jaipur, and has been convicted and sentenced as already stated above.

4. The defence of the accused is a complete denial. His version is that the whole case has been manufactured by Surajmal Sarpanch of Village Panchayat Boraj who is on terms of considerable enmity with him. It is admitted by Surajmal P. W. 10 that, the accused Ganpatsingh had registered a case against him under Sections 420 and 221, I. P. C., on the 21st April, 1961, which case was still pending at the time of the prosecution of the accused. The defence has further tried to prove that of the two Motbirs Ramesh Chandra and Jagannath, the former had made a complaint against the accused before the Superintendent of Police, Phulera, on the 25th January, 1961, that the accused was inimical towards him and was bent upon harassing him, and so far as the latter was concerned, it is said that he belongs to the party of Surajmal. The accused has produced 18 witnesses in his defence, examined himself on his side as D. W 18 anddenied in his cross-examination that he had accepted any currency notes from Lalaram or that he had thrown them away where the Assistant Superintendent of Police had come to arrest him.

5. At this stage. I should like to summarise the findings of the learned Special Judge. In the first place, he found that the story that the accused had sent for Lalaram through camel sowar Gumansingh D. W. 4 on the morning of the 1st October, 1961, cannot be unhesitatingly relied on. In the second place he has found that, the further story that the accused had demanded and accepted a bribe of Rs. 40 from Lalaram on the 1st October, 1961, is also not proved beyond all reasonable doubt. In the third place, he has found that although the four currency notes were not recovered actually from the possession of the accused, they were found lying quite close to the spot where he was arrested by the Assistant Superintendent of Police, R. Shekhar and that, the counter story put forward by the defence witnesses that, they had been recovered at some distance from the place of the accused's arrest and only after a search for them bad been made with the help of a petromax lamp was untenable. In the fourth place, his finding is that, although P. Ws. Ramesh Chandra and Jagannath Motbirs 'do appear to have a grudge against the accused,' there is no reason to doubt or to reject the evidence of Lalaram and the Assistant Superintendent of Police Shekhar. Fifthly, the learned Judge found that, although, Lalaram was a trap witness and therefore, some corroborative evidence should be looked for before the conviction of the accused could be founded on his evidence, such corroborative evidence was available in the statements of P. Ws. Ramesh Chandra and Jagannath. Lastly, the learned Judge went on to hold that, even if the testimony of Ramesh Chandra and Jagannath was altogether excluded, the case against the accused was still proved beyond all manner of doubt on the testimony of Lalaram supported as it was by that of the Assistant Superintendent of Police R. Shekhar. The learned Judge then sums up his conclusion thus :

' Therefore, it is reasonably true that Lalaram had given him the four currency notes (Ex. 1 to Ex. 4), but the accused appears to have been cautious of the tainted money in his possession and immediately as he was caught, he somehow managed to slip them down ..... therefore, I find it proved beyond any manner of doubt that the accused Ganpat Singh had accepted Rs. 40 from Lalaram on 3-10-61 as illegal gratification for forbearing to proceed officially against him and therefore, hold him guilty of an offence under Section 161 and Section 5(2) of the Prevention of Corruption Act. ..... "

6. Now before I deal with the evidence of the eye-witnesses, I should like to make a few general observations with respect to the value to be put on the evidence of trap witnesses. For it is in the light of the correctlaw bearing on this subject that the evidence of the various eye-witnesses must fall to be, evaluated in the present case.

7. The question has many a time come before the Courts as to whether a person who participates in a trap laid for apprehending another, accused of accepting a bribe, is an accomplice or not, and is not free from a certain amount of difficulty. In IT. T. Huntley v. Emperor, AIR 1944 FC 66, the evidence of a decoy or a trap witness has been treated as that of an accomplice. In Public Prosecutor v. A. Thomas, AIR 1959 Mad 166, it was held that a trap witness is not an accomplice and he does not come under the category of witnesses whose evidence cannot be accepted in the absence of material corroboration. But at the same lime as the system of employing a trap witness will lend itself to abuses, the Court will closely scrutinise his testimony and the weight to be attached to his evidence will depend upon the character of each individual trap witness. It was further held that, while prudence requires that the Courts should demand and the prosecution should adduce some corroborative evidence, it need not be so strong or absolutely convincing or sufficient in itself to support a verdict of guilty and that, any corroborative evidence--documentary or oral, direct or circumstantial--legitimately tending to connect the accused with the commission of the offence would be sufficient to warrant a conviction although standing by itself it would be only slight proof of accused's guilt and entilled to but little consideration and even though it is not wholly inconsistent with the innocence of the accused. It was, however, made clear further that, evidence which merely raises a suspicion that the accused is guilty is not sufficiently corroborative of the testimony of a trap witness to warrant a conviction nor will uncertain or equivocal corroboration suffice. Indeed it was felt that, no general rule could be formulated with respect to the quantum of evidence corroborating a trap-witness's testimony and that each case must be governed by its own circumstances keeping in view the nature of the crime, the character of the trap-witness's testimony and the general requirements necessary to sustain a conviction.

8. In Shiv Bahadur Singh v. State of Vindh Pra, AIR 1954 SC 322, it was held by our Supreme Court that witnesses who are not willing parties to the giving of a bribe to the accused but who are actually activated with the motive of trapping the accused cannot be treated as accomplices; but their evidence was nevertheless the evidence of partisan witnesses who are out to entrap the accused, and, therefore, their evidence requires to be scrutinised with considerable caution and care and should not be ordinarily relied upon without independent corroboration.

