

Badri Nath Vs. State

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Court : Jammu and Kashmir

Decided On : Aug-18-1952

Reported in : 1953CriLJ1719

Judge : Dar and; Iqbal Ahmad, Members

Appellant : Badri Nath

Respondent : State

Judgement :

Iqbal Ahmad, Member

1. While fully alive to the salutary rule that enjoins respect for the estimate of oral evidence made by the trial Judge and, in particular, to concurrent findings on questions of fact recorded by the Courts below, the Board, in the present case, for reasons that will presently appear, is unable to endorse the finding about the guilt of Pt. Badri Nath Jalali recorded by the Courts below and to affirm his conviction.

2. In or about Bhadon 2005 (August 1948) Pt. Bari Nath Jalali hereinafter referred to as the appellant, was temporary Tehsildar at Uri. Till December 1947, the area round about Uri was in possession of raiders, but they were dispossessed from the same and civil administration was established in or about the beginning of 1948. The exigencies of the situation, however, dictated the desirability of military control over the area for some time to come and, accordingly, the civil administration had, for the time being to function in collaboration with the military authorities.

3. It is common ground that one Ghulam Rasul, who was Zaildar of Islamabad and surrounding villages, had gone over to Pakistan side and this fact, after the establishment of civil administration, necessitated the appointment of another Zaildar, the more so as the revenue for the Section year 2004 (1947) was in arrears. On 15th Bhsdon 2005 (30.8.948) some Zemindars of Islamabad and neighbouring villages presented a petition Ex. P.A. to the appelt. praying that one Mutwali Mir (PW 1) be appointed Zaildsr of the illaqa in place of Gulam Rasul. On the same date, in pursue nee of the order of the appellant, Dina Nath Patwari (P.W. 2) recorded the statement of a number of Zemindars who stated that

Mutwali Mir has shown sympathy towards us and we request that it will meet the ends of justice if Mutwali Mir is appointed Zaildar of our illaqa.

It appears from the evidence of Dina Nath that the Chief Administrator, Pir Mohd Maqbul (P.W. 17) was present when the application just referred to was presented and when the joint statement of Zemindars was recorded by Dina Nath. Dina Nath further stated that 'the Administrator ordered verbally that since he (Mutwali Mir) had done good work in military he may be appointed as Zaildar.' At that time he passed the order verbally. It is also a matter of admission that after the departure of Gulam Rasul, Mutwali Mir was playing the role of Zaildar and was, to all intents and purposes, a de facto Zaildar.

4. The application Ex.-P.A. was disposed of by the appellant on 7th Assuj 2005 (22.9.1948) by his order Ex. P.B. in which after noting that

Mutwali Mir has rendered great help to the Military and had worked with great enthusiasm at the time of Qabali raids and the Zamindars too gavs a statement on their part in favour of this man's appointment as Zaildar,

he went on to observe that 'under the present emergency conditions this man is fit and suitable of Zaildarship.' He, however, added in the order that

since this illaqa is under military operation at this time, therefore, at this time the appoint-of Zaildar cannot be made according to the rules...therefore he is appointed Zaildar for the time being for conducting the work and afterwards

necessary action under rules will be taken.

In view of the reasons just set out the appellant ordered that, subject to confirmation by the Chief Administrator (Pir Mohd Maqbul), 'Mutwali Mir is appointed Zaildar of the aforesaid villages for the time being as an emergency measure.'

5. A period of about three weeks elapsed between the date of application Ex. P.A. and the passing of order Ex. P.B. and the case for the prosecution is that the appellant deferred passing order on the application Ex. P.A. till his demand for a canister of Ghee and payment of Rs. 25/- as illegal gratification was complied with by Mutwali Mir. Indeed it is alleged that on some date between 28-31st Bhadon Section 2005 (12 to 15 Sept. 1948) a canister of Ghee was taken by Mutwali Mir and eventually delivered to the appellant, and further a sum of Rs. 25/- was also paid the very next day by Mutwali Mir to the appellant.

6. The evidence shows that in the meantime information had reached the Chief Administrator that the appellant had received a sum of Rs. 50/- from Atta Mohd Numberdar (P.W. 7) as illegal gratification for recommending the remission of the Government revenue for the instalment of Magh 2004 and accordingly, the Chief Administrator passing order Ex. (P. W. 6) on 25-9-1948, directing that Atta Mohd be summoned 'for the sake of an enquiry so that proper proceedings may be taken after an enquiry from him.' Within four days of the last mentioned order the Chief Administrator on 29.9.1948, passed orders Ex. P.W. 8 in which, after pointing out that

there is sufficient proof to believe that you have accepted Rs. 20/- and Rs. 30/- as illegal gratification from one Atta Mohd...to do away with the revenue of Kharif 2004,

he called upon the appellant to submit his explanation within two days 'to complete the case and to proceed further'. The appellant forthwith submitted his explanation Ex. P.W. 9, which apparently was not acceptable to the Chief Administrator, with the result that the latter passed an order on 15.10.1948 suspending the appellant (vide statement of Gulam Nabi P.W. 16 on p. 47).

