

Krishan Kumar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-13-1991

Reported in : 1992(2)WLC334; 1991WLN(UC)558

Judge : Farooq Hasan, J.

Appeal No. : S.B. Cr. Appeal No. 269 of 1985

Appellant : Krishan Kumar

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Farooq Hasan, J.

1. This appeal is directed against the judgment dt. 18.5.85 passed by Special Judge for A.C.D. Cases. Jaipur, by which the appellant has been convicted and sentenced to one year's R.I. and a fine of Rs. 500/- Under Section 5(1)(d)(r) P.C. Act, in default of payment of fine to further undergo three months' R.I. and Under Section 161 IPC sentenced to one year's R.I. and a fine of Rs. 500/-, in default of payment of fine to further undergo three months' R.I.

2. The brief facts giving rise to this appeal are that in the year 1977, the accused-appellant was working as Asstt. Transport Inspector in Rajasthan State Roadways.

On 22.10.77, PW 4 Madanlal Sharma, the Conductor, lodged a written report Ex. P 6 before PW 11 Manhpool Singh Addl. S.P. mentioning therein that he was working as Conductor in Rajasthan State Roadways. He had gone on duty as Conductor on Jaipur-Sambhar route and during the journey at Boraj Station Shri Kishan Kumar Asstt. Transport Inspector made checking and put a remark on his way bill regarding three passengers. Thereafter, on 17.10.77 Shri Kishan Kumar Asstt. Transport Inspector again checked his bus, when all the passengers were having tickets. The appellant again checked his bus on Andhi route and at that time in the bus all passengers were having tickets but that A.T.I took out 13 tickets of one rupee each 13 tickets of combination of 40 paise each, totaling to the amount of Rs. 18.20 and that was deposited by him after taking the same from his house and when he went again on duty on the same route, the A.T.I, told him that his tickets were with him and also told that he would report regarding his misconduct. He further told that if Rs. 100/- are paid him, he would not report and would also torn out the tickets. He also told that at the time of enquiry he would give statement in his favour. He also that he would see that nothing would have happen against him on his previous remark. He also told that at the time of enquiry he would give statement in his favour. He further told that on that day he again met the A.T.I. and he had asked him to come at his residence at 4-5 p.m with money, he does not want to pay the bribe money and has brought notes of Rs. 100/- with him. After receiving the said report the Addl. S.P. (A.C.D.) summoned two motbirs. The report was read over to them. The demonstration of phenolphthalein powder was given. The memo of handing over notes was prepared and thereafter the trap party proceeded for the trap at the residence of accused. The decoy paid the tainted amount to the accused and thereafter gave a signal and thereupon the Addl. S.P. reached at the spot and disclosed his identity. The amount was recovered. A recovery memo was prepared and after completing the trap proceedings the Addl. S.P. came to the Police Station and registered a case Under Section 5(1)(d)(2) P.C. act and 161 IPC. The I.O.A.C.D. after investigation obtained sanction for prosecution and submitted a charge sheet in the court of Special Judge for A.C.D. cases, Jaipur. Charges were framed against the accused-appellant which were read over to him and the appellant denied the charges and claimed to be tried.

3. On behalf of the prosecution as many as 11 witnesses have been produced. The statement of the accused Under Section 313 Cr.P.C. was recorded in which he denied of having demanded and accepted the bribe from the decoy. He further stated that Shri Madan Lal Conductor had taken a loan of Rs. 150/- on 7.8.77 from him and executed a promissory note (Ex. D 2) in favour of the accused. According to him Tikam Chand and Laxmandas were present there and both of them signed as witnesses on the receipt of the promissory note Shri Madan Lal had promised to return the amount on an early date but he did not return the amount in time. For sometime he avoided and thereafter he become annoyed with him. He further stated that on 22.10.77. Shri Madan Lal came at his residence and paid Rs. 100/- against the loan amount and for the balance he told to pay lateron. The aforesaid explanation was given by the appellant immediately after his trap.

4. The accused examined three defence witnesses to support his version and to prove the pronote and receipt. It is a settled principle of law that in anticorruption cases following four circumstance are material and they are to be proved by the prosecution and these are; (1) demand of bribe, (2) Motive, (3) Acceptance of bribe amount and(4) Recovery of bribe amount.

