

**K. Nachimuthu Vs. State**

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**Court :** Chennai

**Decided On :** Feb-11-1994

**Reported in :** 1994CriLJ2760

**Judge :** Bellie, J.

**Appeal No. :** Criminal Appeal No. 366 of 1988 (Against Judgment of Spl. J. Chief Judicial Magistrate, Cuddalore in

**Appellant :** K. Nachimuthu

**Respondent :** State

**Advocate for Def. :** P. Govindarajan, Govt. Adv., for Public Prosecutor

**Advocate for Pet/Ap. :** S. Sethuratnam, ;Sr. Counsel, for M. Md. Ibrahim Ali and ;S. Silambanan, Adv.

**Judgement :**

1. The accused has been convicted under section 161 of the Indian Penal Code and Section 5(1)(e) read with Section 5(2) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/- under Section 5(2) of the Prevention of Corruption Act. No separate sentence has been passed under section 161, I.P.C.

2. The prosecution case is as follows :

P.W. 1 Kuppan is a resident at Kootteripattu village. He had three acres of land at the boundary of Edappalayam village on the side of the G.S.T. road there. He had construction a hut in it and was keeping in it agricultural implements. On both sides of the G.S.T. Road the Forest Department had planted tree saplings under the Social Forest Scheme. The accused Nachimuthu, a Forester in that department was in Kootteripattu. He placed Valikathan thorns in front of that house obstructing the way to the house from the road. P.W. 1 went to the Forest Watcher (P.W. 4) but he directed P.W. 1 to go and see the Forester-accused. P.W. 1 went to meet him two three times but he was not available. He was informed that the accused would be available in his house in the early morning.

On 13-5-1985 at 6.00 a.m., P.W. 1 proceeded to the house of the accused. On the way he took with him his cousin brother Sundaramurthy P.W. 2. They saw the accused sitting in the verandha of his house. P.W. 1 requested him to take away the thorns put in front of his house. The accused refused and he said that it would be kept there till the time of rainy season, and he further stated that even after taking the thorn after the rains he was going to plant tree saplings. On further request of P.W. 1 the accused said that if he was paid a bribe amount of Rs. 200/- he would remove the thorn and he would not plant tree Saplings. P.W. 1 told him that he would come next day morning and returned along with P.W. 2.

But P.W. 1 did not like giving bribe to the accused. He wanted to give a report to the Vigilance and Anti-Corruption department, Cuddalore. He went there at 4.00 p.m. There P.W. 1 gave a report Ex. P. 1 to P.W. 11 Inspector. The Inspector registered a case under section 161 of the Indian Penal Code. He sent word to P.W. 3 Kuppu Ramana, an Agricultural Officer and Gnansingamani, a Co-operative Sub-Registrar and requested them to come to his office at 4.00 a.m. on the next day and P.W. 1 and P.W. 2 also were told to come there at that time.

Accordingly P.W. 1 and P.W. 2 went there at the time mentioned on the next day. P.W. 3 and Gnansingamani also came there. The Inspector introduced P.W. 3 and Gnansingamani to P.W. 1 and P.W. 2, and P.W. 3 and Gnansingamani were informed about the complaint. P.W. 1 then gave to the Inspector four 50 rupees notes. He conducted Phenaphthalene test smearing Phenaphthalene powder on

the said four currency notes. Then he noted the numbers of the notes, and he gave the said four currency notes to P.W. 1 after preparing enstrustment mahazar Ex. P. 2.

Then they all went in a jeep to Kootteripattu and near Mylam Railway Station P.W. 1 and P.W. 2 got down. The Inspector told P.Ws. 1 and 2 to do as they were instructed by him. P.Ws. 1 and 2 went towards the house of the accused and the Inspector and others remained there. P.Ws. 1 and 2 saw the accused sitting on the bench in front of his house. On seeing them he asked whether they had brought the money. P.W. 1 gave the said four currency notes. The accused received it and counted them with his both hands, and he promised P.Ws. 1 and 2 that he would remove the thorn and he would not plant sapling.

