

Raj Lal Data Vs. State

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Court : Himachal Pradesh

Decided On : Jul-30-1951

Reported in : AIR1952HP1

Judge : Chowdhry, J.C.

Acts : [Evidence Act, 1872](#) - Section 134; ;[Indian Penal Code \(IPC\), 1860](#) - Sections 116 and 161

Appeal No. : Criminal Revn. No. 34 of 1951

Appellant : Raj Lal Data

Respondent : State

Advocate for Def. : Bakshi Sita Ram, Govt. Adv.

Advocate for Pet/Ap. : Mehar Chand Sud and; R.N. Sahai, Adv.

Disposition : Revision dismissed

Judgement :

Chowdhry, J.C.

1. This is an application in revision by one Raj Lal Data against the judgment and order of the learned Sessions Judge of Mahasu and Sirmur, dated 16-6-1951, upholding his conviction by the learned Additional District Magistrate of Nishan

under Section 161, read with Section 116, I. P. C., and the sentence of two months' rigorous imprisonment and Rs. 200/- fine, or further two months' rigorous imprisonment in default of payment of fine. He has been found to have unsuccessfully offered a bribe of Rs. 15/- to the Head Clerk of the Divisional Forest Officer of Nahan.

2. The petitioner is a 'kaththa' contractor and had purchased some 'Khair' trees from certain Zamindars. According to a notification of the Chief Commissioner of Himachal Pradesh, before the felling of trees owners have first to get their land demarcated by the revenue authorities and then to apply to the Divisional Forest Officer to get the trees marked. This is obviously a necessary safeguard since Zamindari trees do often stand cheek by jowl with trees of the forest department. On 14 applications on behalf of Zamindars, who had sold trees to the petitioner, demarcation was done by the revenue authorities, and thereafter the applications were presented on 26-2-1951 at the office of the Divisional Forest Officer, Nahan) for the next step of getting the trees marked. The applications were presented by the petitioner's clerk Rabal Singh to the Head Clerk Vishnu Das Gupta. The Head Clerk put up an office note that five of the applications were in order but not the remaining nine for want of signatures of all Zamindars on whose behalf each of them purported to be. The Divisional Forest Officer ordered the five good applications to be sent to the Range Officer for marking the trees and the nine defective ones to be returned to the revenue authorities for verification.

3. On 27-2-1951 the petitioner himself went to the Head Clerk in his office when the latter apprised him of the defect in nine of his applications and of the proposed action on the good and the defective applications. The petitioner then went to the Divisional Forest Officer, Shri Gur Das Mohan, whose office was next to that of the Head Clerk. The Divisional Forest Officer sent for the Head Clerk and the applications, and the defects and the proposed action were reiterated to the petitioner. The petitioner protested that delay meant loss to him and made a request that in order to expedite matters the defective applications be handed over to him to be presented by him 'dasti' before the revenue authorities. The Divisional Forest Officer acceded to this request, directed the Head Clerk to comply therewith and asked the petitioner to wait outside in the meanwhile.

4. After a while the petitioner again went into the Head Clerk's room, and it is on the determination of what transpired at this stage between the two that the guilt or the innocence of the petitioner depends. Before referring to the prosecution and defence versions of the occurrence, it might with advantage be stated here that immediately thereafter, within five minutes according to the petitioner himself, he was called by the Divisional Forest Officer and shown one Rs. 10/- and another Rs. 5/- currency note and a bus ticket in which they were wrapped and asked whether he had offered the currency notes as a bribe to the Head Clerk.

5. What happened in the Head Clerk's room when the petitioner visited it the second time was, according to the prosecution, as follows. The petitioner went to him alone and requested him not to send the nine defective applications to the revenue authorities for varification but to send all the fourteen to the Range Officer. The Head Clerk demurred that action on the applications would be taken in accordance with what the petitioner had already been told. Thereupon the petitioner repeated his request and put into the Head Clerk's outer coat pocket the two currency notes wrapped as aforesaid and said to him that the money was for sweets. According to the petitioner, on his first visit to the Head Clerk the same day the latter had got annoyed with him because he (the petitioner) had pointed out to him that according to past practice as soon as applications were received from the revenue authorities after demarcation of land the forest department used to get the trees marked without further ado. When therefore he went to him the second time, and this he professes to have done in the company of his clerk Rabal Singh, and asked the Head Clerk to give him the nine defective applications which he has to present 'dasti' before the revenue authorities according to the order of the Divisional Forest Officer, the Head Clerk refused to comply with his request. The reason which the Head Clerk is said to have volunteered for the refusal was that the petitioner had made a complaint against him to the Divisional Forest Officer. The petitioner repeated his request and it again met with a refusal from the Head Clerk whereupon the petitioner threatened to report him to the Chief Conservator of Forests and the Head Clerk asked him to be gone. After this altercation the petitioner left the Head Clerk's room, and within five minutes of that, as already stated, he was called by the Divisional Forest Officer and confronted with the above allegations.