5. In such cases the demand of bribe is the genesis of the case and if that vital part of the story is not acceptable, then it is difficult to see how the other part, which did not stand by itself could be accepted. For these observations I find support from the case reported in 1976 Supreme Court 1489.

6. In the present case there is solitary statement of the decoy Madan Lal Sharma on the question of demand of bribe. A look at the record shows that none of the witnesses for the prosecution supported the testimony of decoy Madan Lal. After serious scrutiny of the statement of Madan Lal it also appears that the this witness is not of sterling worth because he has given evidence against the document Ex. D2 promissory note executed by him in favour of the appellant. Madan Lal denied the signatures on the promissory note as well as on the receipt of the same but his signatures have been proved by the Expert who has been produced in defence. So the testimony of Madan Lal is not acceptable in presence of the evidence of the Expert. Madan Lal in his examination-in-chief further says that the accused met

him Chandi Ki Taksal on 20.10.77 and demanded Rs. 100/- but he does not say that he met the accused on the day on which the report was lodged. In the F.I.R. he stated that:

ngckjk blh ekxZ ij eS M~;wVh ij x;k rks mDr , -Vh-vkbZ- us eq>s dgk fd rsjs fVdV esjs ikI gS A eS felcgsfo;j dh fjiks ZV d:xk vkSj rw eq>s 100@& ykdj ns nsxk rks eS fjiks ZV ugh d:xk vkSj ;g fVdV Hkh QkM+ nwaxk A

While in the statement he stated that:

eqyfte us ;s 100@& :- fnukad 20&10&77 dks t;iqj es pkanh dh Vdlky ds ikI ekaxs Fks A

In the cross-examination he stated that:

eq>s 20 rkjh[k dks eqyfte us esjs de gq, fVdVks ds fo'k; es crk;k Fkk tks fVfdV muds ikI gS eSus ml fo'k; es gekjs fdLh vf/kdkjh dks eqyfte dh f'kdk;r ugh dh eq>s iwjk iDdk /;ku ugh gS Afd eqyfte us eq>s dc crk;k Fkk fd esjs fVdV blds ikI gS vkSj fdl rkjh[k dks eqyfte us esjs ls fj'or ds :- ekaxs Fks A mij eSus 20 rkjh[k vUnkt ls fy[kk;h gS A eqyfte us esjh fVfdV mlDs ikI gksus ds ckn eq>s pkanh dh Vdlky d ikI crk;h Fkh-----vklikl dbZ vkneh Fks A

7. From the above statements it is clear that as per F.I.R. the demand of bribe was made two times; one on the date of lodging the report and another at some time ago to it but he has not given the date in the F.I.R. In the court he states that demand was made once on 20.10.77 but when he was cross-examined he stated that he does not remember the date and further deposed that he had given the date by proximation. From this, it is clear that from the evidence of the decoy the prosecution could not prove the demand of bribe because the evidence of the decoy is self contradictory and discrepant to the facts mentioned in the F.I.R. The accused in his statement denied of having demanded bribe from the decoy. Moreover there was opportunity for the decoy to make the complaint to the higher officials but by not making this makes his evidence unreliable.

8. So far motive part is concerned, in the F.I.R. he stated that on 17.10.77, the accused while checking the bus removed 13 tickets of Rs. 1/- each and 13 tickets

of 40 paisa totaling to Rs. 18.20 from his ticket books and on the not time when the accused again checked the bus and told that his tickets were with him and he would not report the matter and for misbehaviour if he pays Rs. 100/- and would torn out the tickets so that no action may be taken against him. But in the statement on oath before the trial Court the decoy deposed that

vka/kh ekxZ ij fd'ku dqekj feys vkSj dgk fd esjh fVdVs es ts x;k Fkk esjs ikl gS vkSj ;s Hkh dgk fd ;k rks 100@& :- ns rks vU;Fkk esjh fjiks ZV d:axk A

9. In the cross-examination he admitted that he did not make any complaint to any official, he also stated that he does not remember positively as to when he disclosed that the tickets were with him (appellant). It is matter of strange that in the evening when he deposited the cash regarding sale of tickets, he did not make any note on the way bill or on any other document regarding the shortage of tickets. It may be stated that the senior officials are always available in the office but this fact was not brought to the notice of any official and therefore stand taken by the decoy is falsified. The prosecution has also not produced any documents showing that any remark was put by the accused also.

