

The State of Rajasthan Vs. B.K. Roy

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Court : Rajasthan

Decided On : Dec-19-1983

Reported in : 1983WLN(UC)569

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Criminal Appeal No. 238/73

Appellant : The State of Rajasthan

Respondent : B.K. Roy

Advocate for Def. : Mr. Doongar Singh

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. Respondent B.K. Roy was tried for the offence under Section 161 IPC and under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act (hereinafter referred to as 'the Act') by the Special Judge, Sriganaganagar, and was acquitted by the judgment dated December 16, 1972. The State of Rajasthan feeling dis-satisfied by the order of acquittal has filed the present appeal in this Court.

2. Briefly stated the facts of the case giving rise to the trial of the respondent his acquittal and the present appeal by the State of Rajasthan are as under:-- Respondent was Medical Officer at the Primary Health Centre, Chhani Badi in the year 1970. He had conducted the post-mortem examination of the dead body of a child Chhani Badi in connection with Case No. 44 under Sections 312 and 318 IPC registered at Police Station Bhirani by Ismailkhan (PW 9) the S.H.O of that Police Station. The allegations were that the respondent wanted to examine all the women of the village to find out as to who was the mother of the deceased child. That, Punamchand Jat (PW 2) had gone to that village and was told by Dhanpat (PW 5) that the Doctor wanted to examine all the women of the village, which should not be done. Thereafter Punamchand is said to have met the Doctor at Chhani Badi in the evening of 27-9-70 when the post mortem examination was conducted. The Doctor demanded Rs. 200/- for giving a favourable report. The matter was settled at Rs. 100/- Punam Chand went to Yaswant Singh (PW 6) Sarpanch who informed him that the Anti-Corruption Officer had come to Bhadra and he should meet him on the next morning at Jogi-wala Canal. The prosecution version is that Yaswant Singh met Addl. S.P. Jabar Mal Mehera (PW 8) at Bhadra Post House at 8.00 P.M. in the night and disclosed the matter to him. The Addl. S.P. informed him that he would reach Jogiwala Canal on the next morning. On 28-9-70 Punam Chand (PW 2) went to the Canal at about 8.00 A.M. and submitted an application Ex. P/3 along with a currency note of Rs. 100/- denomination. At the instance of Addl S.P. Punamchand brought Lal Chand (PW 4) and Moji Ram (PW 1), the two motbirs, in whose presence the application was submitted and the memo Ex. P/4 regarding the delivery of note to Punam Chand for being given to the Doctor on demand was prepared. All of them proceeded in a jeep from Jogiwala Canal and reached near the Primary Health Centre Chhani Badi. Punam Chand and Lal Chand went to the hospital and others remained behind. The discrepancy in the statement of the witnesses regarding the person entering the room of the Doctor to give him the currency note will be discussed at appropriate place. For the present suffice it to say that the prosecution case is that Punamchand gave the hundred rupees currency note to the Doctor and came out of the room and gave signal to the trap party. The Addl. S.P. and Moji Ram went to the hospital and along with Punam Chand and Lal Chand entered the room of the

Doctor. The Addl. S.P. disclosed his identity and demanded the currency note. The Doctor took out the currency note and produced it before the Addl.S.P. On being asked to explain the possession of the note, the Doctor is said to have stated that he has nothing to say in the matter. The Addl. S.P. after observing all the necessary formalities of the trap cases, prepared the recovery memo Ex.P. 6. The documents relating to the post mortem, examination of the child were also taken in possession. The Doctor was arrested. Here again there is difference between the prosecution case and the defence version as to whether he was taken to Bhadra because he was unable to furnish surety or the police did not accept the surety to harass him. Any how the facts are that respondent was taken to Bhadra and was enlarged on bail, on his furnishing surety.