6. When the petitioner was shown the currency notes and its wrapper by the Divisional Forest Officer and confronted with the accusation of having offered a bribe to the Head Clerk, the petitioner replied in the negative. The Divisional Forest Officer initialled the currency notes, took a written report from the Head Clerk and sent the notes, the wrapper and the report, with a report of his own, to the police, and the petitioner was in due course prosecuted and convicted as aforesaid. The currency notes, the buss ticket in which they were wrapped and the reports were produced by the prosecution and exhibited during the trial.

7. The question for determination therefore is : Did the petitioner offer a bribe to the Head Clerk in order to persuade him to send all the applications, defective as well as non-defective, to the Forest Range Officer for marking the trees, or did the Head Clerk, on the contrary, trump-up a false case against the petitioner because of an altercation between them? Both the Courts below have unhesitatingly accepted the prosecution and rejected, the defence version of the occurrence, and in my opinion they were perfectly justified in doing so.

8. On behalf of the prosecution there is the sole testimony of the Head Clerk, whereas the petitioner's version is supported by his clerk Rabal Singh. This by itself was pressed on behalf of the petitioner as sufficient ground for holding the prosecution version not proved. The Unus Nullus Rule of English law which the learned counsel was pro-pounding, the rule that one is equal to none, has been done away with by Section 134, Indian Evidence Act, which lays down the general rule applicable to all cases that no particular number of witnesses shall in any case be required for the 'proof of any fact. Even in England the said rule applies only in certain classes of cases, and cases of bribery do not fall under any of those classes. On the other hand, despite the universal nature of the provisions of Section 134, Indian Evidence, Act, there are certain classes of cases in which from the very nature of those cases Courts in India have followed the said English rule as a rule of caution and prudence, e.g. in cases of perjury and in sexual cases. No reported case of bribery was cited by the learned counsel for the petitioner in which the uncorroborated testimony of the complainant was rejected on the mere ground of the aforesaid rule of prudence. The only ruling cited by him was of 'Emperor v. Anwar Ali, A. I. R. (35) 1948 Lah. 27, but that was a case of a decoy

witness. From the very nature of the witness it was necessary that his statement be corroborated by independent evidence, for, as remarked in the ruling itself, 'it cannot be remembered too carefully that persons who lend themselves for use as decoys and agents provocateur possess ingenuity and suppleness of wit above the ordinary.' Even in sexual cases it has been held that the said rule of caution and prudence is not of general application, and it may be that in view of the facts and circumstances of a particular case a Court would be justified in basing conviction on the uncorroborated testimony of the prosecutrix. 'Budhu Mian v. Emperor', A. I. R. (34) 1947 Pat. 416. The general rule, based on Section 134, Indian Evidence Act, therefore holds good, namely, that a fact may be proved even a single witness if his evidence be relevant and worthy of belief. Indeed, adherence to any rigid rule by way of an exception to this general rule is bound to result in a miscarriage of justice in offences like the present which are from their very nature secretive. If, on the contrary, oral evidence be of a tainted character, it cannot be believed, whether it consists of the testimony of one witness or many, e. g. where the witness himself was suspected of the crime 'Narayana Mudaly v. Emperor', 12 Cri. L. Jour, 488, or he is a bitter enemy of the accused or has apparently a grudge against him 'Dalip Singh v. Emperor', A. I. R. (14) 1927 Lah, 874, and 'Ramphal Das v. Emperor', A. I. R. (16) 1929 Pat. 705, or has been demonstrably shown to be a liar 'Puran Singh y. Emperor', A. I. R. (21) 1934 Lah, 743, and 'Hari Krishna v. Emperor', 42 Cal 784. All these are rulings which were cited by the learned counsel for the petitioner. None of these taints, however, can, in my opinion, be attributed in the present case to the sole prosecution witness, Head Clerk Vishnu Das Gupta. The learned Judicial Commissioner then considered objections to the credibility of the Head Clerk's evidence and rejecting them proceeded :)