10. In the F.I.R. he mentioned that 26 tickets were removed from his tickets books but he does not say that he was removing the tickets. He stated this on the basis of statement made by the accused. In this connection in the F.I.R. he mentioned that 26 tickets were missing. He has not mentioned the details of the tickets but the recovery memo. Ex. P 4 shows the recovery of 29 tickets. This difference has not been explained by the prosecution and makes the evidence of the decoy totally false. In the cross-examination the decoy deposed that he did not know that how many tickets were recovered and that in the F.I.R. number of tickets which were missing have been given as 26 mainly on the basis of information given by the accused though in the statement he admitted that he did not mention in Ex. 6 the number of lost tickets have been given on the basis of the information given to him by the appellant.

11. In the F.I.R. he mentioned that the total amount of missing tickets was of Rs. 18.20 while as per Ex. P4 the amount comes to Rs. 20.70 and this falsifies the case of the decoy. It may also be stated that the accused was neither empowered

to remove the remarks not he was in a position to take any action against him with regard to the missing of the tickets because as per decoy he had already deposited the amount. From the above it is clear that there was no motive on the part of the accused to make any demand of bribe from the decoy. Contrary from this it is established that a false case has been foisted upon the accused. As per the case reported in 1954 Supreme Court 637 and 1984(1) Crimes 784, the motive is an essential ingredient in the bribe cases. The prosecution in this case totally failed to prove this aspect.

12. One more important aspect in this case is that as per the prosecution the amount involved was Rs. 20.70 while the demand of bribe is for Rs. 100/-. It is not believable that the person would pay Rs. 100/- for the work of Rs. 20.70 only. Hon'ble Supreme Court in the case of Balkishan Sayal v. State of Punjab held that 'where in a case it was alleged that for waiver of penal rent which was found to be Rs. 102/- in respect of official residence of the complainant, he offered a bribe of Rs. 100/- it was held that to obtain waiver of the rent it was unlikely that a bribe of Rs. 100/- would have been offered.' In such a situation their Lordships of the Supreme Court acquitted the accused.

13. So far payment of bribe is concerned, there is also solitary evidence of decoy. The decoy PW 4 Madanlal in the examination-in-chief stated that when he went to the house of the accused he was sitting in an open place and as soon as he saw him asked whether he had brought the amount and then he paid Rs. 100/- to the accused and thereafter the accused took him to take tea while in the cross-examination he stated:

;g ckr xyr gS fd eq- esjs cqykus ij edku ds vUnj ls vk;k rks ;g ckr xyr gS fd eSus eq- ds edku ds njokts ij gh eq- dks :- ns fn;s Fks A izn'kZ Mh&1 bZ- ls ,Q- Hkkx es eq- dk edku ls ckgj vk;k vkSj njokts ij esjs ls :- ysuk xyr fy[kk gS A ,slk eSus ugh fy[kok;k A

14. From the above it is clear that there is a contradiction with regard to the place of payment of bribe amount.

15. PW 2 Arun Kumar the Motbir in his statement did not claim that he either heard the conversation between the decoy and the appellant. He merely deposed that he saw the passing over of the note to the accused. It is thus clear that the statement of PW 2 is not on the point as to what deliberation took place in between accused and the decoy at the time when the amount of Rs. 100/- was given to the appellant. So PW 2 does not corroborate the statement of the decoy regarding the demand and payment of bribe at the time of the trap.