9. In State of Bihar v. Basawan Singh, AIR 1958 SC 500, the decision of the Supreme Court in Rameshwar v State of Rajasthan AIR 1952 SC 54, was reaffirmed and it was laiddown that a person who was not a willing giver of a bribe could not be correctly treated as an accomplice and it was further made clear, relying on the rule laid down in King v. Baskerville, 1916-2 KB 658, that the uncorroborated evidence of an accomplice is admissible in law and, that a conviction can be founded on it; but it has long been a rule of practice which has virtually become equivalent to a rule of law, that the Judge must warn the jury of the danger of convicting a prisoner on the uncorroborated testimony of an accomplice.

In Rameshwar's case, AIR 1952 SC 54, (supra), Bose J. speaking for the Court had laid down that, the only clarification which was necessary for the purposes of this country where this class of offence was sometimes tried by a Judge without the aid of a jury was that in such cases, the Judge should give ' clear indication in his judgment that he has had this rule of caution in his mind and then should proceed to give reasons for considering it unnecessary on the facts of the particular case before him so that, he considers it safe to convict without corroboration. Having thus enunciated the law with respect to accomplice evidence, their Lordships then went on to observe that there could be no universal or inflexible rule that the evidence of partisan or interested witnesses could be rejected out of hand because the value of the testimony of a witness depends on diverse factors, such us the character of the witness, to what extent and in what manner he is interested, how he has Cared in cross-examination etc. It was then laid down that the testimony of partisan or interested witnesses must be scrutinised with care and that there may be cases where as a matter of prudence,

the Court will look for independent corroboration before convicting the accused, but it would be wrong to deduce from this that there was any universal or inflexible rule that the evidence of the witnesses of the raiding party must be discarded unless independent corroboration was available.

10. The matter again came before their Lordships of the Supreme Court in K. G. Barsay v. Slate of Bombay, AIR 1961 SC 1762, and it was laid down that a trap witness is certainly an interested witness in the sense that ho was interested to see that the trap laid down by him succeeded, and, therefore, he could at least be equated with a partisan witness and it would not be admissible to rely on such evidence without corroboration. It was further laid down, that it would be equally clear that his evidence, was not a tainted one but, it would only make a difference in the degree of corroboration required rather than the necessity for it.

11. Learned counsel for the accused placed strong reliance on the passage referred to above in support of his submission that this Court cannot in law uphold the conviction of the accused without material corroboration of the testimony of the main trap witness Lalaram from an independent source as to the commission of the crime by the accused. I desire to point out that this passage should be read in its entirety in order to find out its true import. I do not think that their Lordships intended to lay down any such universal or inflexible proposition as learned counsel seems to think Indeed it seems to me that the last sentence of the passage namely that ' it would only make a difference in the degree of corroboration required rather than the necessity for it' is equally important. It is also important to bear in mind that their Lordships have referred with approval to the principles laid down by the Court of Criminal Appeal in (1916) 2 KB 658 (Supra), which has been accepted as the locus classicus of the law on the subject and has been followed by the Courts in India.

Again, with all respect, it does not seem to me that their Lordships intended in deciding this case to depart from the law which had been earlier laid down in AIR 1958 SC 500 (Supra).

12. As a result of the discussion made above, the true legal position with respect to a trap-witness seems to be somewhat like this. A trap witness is really not an

accomplice because he is not a willing party to the giving of a bribe. He is, however, a highly partisan witness and therefore, his evidence must be scrutinised with very considerable care and caution. Further, as a matter of substantive law there would seem to be no rule which stands in the way of a conviction being found ed on the evidence of such a witness in a proper case, but the Courts, as a matter of prudence, should normally and ordinarily look for material corroboration of the evidence of such a witness from independent sources though it seems to me that perhaps it would be open to a Court to depart from this course for valid reasons to be stated by it in an exceptional case. Again, in seeking corroboration of the evidence of such a witness the Courts need not look for corroboration of every part or detail of the prosecution story, and it would be sufficient if corroboration is forthcoming as to the material circumstance of the crime and the identity of the accused in relation thereto

13. In the light of the above principles, I now propose to examine the evidence led by the prosecution in this case.

14-32. (His Lordship considered the evidence in the light of these observations and proceeded) :--

33. Judging the whole case by the principles which I have discussed above, I find that the evidence of the main trap-witness Lalaram cannot be accepted as unquestionably true Nor does that evidence receive any satisfactory corroboration from the other witnesses produced by the prosecution.

34. Before concluding my judgment, I should like to point out that at the best there may be suspicion against the accused that, he had asked for and accepted a bribe from Lalaram; but as observed by their Lordships of the Federal Court in AIR 1944 FC 66 (supra); although a charge under Section 161, Penal Code, is difficult to establish, that would not relieve the prosecution of the burden which rests upon it to establish the charge beyond reasonable doubt and that if after everything that can legitimately be considered has been given its due weight, room still exists for taking the view that however strong the suspicion raised against the accused, every reasonable possibility of innocence has not been excluded, he is entitled to an acquittal.

35. For the reasons mentioned above I hold, that the conviction of the accused under Section 161 I. P. C., and under Section 5 (2) of Prevention of Corruption Act cannot be sustained and it is, therefore, set aside.

36. In the result, I allow this appeal, setaside the conviction and sentence of the accused and hereby acquit him As the accused ison bail, he need not surrender to his bail bond.

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