9. Finally it was argued by the learned counsel for the petitioner that in view of the order the Divisional Forest Officer had already passed, namely, that only the five good applications be sent to the Range Officer for marking and the remaining nine defective ones be returned to the revenue authorities through the petitioner for verification, the Head Clerk was not in a position, and had not in his power, to do the alleged official act, favour or service to the petitioner, that is, to forward all the fourteen applications to the Range Officer for marking the trees. It was therefore

contended that the petitioner had committed no offence. And in support of this contention he cited these rulings : 'Shamsul Huq v. Emperor', A. I. R. (8) 1921 Cal, 344; Venkatarama Naidu v. Emperor', A. I. R. (16) 1929 Mad., 756; and 'Public Prosecutor v. Vishwanathan', A. I. R. (34) 1947 Mad., 306(2). The last ruling was based on the second. The first two rulings were considered and dissented from in 'Emperor v. Phul Singh', A. I. R. (28) 1941 Lah., 276, and following 'Kishan Lal v. Emperor', 1 All L Jour. 207n; 'Aju-dhia Prasad v. Emperor', A. I. R. (15) 1928 All., 752, and 'Ahad Shah v. Emperor', A. I. R. (5) 1918 Lah., 152, it was laid down in respect of Section 161, I P.C. as follows :

'All that is necessary for the application of the section is that the 'gratification' should have been offered as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show favour or disfavour to any person, or for rendering or forbearing to render any service or disservice to any person. The section does not require that the public servant must, in fact, be in a position to do the official act, favour or service at the time. Illustration (c) to the section is noteworthy.'

I respectfully agree with and adopt the above view. It may be noted that this view has also been subsequently adopted in 'Ram Sewak v. Emperor', A. I. R. (35) 1948 All., 17, 'Gopeshwar v. Emperor', A. I. R. (35) 1948 Nag. 82, and 'Ramswarup v. Crown', A. I. R. (36) 1949 Ajmer, 12. Accordingly even though the Head Clerk may not have been in a position to do the official act in question, the petitioner was guilty of the offence punishable under Section 161, read with Section 116, I. P. C., as soon as he offered gratification to him as a motive or reward for doing it.

10. The learned counsel for the petitioner cited the following dictum in 'H. T. Huntely v. Emperor', A. I. R. (31) 1944, F. C. 66 at p. 68, for judging the evidence in the case of a charge under Section 161, I P. C.:

'A charge under Section 161, Penal Code, is one which is easily and may often be lightly made, but is in the very nature of things difficult to establish, as direct evidence must in most cases be meagre and of a tainted nature. These considerations cannot however be suffered to relieve the prosecution of any part

of the burden which rests upon it to establish the charge beyond reasonable doubt. If after everything that can legitimately be considered has been given its due weight, room still exists for taking the view that however strong the suspicion raised against the accused every reasonable possibility of innocence has not been excluded, he is entitled to an acquittal.'

It is in the light of the above dictum that I have examined the case against the petitioner. I have given due weight to everything that was argued on behalf of the petitioner, and for reasons already recorded, I believe the testimony of the Head Clerk and reject that of the petitioner's clerk and hold that the prosecution case has been fully established and no reasonable possibility of the innocence of the petitioner exists.

11. As remarked in one of the rulings cited on behalf of the petitioner, 'Venkatarama v. Emperor', A. I. R. (16) 1929 Mad., 758, as between the taker and the giver of the bribe the latter is by far the worse of the two. And at no time was the suppression of this crime, called for with a stronger hand than at present. The sentence imposed on the petitioner therefore errs, if at all, on the side of leniency. I must also remark that the conduct of the Head Clerk Vishnu Das Gupta in not succumbing to the temptation was praiseworthy.

12. The petition in revision is rejected and the conviction and sentence of the petitioner are maintained. His bail bonds are cancelled.

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