16. PW 3 Mohan Lal also does not say that he either heard the conversation or saw the passing over of the notes. Under these circumstances it is thus clear that PW 3 is also not supporting the statement of the decoy. PW 5 Abhey Singh Head Constable, A.C.D. deposed that the amount was given to the accused by the decoy within the four walls of the house but he does not say as to what conversation took place between the accused and the decoy though he stated that he had seen passing over of the notes but in the police statement Ex. D.3 this fact does not find place. It is thus clear that PW 5 made improvement in his statement before he tried to prove that the money passed at the house of the accused while according to PW 10 Hotchand whose shop was at some distance from the house of the accused and the shop of Panwala was also there where the accused was caught red handed. Looking to the site plan it appears that Hotchand and Panwala are the real witnesses who could have given direct evidence against the accused but both of them have neither been interrogated by the police nor they have been produced in the Court. The Panwala appeared in the witness box as a defence witness and deposed that :- 100@& m/kkj ys yks A

17. This completely falsifies the version given by the decoy. In view of the above discussion it can be said that the prosecution failed to prove the payment of bribe. The evidence of the prosecution on the point of acceptance of the money is also shaky though the appellant admitted that the amount Rs. 100/- was accepted by him as against loan advance to Madan Lal so now it is to be seen as to whether the accused appellant has probablized this defence or not and in case the version given by the appellant is probable then it is settled law that conviction is not possible. The recovery of the amount of Rs. 100/- is admitted by the appellant but merely by recovery of money from the possession of the accused in the absence

of other circumstances cannot be taken to be proved that the amount was of bribe. Similar view was taken in the case of Suraj Mal v. State reported in 1981 C.A.R. where in the Court observed that 'more recovery of money divorced from the circumstances under which it is paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Thus recovery itself cannot prove the charge of the prosecution against the appellant in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money.'

Madan Lal PW 5 Abhey Singh Head constable deposed that

mlus igys jkst enuyky dh cl pSd dh Fkh o mlds fvfdV ys vk;k Fkk ml ckcr :i;s fy, FksA

PW 10 Hotchand deposed that

vfHk;qDr dks idM+k rc Hkh mlus ;s dgk fd mlus ifjoknh ls cl pSfdax ds 100@& :- fy, gks A

PW 11 Manphool Singh Poonia stated that

18. From the above evidence it is clear that the evidence of the prosecution witnesses are not consistent. PW 10 Hotchand who can be said to be an independent witness has supported the version of the accused. His statement is supported by the statement of PW 2 Arun Kumar. According to him the accused accepted only of having accepted the amount of loan and did not accept the bribe amount. If the evidence of trapping officer Manpohool Singh is gone into on this aspect also the evidence is not consistent. He has also given a contradictory statement. One more point implicating the accused-appellant for the offence under which he has been convicted pointed out by the learned P P is that the tickets were recovered at the information and instance of the accused appellant recovery memo of which Ex. P.3 has been prepared.

19. The legal position in this regard stand that at the time of trap when a person is preplexed by the circumstances, an honest man may offer a false explanation and some times some one remains silent but from that no inference can be drawn or

can be taken that the accused accepted the bribe. What is important is that what has been proved by the prosecution during trial. Merely giving false explanation at the time of the trap can not be taken that the accused is guilty. In this regard reliance can not be placed on the cases of Ram Lal Tada v. State reported in 1979 Cr.L.R. (Raj.) 519 and Ram Kumar v. State 1982 Cr.L.R. (Raj.) 29. On the point of recovery of ticket, PW 2 Arun Kumar has been produced as a motbir but from his statement it appears that he has not heard the conversation nor saw the passing over of the notes. He admits that Madan Lal went inside the quarter and another Motbir Head Constable remained outside the house. He deposed that one person along with the decoy came out of the quarter and they both went towards the shop and at the Tiraha the signal was given. According to him the accused gave information that the tickets are at his residence then they all went to the house of the accused and there the tickets were seized. In the cross-examination he admits that the decoy has entered into the plot. He further admits that which the complainant was searched by the Head Constable and the other person who entered into the house of the accused were searched. He further admits that the decoy remained 2-5 minutes inside the house and they and seen him coming out he further admits that after preparing Ex. P3 and obtaining their signatures on it the accused was taken to his house for the recovery of ticket, by that time the decoy was inside the house of the appellant and there the recovery memo of tickets was prepared. The site-plan was prepared thereafter coming back from the house of the accused, he further admits that the accused was arrested after recovery of tickets. In the room the accused and the Addl. S.P. had gone for the recovery of tickets and the rest of them were standing outside. He could not say whether the recovery memo of tickets Ex. P 4 was prepared inside the room or outside the room or after coming at the shop. This witness further deposed that it is wrong to say that the recovery memo Ex. P 4 was prepared after the recovery of the tickets.