3. After obtaining necessary sanction for the prosecution of the respondent, challan was put up against him for the aforesaid offence in the Court of Special Judge, Anti-Corruption, Sriganaganagar. The learned Judge chargesheeted the respondeat for the aforesaid offences. He pleaded not guilty and the trial proceeded. Nine witnesses were examined by the prosecution to substantiate its case. In his statement Under Section 302 Cr. PC (Old), the respondent denied the allegation of receiving illegal gratification and stated that 100 rupee currency note Ex, P- 1 was given to him by Lal Chand (PW

3) towards his fees & cost of medicines which some dues in connection with the treatment of the members of his family. That, after adjusting that amount he returned Rs. 10/- to Lal Chand. That at the time of the recovery itself he had told that he had received the amount towards the fee and cast of medicines and returned Rs. 10/- but the explanation was not written by Jhabar Mal (PW 8), He also stated that he had asked him to write the explanation in English as he did not know Hindi but the record was prepared in Hindi which he was unable to read and, therefore, he had to sign under compulsion. The respondent also took the plea that Lal Chand (PW

4) and his family members wanted free service and free medicines from him and were, therefore, annoyed with him. It was also stated that Mahendra Punia, son-in-law of Jhabar Mal (PW

8) was computer under him in the Family Planning and wanted to get his tour programme verified without undertaking any tour and because of his (respondent) refusing to do so, he was not on good terms with him and had spoken adversel against him to his father-in-law. That, Punia Pokharmal, another compounder under him was also aggrieved with him because of the loss of his private practice on account of the respondeat being posted at the hospital. The class four servants of the Primary Health Centre Chhadi Badi viz. Shivkaran (DW

1) and Gurucharan (DW

2) were examined to substantiate the defence version. The learned trial udge did not believe the prosecution case that the currency note was received by the Doctor as illegal gratification for giving any favourable report so that women of the village Bair may not be put to medical examination. He found substance in the defence version of the payment of the amount being made by Lal Chand to the respondent by way of fees and cost of medicines. The learned Judge taking into consideration the inconsistent statement of the prosecution witnesses and the unbelievable story put up by the prosecution, acquitted the respondent for the charges levelled against him. Hence this appeal by the State of Rajasthan.

4. The learned Public Prosecutor has assailed the findings of the innocence by the learned trial Judge mainly on the ground that provisions of Section 4 of the Act have not been taken into consideration by the learned trial Judge, According to him when the respondent had received Rs. 100/- currency note and the recovery of the same from his possession has been proved, the burden was upon him to refute the prosecution case that it was received by him not by way of illegal gratification. Mr. Doongar Singh, learned Counsel for the respondent on the other hand contended that mere recovery of money from the respondent will not by itself be sufficient to raise a presumption and, therefore, the burden would still be upon the prosecution to prove that the public servant had obtained the amount by corrupt or illegal means so as to being the case within tha ambit of Section 5(1)(d) of the Act.

5. In order to appreciate the arguments of the learned Counsel for the parties and to make out whether the learned trial Judge has properly appreciated the evidence

in the light of the principle of law and provisions of Section 4 of the Act it would be appropriate to discuss the principles enunciated in the various authorities cited from either side.

6. Section 6 of the Act provides that where in any trial of an offence punishable under Section 161 or Section 165 of the Indian Penal Code, offence referred in Clause fa) or Clause (b) or Sub-section(l) of Section 5 of 'the Act' punishable under Sub-section (2) thereof, it is proved that on accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be as motive or reward, such as is mentioned in the said Section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

7. It is pertinent to note that the various offences given in this section, do not include the offences under Section 5 (1)(d) of the Act, and therefore, the burden would still be upon the prosecution to prove that the accused had by corrupt or illegal means or otherwise abused his position as public servant, obtained for himself or for any other person, any valuable thing or pecuniary advantage.

8. In the case of State of Assam v. Krishna Rao and Anr. : 1973 CriLJ169 relied on by the learned Public Prosecutor their Lordships have been pleased to observe that the presumption under Section 4 of the Act shall at once arise where it is proved that a gratification has been accepted That, this is a presumption of law and it is obligatory on the Court to raise it in every case brought under Section 4. Interpreting the word 'unless the contrary is proved', their Lordships were pleased to observe that these words mean that the presumption raised by Section 4 has to be rebutted by proof and not by bare explanation which may be merely plausible. Their Lordships however, further held that the required proof need not be such as is expected for sustaining a criminal conviction, it need only establish a high degree of probability.

