

**Khilli Ram Vs. the State**

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**Court :** Rajasthan

**Decided On :** Oct-21-1975

**Reported in :** 1975WLN(UC)418

**Judge :** P.D. Kudal, J.

**Appeal No. :** S.B. Cr. Appeal No. 850 of 1971

**Appellant :** Khilli Ram

**Respondent :** The State

**Disposition :** Appeal dismissed

**Judgement :**

**P.D. Kudal, J.**

1. This is an appeal by the accused-appellant Khilli Ram, who has been convicted by the learned Special Judge (Sessions Judge), Bharatpur, in Special Sessions Case No. 2 of 1970, under Section 161 of the Indian Penal Code, and Section 5(1)(d)(2) of the Prevention of Corruption Act, 1947, to two years rigorous imprisonment by his judgment dated 16-9-1971.

2. The prosecution case, in brief, is that the complainant Ramswaroop PW/2 had presented two private complaints before the learned Munsiff Magistrate, Bayana, who had forwarded the same to the Police Station, Bhusawar for enquiry. It

appears. that the complaint PW/2 Ram Swaroop was harbouring an honest impression that no investigations are being conducted by the police. He then brought this fact to the notice of the police by an application dated 10-1-1969. A report was asked for vide Ex. P/4 from the Police Station, Bhusawar. On 25-3-1969, the SHO submitted the report that the complainant PW/2 Ram Swaroop is in the habit of making false reports, and that the two private complaints filed by him have, on investigation, been found to be false and, therefore, action under Section 182, IPC should be taken against him. The complainant Ram Swaroop, in the meantime seems to have presented a written complaint Ex. P/8 on 17-2-1969 to the D.I.G., Police, Jaipur. This complaint was forwarded to the S.P., A.C.D for necessary action through the Police Constable Durga Prasad. PW/6 Kastoori Lal Dy S.P., A.C.D., before whom the complainant PW/2 Ram Swaroop, presented himself called Ram Swaroop to appear before him on 20-2-69. The complainant Ram Swaroop, however, did not present himself on 22-2-1969, but appeared before him on 10-3-1969. The grievance of the complainant Ram Swaroop PW/2 was that the Head Constable Shankar Lal, Police Station, Bhusawar had already received Rs. 100/- as illegal gratification. He was further paid a sum of Rs. 80/- on a subsequent demand, but still he was not proceeding with the investigation of those two cases which were forwarded by the Munsiff Magistrate, Bayana and was still demanding Rs. 80/- more from the complainant. A trap was accordingly laid on 10-3-1969 but the Head Constable Shankar Lal did not go to the spot, as was indicated by the complainant Ram Swaroop PW/2 PW/6 Kastoori Lal had arrived there with his party, and went back as Shankar Lal, Head Constable, did not appear. While returning PW/6 Kastoori Lal had asked Ram Swaroop PW/2 to fix up another date with Shankar Lal, Head Constable and then inform him. On 30-2-1969, at about 11 a.m. PW/2 Ram Swaroop again went to the office of Shri. Kastoori Lal PW/6, and informed him that the Head Constable Shankar Lal has been transferred, and that Khilli Ram, Head Constable, has taken over in his place. He further told him that Khilli Ram had demanded Rs. 50/- as illegal gratification. The complainant Ram Swaroop had taken out five notes of Rs. 10/- each, and desired that Khilli Ram may be arrested red handed. The complainant was directed to meet near the Dharma Shala of Raghunathji in the afternoon. PW/6 Kastoori Lal reached the Dharma Shala of Raghunathji at Bhusawar at