20. This witness has contradicted on the point of recovery of tickets. He had admitted that the bag was not taken into possession. He also admits that within few seconds they came out of the room and thereafter they were checking the tickets and at the time of coming out of the house the bundle of tickets was in the hand of Addl. S.P.

21. PW 3 Mohan Lal though was standing outside i.e. in front of the house of the accused as per the version of PW 2. It is thus clear that he has neither heard the conversation nor saw the passing over the notes. He also admits that the decoy entered in the plot of appellant and they remained outside. This witness does not say anything about the recovery of tickets from the residence of the appellant. In the cross-examination he stated that he had been a witness in the cases State v. Hanuman Singh and in State v. Chiranjilal. This shows that he is a stock witness of the prosecution and no reliance can be placed on such a witness. For these observations I find support from the case reported in 1991 Supreme Court 356, wherein it has been held that 'when a person appearing as a prosecution witness frequently in police cases evidence of such witness does not carry any value. Similar view has been taken in the case reported in 1975 Cr.L.J. 1630 where the court observed that 'evidence of a person appearing as prosecution witness frequently in police cases does not carry any evidentiary value'. Mohan Lal PW 3 deposed that before laying the trap he cannot say that who made the search of the decoy, rather he admitted that he cannot say that any search was made. He states that the distance between plot No. 168 and the Tiraha was about 50-100 steps. So far PW 4 decoy Mohan Lal is concerned on 16.10.77, the accused checked his bus No. 2997 on which he was conductor but no irregularity was found and the accused returned the tickets and also the way bill on 17.10.77. Again after 2-3 days he was deputed on the same route where the accused told that he had taken his tickets and would report. He further stated that on 17.10.77 there was shortage of amount which was about Rs. 15-16 and that was deposited by him from his own pocket. The accused demand Rs. 100/- on 20.10.77 at Chandi Ki Taksal and thereafter on 27.10.77 he lodged the report. He further deposed that he went to the house of the accused where he was sitting outside in open place. On seeing him the accused asked whether he had brought the amount and then paid Rs. 100/- to him. In the way at the betel shop, the Dy. S.P. was sitting and the decoy gave signal to him. The Dy. S.P. along with the trap party and witnesses came at Tiraha and accosted the accused. He does not say that the accused gave information for the recovery of the ticket. He simply says that the tickets were recovered from the house of the accused. He states that he was sitting in the jeep and the Dy. S.P. went to the house of the accused. In the cross-examination he

states that he has written the F.I.R. Ex.P.6 in the A.C.D. office after taking the paper from there. According to him the accused met him on 17.10.77 also. He further deposed that on 16.7.77 the accused has not put any remark on his way bill regarding three passengers, but had but remark one and half month earlier. On 20.7.77 the accused had informed him that the tickets were with him. No complaint has been made by the decoy. He further deposed that he does not remember definitely as to when the accused told that the tickets were with him and the demand of bribe was made by him. The date 20.7.77 has been given by him on proximation. Regarding the tickets he informed him at Chandi Ki Takasal and some other persons were present nearby. He admits that he did not disclose regarding the shortage of tickets to driver Muzbir Khan. He admits that in Ex. D.1 portion mark A to B he had not mentioned regarding the checking by the accused on 16.7.77 and putting a remark regarding three passengers on the way bill but how it has not been written, he cannot say. On 17.7.77 the accused had not checked his bus. He has deposed amount showing as the sale of the tickets. He has not given any application the regarding the torning of the tickest.

22. PW 6. is the dricer of the bus in which the decoy was conductor. According to him on 16.7.77 appellat checked his bus. The accused had taken the box of the tickets at Ramgarh bus station. Madan Lal told him that 10-15 tickets were found short. According to him they halted in the night at Andhi village. In the cross-examination he stated that Madan Lal had told him that he had to give some money to Kishan Kumar and he did not ask Modan Lal to report the matter when he informed about the shortage of the tickets.