9. The question of availability of the presumption under Section 4 of the Act for the charge under Section 5 (2) read with Section 5 (1)(d) came for determination before their Lordships of the Supreme Court in the case of V.K. Sharma v. State Delhi Administration : 1975 CriLJ776 and their Lordships answered in negative and held that it would not be available for the charge under Section 5 (1)(d) read with Section 5 (2) of the Act.

10. This being the position, the presumption Under Section 4 of the Act for the charge under Section 161 IPC may be availed of by the prosecution. But even then if there is any evidence showing the probability of the defence version, the presumption would stand rebutted. So far as the charge Under Section 5(1)(d) of the Act is concerned, the burden would be on the prosecution to prove that the public servant had abused his position and has obtained valuable thing or pecuniary advantage, by taking the amount in question.

11. There is no dispute on the point that RS. 100/- currency note was produced by the respondent before Jhabar Mal Maheria(PW 8) on demand. The question is whether the respondent had given any explanation for the same at the time. The statement of Jhabar Mal (PW 8) is that the accused stated that he had nothing to say for it. The case put forth by the respondent is that he did state at the time that the note was given by Lal Chand (PW 4) as Rs. 90/-were due towards him for the treatment of his family members and that Rs. 10/-were returned to him, while cross-examining the prosecution witnesses this plea was put forth. Jaisa Ram (PW 1) has stated that about twenty days prior to this occurrence Doctor has demanded money from Lal Chand, son of Dhanna Ram (PW 4), due towards his fees and Lal Chand has told him that he would pay. The witness further stated that when a person demands money, it is natural for the other to feel annoyed. Lal Chand has also admitted that his family members were got treated by the Doctor (respondent) and some time at Bhadra. On being questioned as to whether the respondent had treated the ailing daughters of the guests who had come to attend the marriage of two girls in the family of Lal Chand, the witness stated that if they had fallen ill, the Doctor might have treated them. Shiv Karan (PW 1). Class four employee posted at Chhani Badi at the relevant time, has also supported the defence version and stated that he used to accompany the Doctor when he was

going at the house of Yaswat Singh and Lal Chand, sons of Dhanna Ram. That, whenever he had accompanied the Doctor, those persons did not make payment of the fees and cost of the medicines and used to say that they would sent later on. That, at the instance of Doctor had gone to demand Rs. 90/- but Lal Chand did not give and feeling annoyed told that they would send. Gurucharan (DW 2) another class four servant posted at the Chhani Badi at the relevant time had also stated that he had accompanied the Doctor twice or thrice to the house of Dhanna Ram. That, on one occassion, the Doctor had gone to attend the wife of Yaswant Singh while at the other to attend Dhannaram's daughter Santosh. That, whenever, he had gone with the Doctor these persons did not pay the fee and the cost of medicines and told that they would pay. That, he had gone to bring Rs. 90/- due to wards fees and cost of medicine but they said that they would pay.

12. The argument advanced against the testimony of these two defence witnesses is that they were the employees under the respondeat and as such right have stated in his favour. It is important to note that these two employess had been transferred from the Chnani Badi long before their statments were recorded in the Court. There is nothing to disbelieve them.

13. The respondent has stated that he had given the explanation regarding the possession of the currency note with him at the time of the trap itself. So is the statement of Shiv Karan (DW 1). The presence of Shiv Naran at the time is natural. Merely because he happens to be an employee at the Chhani Badi Health Centre would not be sufficient to discard his testimony specially when he had stood the cross examination well. The respondent has taken the plea that he was not knowing Hindi and had asked Jhabar Mal Maheria (PW 8) to note down his explanation in English but the latter did not do so and got his signatures on the memo under compulsion. Shiv Karan (DW 1) has stated that the Doctor was not knowing Hindi. He has based his version on the fact that the Doctor was getting the Hindi Papers read from Compounder and the computer. He also stated that the memo prepared at the time of the trap was not read over to the Doctor and he was directed to append his signature thereupon.