7. After the suspension of the appellant, and the lapse of more than a month after the order for appointment of Mutwali Mir as Zaildar was passed, Mutwali Mir on 26.10.1948 submitted a petition Ex. P.C. to the Chief Administrator that

the ex-Tehsildar has taken one tin of Ghee and Rs. 25/- in cash from me in connection with my appointment as Zaildar. There is evidence existing and proceeding may be taken.

Thereafter the Governor of Kashmir, on 19.1.1949, called upon the appellant (vide Ex. P.W. 1) to submit his explanation with respect to 3 charges viz. (1) about the receipt of Rs. 50/- from Atta Mohd, (2) the receipt of one tin of Ghee and Rs. 25/- as bribe from Mutwali Mir and about a 3rd charge which is not material for our present purposes. The appellant thereupon submitted his explanation (Ex. P.W. 2) to the Governor on 24.1.1949. The explanation did not satisfy the Governor and, accordingly, he forwarded the case to the Government for necessary action. Thereafter the Anti-Corruption Department, having secured the necessary sanction for prosecution of the appellant, launched the prosecution which has culminated in the present appeal.

8. Before the trial Magistrate the appellant was called upon to stand his trial for acceptance of illegal gratification on three counts viz. (1) acceptance of one tin of Ghee and Rs, 25/- from Mutwali Mir in consideration of recommending him for Zaildarship, (2) acceptance of Rs. 50/- as illegal gratification from Atta Mohd. for recommending postponement or remission of land revenue and (3) that he had accepted Rs. 47/- by way of bribe from Jumma Shah, Malik Mohd. etc. etc.

9. The appellant was discharged with respect to 3rd charge but was convicted by the Magistrate with respect to first and second charges. On appeal, the learned Sessions Judge acquitted the appellant with respect to the second charge but maintained his conviction with respect to the first. On an application in revision by the appellant, the High Court upheld the conviction of the appellant with respect to the first charge above referred to. The appellant then was granted special leave to appeal to His Highness.

10. It would thus appear that the evidence in the case relating to the first charge was, in the opinion of the learned Judges of the three Courts below, sufficient to bring that charge home to the appellant, and this fact, standing by itself, counsels great caution in interference with the finding recorded by those Courts. A perusal of the judgments of the Courts below, however, reveals that those Courts seriously misdirected themselves in one respect. Those Courts approached the consideration of the case from a point of view which was appropriate for adjudication of a civil matter, but wholly inapplicable to a case in which a public servant was charged with the offence of accepting illegal gratifications. What the Courts below virtually did was to compare the probability or otherwise of the respective stories for the prosecution and for the defence, and holding that the story for the prosecution was more probable and convincing, recorded the order of conviction. In other words the Courts below put the evidence for the prosecution in one scale and the evidence for the defence in another and, after weighing the same, held that the scale containing the prosecution evidence was heavier and, accordingly, convicted the appellant. It is hardly necessary to observe that in criminal cases, unlike civil cases, the evidence has not to be weighed in this manner. In a criminal trial, an accused starts with presumption of innocence in his favour, and this presumption holds the field till the prosecution succeeds in establishing the guilt of the accused beyond all reasonable doubt. Unlike civil cases, the burden that rests on the prosecution in criminal cases does not shift from time to time, howsoever flimsy or unreliable the evidence for the defence may be.

The prosecution is not relieved of the burden of satisfying the judicial conscience of the Court from the evidence led by it about the guilt of the accused. In short, in criminal trials, in which the accused does not invoke to his aid any of the exceptions embodied in a criminal Statute in justification of the act of commission or omission with respect to which he is charged, the Court is bound to keep the evidence for the prosecution, and for the defence in two water-tight compartments, and has first to consider whether or not the guilt of the accused has been established beyond all reasonable doubt by the prosecution evidence. If the answer to the question, just referred to, is in the negative, there is an end of the matter. If, however, the Court is of the opinion that the prosecution discharged the

onus that rested upon its shoulders, it has then to turn to the-defence evidence in order to find out whether that evidence does or does not rebut the prosecution evidence and either negatives the guilt of the accused or makes his guilt doubtful. It is true that, in one sense, the evidence, both for the prosecution and for the defence, has, at some stage of the case, to be weighed, but it is well known that in criminal cases the evidence has not to be weighed in golden scales, and there must be great preponderance of weight on the side of the prosecution before the accused can be found guilty.