about 3 p.m. Ram Swaroop, the complainant, met him there. Five notes of Rs. 10/- each were initialled by PW/6 Kestoori Lal, and were given to Ram Swaroop. He was instructed that when the illegal gratification has been received by Khilli Ram, he should indicate so by taking off the 'dhoti' which he had tied on his head. This was done so at about 5.45 p.m. The witnesses were asked to occupy the specific positions, and then the Head Constable Khilli Ram was informed. Khilli Ram came to the bus-stand from the Police Station, and talked to Ram Swaroop beneath the tree of 'imali'. Ram Swaroop then took off the 'dhoti', which he had tied on his head. On receiving this signal, the Dy S.P. A.C.D. Shri Kastoori Lal went to the site, and disclosed his identity to Khilli Ram. He called upon Khilli Ram to take out Rs. 50/- which he had received as illegal gratification from Ram Swaroop. Khilli Ram denied having received any such amount as illegal gratification, and thereupon, PW/6 Kastoori Lal asked the Police Constable Prabhu Dayal to take search of Khilli Ram. On a search having been made, five notes of Rs. 10/- each bearing the initials of the Dy. S.P., A.C.D. are said to have been recovered from the right hand pocket of the shirt of the Head Constable Khilli Ram. An application addressed to the Sub Inspector, Police Station, Bhusawar was also found in the pocket of the shirt which Khilliram was wearing at the time. But this application was torn to pieces by Khilli Ram. The five notes of Rs. 10/- each and the torn pieces of the application were seized by PW/6 Kastoori Lal, and a seizure memo was prepared. Accordingly a First Information Report was lodged, and a case under Section 161, IPC and Section 5 (1)(d)(2) of the Prevention of Corruption Act was registered against Khilli Ram, and he was arrested.

3. The prosecution has examined PW/1 Prabhu Daval, who has stated that he was posted as a literate constable on 30th March, 1969 at O.P, A.C.D., Bharatpur. He had accompanied PW/6 Kastoori Lal in connection with the trap to Bhusawar. The complainant Ram Swaroop met them at the Raghunath Disarma Shala, Bhusawar. Dy. S.P. A.C.D, in the presence of two witnesses, took the five notes of Rs. 10/- each from the complainant Ram Swaroop, noted their numbers. initialled them, and gave these notes back to Ram Swaroop with the instructions that when Khilli Ram has accepted the bribe, he should signal by removing the 'dhoti' which he had tied on his head. The Dy. S.P. A.C.D, and the witnesses had taken the strategic positions, and hidden themselves behind the trees. After some time, Khilli

Ram came there, and started talking to Ram Swaroop. At that time, Ram Swaroop and Khilli Ram were beneath the 'imali' tree. Khilli Ram was in police uniform. After a little talk, the complainant Ram Swaroop gave those notes to the Head Constable Khilli Ram. The witness was standing about 15 paces from them, and saw Ram Swaroop giving the notes to Khilli Ram. Khilli Ram took these notes and kept them in the right hand pocket of his shirt. Ram Swaroop then gave the signal, on which PW/6 Kastoori Lal and the witness went to Khilli Ram. PW/6 Kastoori Lal disclosed his identity that he was Dy. S.P, A.C.D. of Bharatpur, and asked Khilli Ram that he should take out Rs. 50/- which he had received from Ram Swaroop as illegal gratification. Khilli Ram denied having received any such amount Thereupon. PW/6 Kastoori Lal directed the witness Prabhu Dayal to take search of Khilli Ram. Before taking the search of Khilli Ram, Prabhu Dayal gave his own search, and then recovered five notes of Rs. 10/- each from the right hand packet of Khilli Ram. On being cross-examined, the witness stated that his statements were not recorded under Section 161, Cr.PC.

4. PW/2 Ram Swaroop, the complainant, has stated that about three years. back, he has submitted two private complaints before the Munsiff Magistrate, Bayana against Ranjeet, Dhujji, Paras Ram. Chhitaria, Valli, Sughar singh and Sufedi residents of Hingota. Both these complaints had been forwarded by the Munsiff Magistrate, Bayana to the Police Station, Bhuswar for enquiry and necessary action, Both these complaints were presented to the Police Station, Bhuswar by the complainant himself. Head Constable Shankar Lal was. Incharge of the Police Station during these days, He paid Rs. 100/- to Head Constable Shankar Lal, but he did not initiate the enquiry Ramswaroop then again went to the Police Station after 7-8 days, and again paid Rs. 30/- to Head Constable Shankar Lal. Shankar Lal then met Ram Swaroop on the Khedali Road after 4-5 days and demanded a further sum of Rs. 70/-. Then Shankar Lal came to the village at about 4 p.m. and called for the complainant Ram Swaroop Ram Swaroop, however, did not go there as he was afraid of the persons against whom he had lodged the complaints. Whereupon, Shankar Lal, Head Constable, came to Ram Swaroop, and told him that he will get Ram Swaroop beaten to death by the accused persons as the accused persons were related to the Head Constable Shankar Lal. The witness has further stated that as the police did not conduct any investigation on his