23. PW 7 Inder Pal Singh is the employee of Rajasthan State Roadways as per his statement there is entry regarding checking by the accused on 16.10.77 but there is no entry regarding the checking made by the accused on 17.10.77. He further stated that on checking if the Inspector does not find any irregularity then he puts remark on the way bill and if any passenger is found without ticket, then the Inspector issues ticket from the ticket books.

24. PW 8, Kishan is also employee of Rajasthan State Roadways and as per his statement ticket books were issued by him and he stated that there is no remark of

checking on Ex. P.9 and P.10. In the cross-examination he admits that if any incident happens with the conductor then he should give a letter to the corporation but there was no such letter along with Ex, P.9 and P.10.

25. PW 9 Prabhu Singh is the employee of A.C.D. and as such he is a formal witness.

26. PW 10 Hotchand is the shopkeeper whose shop was near to the house of the accused. He stated that on 20.10.87 both driver and the accused were standing near his shop and the Conductor was telling to Kishan Kumar for taking Rs. 100/- against loan. Conductor also told him that the tickets are in his bag. According to him the accused was accosted near his shop. He further states that all the proceedings took place near his shop. Though he was declared hostile but nothing could be illustrated in the cross-examination. In the cross-examination made by the defence counsel he admitted that Madan Lal had asked to take the loan amount which he had taken and the balance he would pay early. When the accused was daughter he told that the Police that he had taken back the loan amount.

27. PW 11 Manphool Singh Poonia, the trapping officer stated about all the proceedings of trap. According to him the decoy gave signal after making payment and on receiving signal he caught the accused and disclosed his identity, hands and payjama pocket of the accused were got washed and the amount was recovered. Documents were prepared and the accused was arrested. According to him the accused gave information for getting the tickets recovered and consequently those tickets were recovered which were 29 in numbers. Records were seized. Statements after completing Ex. P.3. By this statement it is thus clear that the information for recovery is not admissible in evidence because only that recovery is admissible in evidence which is recovered on the information given by the accused under arrest. The information was written after completing Ex. P.3.

28. From the evidence it is not clear that in the what conditions the tickets seized were in the bag. The I.O. states that he also admits that in site plan the room and the place where the bag was laying has not been shown. According to him the decoy remained in the house for 10 minutes when he had first entered the house.

29. From the above evidence it is clear that there is no consistency between the evidence of the decoy on the following points:

(1) Whether the decoy entered into the house of the accused or not. The decoy has tried to keep himself outside to save himself from the allegation of planting tickets in the house of the accused while the other witnesses have categorically stated he had entered into the house and remained inside near about 10 minutes, from this the possibility of planting tickets in the room cannot be ruled out.

(2) There is contradiction with regard to the place of payment of money to the accused. The decoy himself has given two versions as per first version, the money was given outside the house in the open space, while as per second version the money was paid at the gate of the house. None of the witnesses has stated that the payment was not made near the shop while PW 10 categorically stated that the amount was paid near his shop.

(3) The statement of the decoy is self contradictory on the point that when the decoy went first time at the house of the accused whether he was sitting outside the house or was inside the house. In the court he tried to keep the accused outside deliberately while in his earlier statement he had stated that the accused was sitting inside the house. The other witnesses have also stated that the decoy went inside the house.

(4) The decoy contradicted himself from his earlier statement on the point of recovery of tickets. The decoy here in the court denied about the going at the house of the accused at the time of the recovery of the tickets while in the police statement D-I, he admitted about his going but he denied the police statement. The evidence of the decoy on this point is contradictory to the statement of the other witnesses. The decoy has contradicted on several of the crucial and important statements.

30. The Hon'ble Supreme Court in 1981 Cr. Appeal Reporter 30 held that it is well settled that witnesses who make two inconsistent statements in their evidence either at one stage or at two stages the testimony of such witness becomes unreliable and unwarranting of credence in the absence of special circumstances

no conviction can be based on the evidence of such witnesses.