14. The learned Public Prosecutor placed reliance on the principle enunciated in the case *Gisu Singh v. State of Punjab* : 1974 CriLJ789 wherein the principle has been enunciated that the evidence of the Police Official cannot be discarded in a trap case merely because they are police officials. This opinion was expressed in view of the facts and circumstances of that case. The Police Constables and two other independent witnesses had disproved the explanation of the accused under Section 342 Cr. PC and for that reason the testimony of the police officials was held to be rightly taken into consideration,

15. It would always depend upon the facts of a given case as to whether explanation given by the accused should be taken to be probable or not. Before entering into the discussion of the probability of the explanation given by the respondent, we find, it necessary to scrutinize the evidence on recorded in the light of the arguments advanced by the learned Counsel for the respondent that they belonged to one political party and for various reasons, were annoyed with the respondent. While doing so it would also be necessary to look into the inconsistencies in the statements of the prosecution witnesses indicating the improbability of the prosecution case.

16. The prosecution case is that Dhanpat (PW 5) had told Punam Chand (PW 2) that the Doctor wanted to examine all the women of the village-Bair to ascertain whose issue the deceased child was. The learned trial judge has rightly observed that Punamchand had no occasion to go to that village that day. Punamchand has also admitted in cross-examination that he had not gone to village Bair that day for any work. Be it as it may, there is no evidence to establish that the Doctor expressed the desire to examine all the women of the village in that concern. It is pertinent to note that no person from the village Bair except Dhanpat had been examined to substantiate this contention. Dhanpat has stated that the Doctor conducted the post mortem examination on the dead body of the child in his presence at the 'Johad' and told the 'Thanedar' that by examining all the women of the village it can be ascertained as to whose child it was and the 'Thanedar' replied that he will see to it. Ismail Khan (PW 9) the Investigation Officer has clearly stated that he had not told the villagers that he would get all the women or the village medically examined. According to him if he would have felt it necessary

to get he would have got the ladies medically examined by the Doctor. He expressed his ignorance about the authority of the Doctor to medically examine all the women without his asking him to do so. He further stated that in his presence no body had any talk with the Doctor in this concern nor any body asked him to write the report as they say. Ismail Khan (PW 9) has also stated that it had become dark and, therefore, the Doctor had told that he would send the report next day. Dhanpat (PW 5) has nowhere stated that there was any demand by the Doctor. He simply stated that had asked Punam Chand to have a talk with the Doctor that the ladies of the village should not be examined. The Doctor had received the Police requisition at 4.00 p.m. on 27-9-70 and reached the spot at 5.00 or 5.30 p.m. as stated by Ismail Khan. As such there was no occasion for Punam Chand to have a talk with the Doctor. Punam Chand statement is that after meeting the Doctor, he met Yaswant Singh, Sarpanch at 5.00 - 6.00 at Chhani Badi does not appear to be correct.

17. A glaring contradiction in the statement of Dhanpat (PW 5) and Punamchand (PW 2) is that Punamchand has stated that the hundred rupees currency note given to the Doctor belonged to him and he had received the same Dhanpat. Dhanpat has denied to have given any money to Punamchand at any time and has also stated that he had not met Punam Chand after his talk on the day of the conducting of the post mortem examination.

18. There is force in the argument advanced by Mr. Doongar Singh that Punamchand and Dhanpat were not at all concerned with the case of the death of the child and, therefore, there was no reason for them to approach the Doctor. In the absence of any evidence of any other inhabitant of the village specially in view of the statement of Ismail Khan, it cannot be said that the Doctor expressed any intention to examine all the women of the village. Punam Chand has admitted that he belonged to a different village. and was in no way concerned with village Bair. He has also stated that he had neither told the police nor any body else that Dhanpat (PW 5) had told him that the Doctor would medically examine all the women of the village and that it was for the first time in the Court that he was stating so. He also admitted that he had not written this fact in the report Ex.P. 3 This version shatters the prosecution case that the money was given to the Doctor

in order to avoid the medical examination of the ladies of the village.