complaints, he approached the DIG, Police, Jaipur, and presented Ex. P/8 This complaint was then forwarded to the Anti-Corruption Department, Bharatpur. In the meantime, the Head Constable Shankar Lal was transferred, and the accused-appellant Khilli Ram was posted there After some time, the accused-appellant Khilli Ram met Ram Swaroop on the Khedali Road. He told Devisingh, Police Constable that the complainant Ram Swaroop should be locked. The complainant. Ram Swaroop asked Khilli Ram as to why he was being arrested, on which Khilli Ram replied that he has defamed the police by making complaints. Thereupon the police constable Devi Singh took Ram Swaroop on one side, and told him that whatever amount was to be paid to the Head Constable Shankar Lal may now be paid to Khilli Ram so that he may put up the challan in the two private complaints lodged by him. Ram Swaroop stated that he had no money at the moment, but he would arrange for the money from his relations. Thereupon, the accused told Ram Swaroop that they would come at about 5 p.m. from the village Khedala. Ram Swaroop then went to Bharatpur, and informed the Dy. S.P. Anti-Corruption, He presented five notes of Rs. 10/- each to the Dy. S.P., A.C.D , who initialled them, noted their numbers. and gave them to Ram Swaroop. These notes were given to Ram Swaroop in the presence of Girdhari Meena & Gulji of Malaheda. Then Ram Swaroop went Banshi Lal Kumbar to call Khilli Ram. Khilli Ram came to Ram Swaroop, Whereupon he paid him Rs. 50/- in the form of five notes of Rs. 10/- each. The accused received those Rs. 50/- and kept them in the pocket of his shirt, which he was putting on. As already arranged, he gave the signal by putting off the 'dhoti' which he had tied on his head. The police constable Prabhu Dayal, and the Dy. S.P. A.C.D. came on the spot, and held the accused Khilli Ram. The Dy. S.P. A.C.D. then recovered the notes of Rs. 50/- from the shirt of Khilli Ram. These were the very notes which were initialled by him An application addressed to the P.B. Bhusawar was also found in his pocket which the accused tore. The notes and the torn pieces of the application were seized by PW/6 Kastoori Lal. The witness has further stated that in his statement before the police he had stated that Rs. 100/- were being demanded from him. The witness has further stated that the police had treated his two private complaints to be false, and it was proposed to prosecute him under Section 182, IPC. The witness has also stated that the Dy. S.P. A.C.D. recovered these five notes of Rs. 10/- each from the left band pocket

of the shirt which the accused Khilli Ram was wearing.

5. PW/3 Girdhari and PW/4 Gulji were declared hostile at the request of the learned Public Prosecutor Under such circumstances, the statements of these two witnesses are of not any probative value, and as such, it is hardly desirable to evaluate their statements, PW/5 Shri S.N. Bhargava is only a formal witness.