P.Ws. 1 and 2 returned to the Jeep and told the Inspector that the accused had received the money. Then along with P.Ws. 1 and 2 the Inspector and others went in the jeep to the house of the accused. There P.W. 1 identified the accused. The accused on seeing them just dropped down the rupee notes on a bench there. Then the Inspector prepared in a glass tumbler sodium carbonate, solution and he asked the accused to dip his right hand in it. The solution turned into pink. The solution was sealed in a bottle which was numbered as '2' and that is M.O. 4. The Inspector again asked the accused to dip his left hand in another Sodium Carbonate Solution prepared by him. When the accused did so that solution also turned pink. The Inspector sealed that solution in a glass tumbler which was numbered as '3' and that is M.O. 5. Then the Inspector asked the accused to hand over the rupee notes received from P.W. 1. The accused took up the notes from the bench and handed over them to the Inspector. The Inspector compared the numbers in those currency notes with the numbers he had noted in his office in the morning and they were found to tally. Then the Inspector arrested the accused.

Then the Inspector went to the house of P.W. 1 at G.S.T. Road and prepared an observation mahazar Ex. P. 6 there. Then the Inspector applied for sanction for prosecution of the accused. P.W. 10 Divisional Forest Officer granted sanction Ex. P. 16. Then the Inspector filed the charge-sheet against the accused under Section 161, I.P.C. and Section 5(1)(e) read with S. 5(2) of the Prevention of

Corruption Act.

3. The accused denied the charge.

4. The learned Special Judge/Chief Judicial Magistrate, Cuddalore on consideration of the evidence adduced by the prosecution convicted and sentenced the accused as aforementioned.

5. Now in the appeal Mr. S. Sethuratnam, learned Counsel appearing for the appellant accused contends that the finding of the trial Court that there is valid sanction for the prosecution is erroneous, and that even on the merits there is no satisfactory evidence pointing to the alleged guilt of the accused.

6. The prosecution has filed Ex. P. 16 as the sanction order through P.W. 10 Divisional Forest Officer, who was deposed that he accorded sanction. It is contended that P.W. 10 has not applied his mind and he has simply signed Ex. P. 16. It is submitted that P.W. 10 himself has stated that the prosecution agency has sent a draft sanction Ex. P. 2 and he had adopted that draft in Ex. P. 16, and this shows that there was no application of mind. It is true that the prosecuting agency has sent Ex. D. 2 Draft sanction and P.W. 10 has adopted it. But it cannot be said from this alone that P.W. 10 has not gone through the relevant papers in the matter. In his evidence he has clearly stated that he has gone through the entire records relating to the accused and then only he accorded sanction. There is nothing indicating that he has not done so. Ex. P. 16 contains the facts of the case and the grounds for the satisfaction. Therefore I do not find any reason whatsoever to interfere with the findings of the Court below that Ex. P. 16 is a valid sanction order.

7. Coming to the merits of the case, it is contended that the evidence of the complainant P.W. 1 Kuppan is not at all believable. It is argued that as to when according to him the Velikathan thorn was placed by the accused in front of his house, his evidence is self-contradictory. But on a careful consideration of the evidence I do not find any such contradiction. In the complaint Ex. P. 1 which is dated 13-5-1985 it is stated that P.W. 1 was told 15 days before that the first accused had put the thorn. His evidence is quite in accordance with it. Hence

there is no substance in the submission that the evidence of P.W. 1 is self-contradictory.

8. It is then argued that the evidence would indicate that the thorn would not have been placed 15 days earlier to 13-5-1985. In this connection it is argued that P.W. 3 Kuppu Ramana, an agricultural officer, has stated in his evidence that the Veli Kathan thorn found in M.O. 3 Photograph taken on 14-5-1985 of the thorn alleged to have been placed before the house of P.W. 1 looks new and should have been placed on the same day or one day earlier to that date. But as pointed out by the Court below it is not known how this witness P.W. 3 could say from the black and white Photographs that the thorn is new or old. It must be remembered that this witness has been examined for the purpose of proving the payment of bribe to the accused, and suddenly in the cross examination he has been put some question regarding the thorn. Therefore even if there is anything in the evidence of this witness, that would not help the accused. Considering the entire circumstances of the case particularly the evidence of P.W. 1, only on the basis of the evidence of P.W. 3 it cannot be believed that the prosecution case is false.