19. Yaswant Singh (PW 6) happens to be the real brother of Lal Chand (PW 4) towards whom the fees and cost of medicines is said to be due. Ismail Khan (PW 9) had submitted that Punam Chand (PW 2), Lal Chand (PW 4) and Yaswant Singh (PW 6) were the members of B.K.D. Party. Jaisa Ram (PW 1) has also stated that Punamchand (P W 2) and Yaswant Singh (PW 6) are of the same party. Yaswant Singh and Punamchand being interested in Lal Chand is apparent from the record. The very fact of Punam Chand taking Lal Chand brother of Yaswant and Moji Ram his servants as motbirs indicates the efforts to bring favourable witnesses for the prosecution. Yaswant Singh being annoyed with the Doctor is also borne out from his statement. He has admitted that he had told the news paper men that the Doctor at the Health Centre Chhadi Badi was more interested in legal work than in any other work. That, he has told so to Sadhu Ram of Ganganagar, Patrika, one Yudhister Kumar and one Mohammeden who had come in his office. He has also expressed the opinion that the work of Chhani Badi Hospital was not satisfactory. Thus, Yaswant Singh being annoyed with the Doctor, Lal Chand being his brother and himself being annoyed because of the demand of the fee and cost of medicines by the Doctor and Punam Chand being his party man has rightly given the impression to the learned trial Judge that the prosecution story is not free from doubt.

20. There is contradictory version regarding giving of Rs. 100/- currency note to the Doctor. There are inconsistent versions even regarding Punamchand and Lal Chand entering the room. It would also be relevant to note the terms of Mahendra Punia computer, the son-in-law of Jhabar Mal Meharia (PW 8) the Addl. S.P. with the Doctor were not good. The defence witness has supported the plea of the Doctor that Mahendra Punia was annoyed with him on account of his reluctance to verify the bills. Similarly, there is evidence that Pokharmd Punia had good private practice which was disturbed by the posting of the Doctor in the Chhani Badi Hospital. Thus the evidence on record suggests that the prosecution witnesses were not only interested in one another but also interested in getting the Doctor involved in some case. Lal Chand (PW 4) and Moji Ram (PW 7) being taken as motbirs in the case because of certainty of their supporting the prosecution version

also strengthens this view. The learned trial Judge in our view of these circumstances and in our view rightly so, has considered the defence version as probable and therefore, discarded the improbable story of the prosecution.

21. It is well settled that the appellate Court should not lightly interfere with the conclusion arrived at by the trial Court, which has the occasion to examine the witnesses. In the case of *Castano Fladade Fernandes and Anr. v. Union Territory of Goa, Daman & Diu*, *Pani Goa* AIR 1977 SC 133 their Lordships have been pleased to enunciate the principle that if the view taken by the trial Court is a reasonably possible view, there should be no interference or its disturbance by the High Court.

22. In the case of *Sural Lal v. State of M.P.* : AIR 1982 SC 1224 their Lordships have been pleased to go even to the extent that where from the evidence on record two views are possible, one indicating conviction and other supporting acquittal, the High Court should not disturb the findings of the acquittal of the trial Court.

23. Similar view has been expressed in the case of *Mukva v. State of Madhya Pradesh* AIR 1976 SC 969 and it was held that in the absence of irregularity, manifest error or illegality High Court should not interfere merely because it thinks that sitting as trial court it would have taken the other view of the evidence.

24. In the case on hand, after discussing the evidence on record, we are convinced that no view other than the one taken by trial Court could have reasonably be taken. There is, therefore, no ground to interfere with the findings of the learned trial Judge.

25. As a result of the above discussions, we do not find any merit in the appeal filed by the State of Rajasthan and it is, therefore, dismissed.