6. FW/6. Dy S.P. A.C.D. Shri Kastoori Lal has stated that he had received Ex. P/8 through the Police Constable Durga Prasad. He had called Ram Swatooop to appear before him on 22-2-1969 in his office, but he came on 10-3-1969. A trap was laid for H.C. Shankar Lal. but he did not turn up Ram Swaroop PW/2 again went to the witness Shri Kastoori Lal on 30-3-1969, and told him that the Head Constable Shankar Lal has been transferred and in his place Khilli Ram has taken over He has further stated that Khilli Ram had asked him to go to the Thana with money. A trap was consequently laid for Khilli Ram, and PW/2 Ram Swaroop was directed to meet the witness at Raghu Nath's Dharm Shala at Bhusawar. Ram Swaroop met Kastoori Lal at about 6 p.m., who gave five notes of Rs. 10/- each to him, Kastoori Lal initialled these notes and gave them to Ram Swaroop for being tendered to Khilli Ram. After sometime, Khilli Ram came from the 'thana' and started talking to Ram Swaroop. After sometime. Ram Swaroop took off the 'dhoti' which was tied on his head. Kastoori Lal and the members of his party went to Khilli Ram and told him to take out the money which he had received from Ram Swaroop as illegal gratification. Khilli Ram, however declined. On this, PW/1 Prabhu Dayal was directed to take search of Khilli Ram. These signed five notes of Rs. 10/ each were recovered from the right hand side pocket of his shirt The witness has further stated that he had recorded the statement of PW/2 Ram Swaroop vide Ex. D/1. He had correctly recorded the statement of Ram Swaroop. The witness then arrested Khilli Ram, and registered a case against him under Section 161, IPC. and under Section 5(1)(d)(2) of the Prevention of Corruption Act.

7. PW/7 Kaidar Nath and PW/8 Shri Narain Singh, S.P., Bharatpur are only formal witnesses.

8. The statement of Khilli Ram was recorded on 20-4-1971. In his statement, he has admitted that on 30-3-1969, he was posted as Head Constable at Police

Station, Bhusawar. He has further stated that Banshi Kumhar had come to call Shankar Lal, Head Constable, but as Shankarlal was not available he went to the bus-stand. Prabhu Dayal PW/1 took out the five notes of Rs. 10/- each from the pocket of his pant, and shouted that the money offered as bribe has been recovered. This money was with PW/1 Prabhu Dayal, and was not, in fact, recovered from the accused Khilli Ram.

9. Accused-appellant Khilli Ram examined four witnesses in support of his defence. DW/1 Banshi Kumhar is the person who had gone to the Police Station to call Shankarlal, and as Shankarlal was not available Khilli Ram accompanied him to the bus stand. The witness has also stated that a person who was accompanying Ram Swaroop, took out the notes from the pocket of his pant, & started crying that the money given in bribe has been recovered. DW/2 Devi Singh, who is a constable in police, stated that in March, 1969, he was posted at P.S. Bhusawar, He has dented that in March, 1969, he met PW/2 Ram Swaroop. or the accused Khilli Ram on the Khedali Road. He has further stated that he never told Ram Svaroop to pay any amount as illegal gratification to Khilli Ram. DW/3 Sua has stated that he has tea hotel near the bus stand Bhunsawar. One person had taken out the currency notes from the pocket of his pant, and started crying that money given as illegal gratification has been recovered, from the Head Constable Khilli Ram, On his raising the cries, number of people collected there. DW/4 Nirmal Das has stated that a person who was standing near Ram Swaroop, started crying that the person receiving the illegal gratification has been caught. This person had taken out the currency notes worth Rs. 50/- from the pocket of his pant.

10. It was contended on behalf of the accused-appellant that the prosecution case is wholly false and concocted, and that the accused appellant has been falsely implicated. It has been further contended that while the five notes of Rs. 10/- each are alleged to have been recovered from the right hand side pocket of the shirt of Khilli Ram, the complainant Ram Swaroop PW/2 has stated that the notes were, in fact, recovered from the left hand side pocket of the shirt. It was further contended that the Dy S.P. A.C.D. Shri Kastoori Lal did not record the statement of Prabhu Dayal PW/1, under Section 161 Cr.P.C., and as such, a great prejudice has been