31 One more important point which has been argued by the learned Counsel for the petitioner is that accused has taken defence that the decoy had taken a loan from him on 7.8.77 and he has executed a promissory note with receipt Ex. D.2 in the presence of Tikam Chand and Laxmandas, who had signed the promissory notes as witness. Madan Lal has promised to return the loan at an earlier date but he avoided the payment for a long time. On-22.10.77 the decoy had paid Rs. 100/- against the loan amount of Rs. 150/- and the same was stated to the Addl S.P. at the spot. Where burden of proof lies on an accused, he is not required to discharge the burden by leading the evidence to prove his case beyond a reasonable doubt. The Court has to see the probability of the defence taken and to see whether the preponderance of probabilities lies with the defence version or with the prosecution version irrespective of the presumption which is sought to be reverted by the accused person. The burden of proving a criminal case still lies on the prosecution. The weakness of the prosecution case itself enhances the value of the defence evidence as is observed in the case reported in 1972 CAR 202 in this case their Lordships observed that 'the responsibility of proving the case against the accused beyond reasonable doubt lie on the prosecution even if the defence is weak. Similar view has been taken in the case 1979 Cr.L.R. (Raj.)116, 1984 Cr.LR. (Raj.) 67 and 1979 S.C.C. (3) 425.

32. In the present case (PW 6) the driver of the bus deposed that Madanlal conductor before checking by the appellant told him that he had to pay some money to Kishan Kumar as against a loan. It may be stated that this witness has not been declared hostile and there is no reason with the prosecution to disbelieve his evidence. His evidence is further corroborated from the statement of PW 10, Hotchand an independent witness and he admitted that at the time of trap the decoy requested Kishan Kumar to take Rs 100/- against the loan amount which he has taken. Madan Lal has also told that the balance amount would be paid at an early date.

33. Ex. D 2 is a promissory note executed and signed by the decoy. The decoy denied his writing and signatures but in defence the accused examined hand

writing expert Shri Krishan Charan DW 3 who has categorically stated that the hand writing and signatures on Ex. D2 are all in the hand writing and signatures of decoy Madan Lal. The prosecution failed to smash his testimony in the cross-examination and there is no reason to disbelieve his statement. There are two more witnesses DW 1 Laxman Das and DW 2 tikam Das who were present at the time when the decoy Madan Lal took a loan of Rs 150/-. The testimony of these two witnesses also could not be smashed in the cross-examination. From the evidence of defence which is corroborated by the evidence of the prosecution witnesses PW 6 and PW 10 it is proved that the decoy had taken a loan of Rs. 150/- and at the date of the trap the decoy paid Rs 100/- against the loan amount. In this view of the matter the accused has not probablised his defence rather he has proved it and once it is done the presumption under Section 4 stands rebutted.

34. It has also been contended by the learned Counsel for the appellant that in the present case the sanction for prosecution is defective and the accused appellant is entitled for the acquittal only on this ground. In this case PW 2 B.S. Ranawat, the Addl. General Manager Transport Rajasthan State Roadways has been examined to prove the sanction for prosecution Ex. P 1 but in the Cross-examination he admitted that the accused has appointed by the General Manager. He further admitted that the Addl. General Manager is subordinate to General Manager. In this view of the matter the Addl General Manager is not competent to issue sanction in this case. Though in the cross-examination he stated that he got the approval of the General Manager but he further stated that no such fact has been mentioned in Ex. PI that the approval of General Manager was obtained. Moreover, the prosecution has not produced any record to prove it and therefore, the oral statement cannot be believed. For these observations reliance can be placed on the cases reported in 1977 Supreme Court 1793, 1982 Cr.L.R. (Raj.) 21-8 and 1975 RLW 214. In the case 1975 R.L.W. 214 Ganesh Narain v. State it was held Appointment by Senior Superintendent Post Office Ajmer sanction to prosecution given by Superintendent Post Office Pali which held that the post of Superintendent Post Office Pali not senior to Senior Superintendent Post Office, Ajmer not valied. Hence, in his case the authority to remove him from office was the Senior Superintendent Post Office or his Director the Superior Officer, or an authority equal in grade or rank to the appointing authority.

35. In view of the forgoing discussion I am fully convinced that the Prosecution failed to prove the case against the appellant beyond reasonable doubt.

36. Consequently, this appeal is, therefore, allowed and the judgment of the learned subordinate Court dt. 8.5.85 is set aside. The accused-appellant Kishan Kumar is honourably acquitted from all the charges levelled against him. He is on bail. His bail bonds stands cancelled and he need not surrender.

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