9. It is then argued that there is no corroboration for the evidence of P.W. 1 that the accused demanded bribe. P.W. 2 has corroborated his evidence stating that he accompanied P.W. 1 to the house of the accused and there the accused said that if P.W. 1 wanted the thorn to be removed and no sapling is to be planted he must pay a bribe of Rs. 200/-. It is true that P.W. 2 is a cousin brother of P.W. 1 but only for this reason his evidence cannot be disbelieved. Considering the other circumstances in the case which would be preferred to hereinafter the evidence of P.W. 2 is quite believable.

10. It is then contended that there is no reliable evidence that the accused received bribe of Rs. 200/- as alleged by the prosecution. As to this there is evidence of P.W. 1 and P.W. 2. Both have clearly stated in their evidence that as instructed by P.W. 11 Inspector they both went to the house of the accused on the morning of 14-5-1985 and the accused asked them whether they, had brought the money, and P.W. 1 paid four 50 rupee notes and the accused received them. Then there is the evidence of P.W. 11 Inspector that on being told by P.W. 1 that

he has paid the amount to the accused he went along with his party to the house of the accused and on seeing them the accused slipped down the currency notes on the bench before him and then he (Inspector) prepared Sodium Carbonate solution and asked the accused to dip his right hand first and then the left hand, and that both times the solutions turned pink; and when the Inspector asked for the currency notes the accused took up the four currency notes and gave to him which the Inspector seized under a mahazar.

11. This evidence of P.W. 11 has been corroborated by the evidence of P.W. 3 Kuppu Ramana Agricultural Officer. P.W. 3 is a responsible person and there is no reason whatsoever to disbelieve his evidence. Both against P.W. 11 and P.W. 3 no suggestion as to any motive for them to speak against the accused in a grave charge of corruption has been made. It is however contended that P.W. 3 being a Government Official he is not an independent witness. I do not agree. It must be remembered that he belongs to Agricultural Department and not to Vigilance and Anti-Corruption Department, and therefore there is no point in saying that he is not an independent witness. It is argued that it is in evidence that at the relevant time there were other persons in front of the house of the accused and any of them could have been examined as independent witness. Not necessarily. When there is the evidence of P.W. 3 to support the evidence of P.W. 11, only because there were other persons gathered outside the house of the accused, it is not required that any one of them should be examined.

12. A defence witness (D.W. 1) was examined. He has stated that P.W. 1 Kuppan gave him four 50 rupee notes and when he asked as to why he is giving the amount P.W. 1 told him to keep it and little later he would come to know of the reason, and he kept them in his waist and then the Inspector along with some others came there and at that time P.W. 1 told him to give the rupee notes to the Inspector but he let them fell down, and then the Inspector asked the accused to take them up. When the accused hesitated, the Inspector insisted and then he took them up. This evidence of D.W. 1 sounds quite unnatural and artificial, and this uncorroborated evidence of D.W. 1 cannot at all be believed.

13. Thus there is clear proof that the accused received M.O. 1 series four 50 rupee notes as bribe from P.W. 1. Thus I find no merit in the appeal. Accordingly the appeal is dismissed.

14. At this stage, the learned Counsel appearing for the appellant states that the appellant is entitled to remission of the two years of imprisonment under G.O. Ms. Nos. 180 dated 28-1-1989, 781 dated 11-4-1990, 279 dated 23-2-1992 and 296 dated 20-2-1993. This is not disputed. In view of the said Government orders the accused need not surrender to custody to serve the said sentence of imprisonment for two years.

15. Appeal dismissed.

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