caused to the accused. It was also contended that there are material contradictions in the prosecution evidence in as much as the currency notes were tendered to PW/6 Kastoori Lal at Bharatpur, while the evidence is to the effect that these notes were tendered at Bausawar at the Dharma Saira of Raghunathji. It was also contended that there is another contradiction that the money was demanded a day prior to 30-3-1969, while the evidence is to the effect that it was demanded the same day. It was also contended that the money was, in fact, never recovered from the possession of the accused-appellant. PW/1 Prabhu Dayal, who was keen to see the success of the trap took out the notes from the pocket of his pant, and shouted that the money tendered as illegal gratification to Head Constable Khilli Ram was been recovered. Under these circumstances, it was contended that the Anti Corruption Department party having failed to trap Head Constable Shankar Lal on 10-3-1969 wanted to make a success by falsely implicating Head Constable Khilli Ram on 30-3-1969 Reliance was also placed on V.D. Jhingan v. State of U.P : [1966]3SCR736 and State of Bihar v. Basawan Singh AIR 1968 SC 500.

11. On behalf of the prosecution, it was contended that the recovery of these five notes of Rs. 10/- each from the possession of H.C Khilli Ram has been fully established, and that once this has been established the presumption would be that he had received this amount as illegal gratification, or as a motive as indicated in Section 161, IPC. It was also contended that these minor contradictions do not, in any way, affect the basic case of the prosecution.

12. In State of Bihar v. Basawan Singh AIR 1968 SC 500 it has been observed as under:

In some of the decided cases a distinction has been drawn between two kinds of 'traps' legitimate and illegitimate and in some other cases a distinction has been made between tainted evidence of an accomplice and interested testimony of a partisan witness and it has been said that the degree of corroboration necessary is higher in respect of tainted evidence than for parties an evidence, but for deciding the question of admissibility of the evidence of a raiding party such distinctions are some what artificial, and in the matter of assessment of the value of evidence and

the degree of corroboration necessary to inspire confidence, no rigid formula can or should be laid down.

XXX XXX XXX XXX AIR 1954 SC 322 did not lay down any inflexible rule that the evidence of the witnesses of the raiding party must be discarded in the absence of any independent corroboration. The correct rule is this: if any of witnesses are accomplices who are 'particeps criminals in respect of the actual crime charged, their evidence of accomplices is treated; if they are not accomplices but are partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested in the same way as other interested evidence is tested by the application of diverse considerations which must vary from case to case, and in a proper case the Court may even look for independent corroboration before convicting the accused person. If a Magistrate puts himself in the position of a partisan or interested witness he cannot claim any higher status and must be treated as any other interested witness.

XXX XXX XXX XXX Independent corroboration does not mean that every detail of what the witnesses of the raiding party have said must be corroborated by independent witnesses. Even in respect of the evidence of an accomplice, all that is required is that there must be some additional evidence, rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it. Corroboration need not be direct evidence that the accused committed the crime; it is sufficient even though it is merely circumstantial evidence of his connection with the crime.

In *V.D. Jhingan v. State of U.P.* : [1966]3SCR736 it has been observed as under:

To raise the presumption under Section 4(1) of Prevention of Corruption Act, the prosecution has to prove that the accused has received 'gratification other than legal remuneration'. When it is shown that the accused has received a certain sum of money which was not his legal remuneration, the condition prescribed by the section is satisfied and the Presumption must be raised. Further the mere receipt of 'money' is sufficient to raise the presumption.

XXX XXX XXX XXX The burden of proof lying upon the accused under Section 4(1) of the Prevention of Corruption Act will be satisfied if he establishes his case by a preponderance of probability as is done by a party in civil proceedings. It is not necessary that he should establish his case by the test of proof beyond a reasonable doubt.