11. It may be, and possibly is a fact, that the evidence in the case disclosed facts that justified strong suspicions against the appellant, but this could be no justification for his conviction unless and until the prosecution succeeded in excluding every reasonable possibility of the appellant's innocence. In this connection it is well to bear in mind the following observations of the Federal Court in H.T. Huntley v. Emperor A.I.R. 1944 F.C. 66 (A):

A charge under Section 161 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.

There is yet another circumstance that points to the desirability of an independent and thorough examination of the evidence by the Board. It appears that certain facts, which were indicative of the innocence of the accused & facility of the prosecution case, were not referred to or touched by the Courts below and this, in the opinion of the Board, vitiated the conclusion arrived at by these Courts.

12. It would be recalled that the charge against the appellant was that he accepted as illegal gratification a tin of Ghee from Mutwali Mir between 12 and 15.9.1948 and further received a sum of Rs. 25/- from him the very next day. This charge

readily divides itself into two parts viz. (1) the receipt of one tin of Ghee and (2) the receipt of Rs. 25/-. Not a little confusion was caused by the omission of the Courts below to separately consider and record separate findings with respect to these two counts.

13. Apart from the so-called circumstantial evidence, to which reference shall be made in due course, the conviction of the appellant with respect to this charge was based on the evidence of P.W. 1, (Mutwali Mir) P.W. 2, (Dina Nath) P.W., (Banstlal) and P.W., (Ahad Joo) and P.W. 5, (Gulam Mohd Kuli).

14. It would be convenient first to deal with the second part of the charge viz. about the receipt of Rs. 25/- by the appellant. There is only the evidence of P.W. 4 Ahad Joo, P.W. 1 and Mutwali Mir, as regards this part of the case. Ahad Joo was a peon posted in Tehsil Uri and gave evidence against the appellant as regards the charge of acceptance of Rs. 50/- by the appellant from Atta Mhod. as well. His evidence as regards that charge was, however, not accepted by the Sessions Judge and the appellant was acquitted with respect to that charge. The fact of the rejection of the evidence of this witness, as regards the charge just referred to, laid his evidence with respect to the charge under consideration open to the obvious comment that he was not a witness of truth. No reference, however, to this aspect of the matter was made in the course of their judgments either by the Sessions Judge or by the High Court. Ahad Joo deposed that, when after delivering Ghee Mutwali Mir returned and had not gone far off,

the accused told me to tell him that this Ghee will not do and that some money should be paid for a pair of boots. I went and told this to Mutwali Mir. He replied that he had no money with him at that time.

It is manifest that it is easy to make a statement like this and it is difficult to test its veracity by appropriate cross-examination. There is one circumstance, however, that demonstrates that this part of the prosecution case was an after-thought.

One could understand that, on receipt of the application for the appointment of Mutwali Mir as Zaildar, the appellant dictated his terms. Dina Nath P.W. 3, however, stated that after the receipt of the application he was asked by the

appellant to tell Mutwali Mir to supply a tin of Ghee. Dina Nath makes no mention of any demand by the appellant for a pair of boots or the price thereof. The demand for illegal gratification piecemeal is, to say the least, extremely extraordinary. In all the circumstances we are not prepared to accept the evidence of Ahad Joo on the point. The result is that one is left with the solitary statement of Mutwali Mir as regards this part of the case, and the Board has no hesitation in rejecting the same. Reference has already been made to petition Ex. P.C. which was presented by Mutwali Mir to Chief Administrator on 26.10.1948. The alleged delivery of Ghee and payment of Rs. 25/- to the appellant by Mutwali Mir, according to the prosecution case, was round about 15.9.1948 and the application Ex. P.C. was not presented till after the lapse of about six weeks from that date. No explanation, good or bad or indifferent, as regards the delay in the presentation of the application was offered by Mutwali Mir. This application was presented after the appellant had been suspended. That false complaints against officers, in the situation in which the appellant found himself, are recklessly made after they are relieved of their office and are crest-fallen, is by no means a phenomenon of unusual occurrence.

Indeed the statement of Mutwali Mir in cross-examination strongly points to the conclusion that the application Ex. P.C. did not originate from Mutwali Mir but was the handi-work of someone who was busy in manufacturing evidence against the appellant. Mutwali Mir stated that

I have got the application marked Ex. P.C. written by a man whose name I do not know nor he is an acquaintance of mine. He is the resident of Uri.