14. Taking an over all view of the prosecution & the defence evidence, it is evidently clear that the accused Khilli Ram was posted as Head Constable at P.S. Bhusawar on 30-3-1969. This is further established that he came to the bus-stand and met Ram Swaroop PW/2 on the request of Benshi Kumhar DW/1. The prosecution case is that near the 'imali' tree, H.C. Khilli Ram received five notes of Rs. 10/- each from Ram Swaroop. The defence version is that PW/1 Prabhu Dayal took out those five notes of Rs. 10/- each from the pocket of his pant, and started crying that the money paid as illegal gratification to the Head Constable Khilli Ram has been recovered. Taking into consideration the preponderance of probabilities it is exceedingly difficult to hold that PW/1 Prabhu Dayal would raise a false cry after having taken out five notes of Rs. 10/- from the pocket of his pant with a view to falsely implicate Khilli Ram in the presence of Dy. S.P., A.C.D. Shri. Kastoori Lal PW/6. The complainant Ram Swaroop PW/2 had gone to Jaipur, and had presented a petition before the D.I.G. Police. This petition was sent to the Anti Corruption Department through the police constable Durga Prasad. The various endorsements on Ex. PW/8, which have been detailed above, clearly go to show that the complainant Ram Swaroop was trying to get the Head Constable Khilliram arrested while accepting bribe. There is ample evidence on record to show that these five currency notes of Rs. 10/- each were tendered by Ramswaroop to PW/6 Kastoori Lal, who instilled them, noted their numbers and handed them over to Ram Swaroop for being given to Head Constable Khilli Ram. The recovery memo of these currency notes 'supurdiginama' Ex. PW/9 and recovery memo Ex. P/10 clearly establish, and corroborate the contents of Ex. P/8 and the statements of PW/1 Prabhu Dayal, PW/6 Kastoori Lal and PW/2 Ram Swaroop. The minor contradictions regarding the recovery of the five currency notes of Rs. 10/- each from the left hand side pocket, or the right hand side pocket of the shirt do not, in any way, weaken the prosecution case. Once it has been established that these notes were recovered from the possession of the Head Constable Khilli Ram, it

was for him to have satisfactorily shown as to how he received these notes. The defence version that these notes were taken by PW/1 Prabhu Dayal from the pocket of his pant, and then he raised a cry that the money advanced as illegal gratification to Khilli Ram has been recovered, does not stand to reason, and cannot be believed Under such circumstances, having given my most anxious consideration to the evidence on record, it is exceedingly difficult to hold that PW/1 Prabhu Dayal raised a false cry after having taken out these notes from the pocket of his pant to falsely implicate the accused appellant Khilli Ram. The prosecution has succeeded in bringing the guilt borne to the accused appellant beyond all manner of doubt

15. In Shivaji v. State of Maharashtra : 1973 CriLJ1783 it has been observed as under:

Where the witnesses to a criminal case are rustics, their behavioural pattern and perceptive habits have to be judged as such. The too sophisticated approaches familiar in courts based on unreal assumption about human conduct cannot obviously be applied to those given to the lethargic ways of our village. When scanning the evidence of the various witnesses the court has to in form itself that variances on the fringes discrepancies in details, contradictions in narrations and embellishments in inessential parts cannot militate against the varacity of the core of the testimony, provided there is the impress of truth and conformity to probability in the substantial fabric of testimony delivered.

16. Applying the yardstick laid down in Shivaji v. State of Maharashtra : 1973 CriLJ1783 it will appear that the minor contradictions regarding the five currency notes of Rs. 10/- each from the right band pocket, or, whether the currency notes were given to the Dy.S.P., A.C.D , PW/6 Kastorilal, at Bhusawar or Bharatpur, or whether the talk took place between PW/2 Ram Swaroop, Devi Singh DW/2 and the accused Khilli Ram on 33-3-1959, or on the previous day, pales into insignificance in the face of the recovery of these notes from the possession of the accused. The defence put up the accused that the notes were taken out by PW/1 Prabhu Dayal from the pocket of his pant is highly improbable, and deserves to be discarded.

17. For the reasons stated above, there is no force in this appeal, which is hereby dismissed. The accused appellant Kailli Ram is on bail. His bail and bonds are hereby cancelled. The Special Judge (Sessions Judge), Bharatpur is hereby directed to get the accused appellant arrested to serve out the sentence awarded to him. The accused appellant shall, however, be entitled to a setoff as envisaged under Section 428, Cr P.G , 1973 for the period he has remained in custody during enquiry, investigation or trial.

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