Comment on this statement will be superfluous, but it may be observed in passing that Mutwali Mir was presumably unable to name the scribe of application Ex. P.C. for the simple reason that the application was got prepared not by Mutwali Mir but by some one else. The prosecution case as regards payment of Rs. 25/- to the appellant must therefore be rejected.

15. The evidence as regards the receipt of a tin of Ghee by the appellant as illegal gratification is equally unconvincing. Reference has already been made to the evidence of Dina Nath P.W. 2 which shows that, on the presentation of the

application by Zamindars, Pir Mohd. Maqbul Chief Administrator (P.W. 17) ordered verbally that Mutwali Mir be appointed Zaildar. The Chief Administrator had the last voice in the matter and, therefore, it is extremely improbable that, after the receipt of his verbal order, the appellant could have summoned courage to ask for bribe as a condition precedent to the appointment of Mutwali Mir as Zaildar. Apart from this it is abundantly clear by the order Ex. P.B. passed by the appellant, which has been quoted above, that the appointment of Mutwali Mir as Zaildar was only as a temporary measure, and that he was 'appointed Zaildar for the time being for conducting the work and afterwards necessary action under rules will be taken,' This fact also negatives the probability of the demand of bribe.

16. All that appears from the evidence of Dina Nath is that

he told Mutwali Mir to get a tin of Ghee for the Tehsildar I told him that the accused had demanded a tin of Ghee. Mutwali Mir did not give any reply at that time.

Dina Nath did not commit himself to the statement that the Ghee was demanded by the appellant as consideration for the appointment of Mutwali Mir as Zaildar. The evidence of Bansi Lal P.W. 3 negatives the truth of the prosecution case. The witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness. This fact, however, furnishes no justification for rejecting en-block the evidence of the witness. His evidence has to be read and considered as a whole with a view to find out whether any weight should be attached to the same. In the course of his evidence Bansi Lal stated

I told the accused that Mutwali Mir had brought the Ghee and the accused told me that he would send the price and that he had got the Ghee. I called out to Mutwali Mir and told him that the Tehsildar says that the price will be sent. Mutwali Mir showed by signs from a distance that it was all right.

The prosecuting counsel, when allowed to cross-examine this witness, however, put no question to the witness regarding the statement just quoted.

17. Reasons have been assigned above for rejecting the evidence of Ahad Joo. The result is that there remains the solitary statement of Mutwali Mir P.W. 1, in support of this part of the prosecution case. Most of the reasons assigned above for not accepting the evidence of Mutwali Mir as regards the payment of Rs. 25/- by him to the appellant equally hold good so far as Mutwali Mir's evidence as regards delivery of Ghee is concerned.

18. The so called circumstantial evidence relied upon by the Courts below consists of the following links:

(1) The interval of 3 weeks between the presentation of the application Ex. P.A., the recording of the evidence of the Zemindars and passing of order Ex. P.B. by the appellant,

(2) the acceptance of Ghee by the appellant without weighing the same and settling its price;

(3) the delay in the alleged payment of the price of the Ghee by the appellant.

19. The circumstances just referred to, do not, in the opinion of the Board, clinch the matter and demonstrate the guilt of the appellant. The fact of the receipt of the Ghee was throughout admitted by the appellant, and the only serious Question for consideration was whether the same was received as illegal gratification. It is clear from the evidence in the case that Mutwali Mir dealt in Ghee. It is also clear that the military was in control of the area at that time. In view of the fact that problems of varying intensity must then have been engaging the attention of the civil authorities there is no occasion for surprise if the appellant did not dispose of the application Ex. P.A. for three weeks. His hands must have been full with works and duty of various description. When one pictures to one-self the utter confusion that must have reigned supreme at that time, one hesitates to disbelieve the assertion of the appellant that a Military Officer had asked for the Ghee and, as that officer had moved to Srinagar, the Ghee was sent there, but the officer could not be traced. Supplies could not have been arranged and received in a businesslike manner at that time. The non-weighment of Ghee or the settlement of its price is therefore not a matter to which any weight can be attached. Each one

of three links in the so called circumstantial evidence, tested by itself, leads one to nowhere and their cumulative effect is nil, for the simple reason that Zero multiplied by Zero is still Zero.

20. On the whole, the Board have arrived at the conclusion that the guilt of the appellant was not established and, accordingly, the Board will humbly advise His Highness that this appeal be allowed, the conviction of and the sentence passed upon the appellant be set aside and he be acquitted, and the fine, if paid, be refunded.

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