

(1995) 02 P&H CK 0004

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 431-SB of 1987

Ram Kishan

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Feb. 14, 1995

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161
- Prevention of Corruption Act, 1947 - Section 5(1), 5(2)
- Punjab Land Revenue Act, 1887 - Section 67

Citation: (1995) CriLJ 2892 : (1995) 2 RCR(Criminal) 495

Hon'ble Judges: Satpal, J

Bench: Single Bench

Advocate: D.R. Mahajan and V.K. Mahajan, for the Appellant; M.K. Garg, AAG, for the Respondent

Judgement

Satpal, J.

This appeal is directed against the judgment and order, dated 15th July, 1987, passed by Shri Iqbal Singh, Special Judge, Ferozepore, whereby the learned Special Judge found the accused/appellant guilty and convicted him of the charges u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act (in short, the Act) and Section 161 of the IPC. The learned Special Judge sentenced the accused to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1,000/-, or in default, to further undergo rigorous imprisonment for six months u/s 5(1)(d), read with Section 5(2) of the Act arid to further undergo rigorous imprisonment for one year u/s 161 of the IPC. Both the sentences of substantive imprisonments were ordered to run concurrently.

2. Briefly stated, that facts of the case are that Sulakhan Singh (P.W. 2) of village Bahamaniwala had taken Government land on lease measuring about 30 Kanals 6 Maria, and another resident of the same village, namely Karam Singh (P.W. 3) had

also taken 15 Kanals 8 Marias of land on lease. This land was taken by them on lease from the Rehabilitation Department. In January, 1986. both Sulakhan Singh and Karam Singh took possession of their said land through Balwant Singh Kanugo in the presence of Ram Kishan Patwari, the appellant herein above. Thereafter, they met Shri Sehgal. clerk in the Rehabilitation Department at Fazilika, to take the sale certificate. Shri Sehgal told them that the file had gone to the higher officers for sanction and directed them to take a copy of the entry in the Rapat Roznamcha regarding the possession and to see the Collector, Ferozepore, so that the sale might be confirmed and mutation sanctioned in their favour.

3. Accordingly, on 8th March, 1986, both Sulakhan Singh and Karam Singh went to the appellant and requested him to give a copy of the Khasra Girdawari and entry in the Rapat Roznamcha. It is further alleged that the appellant demanded a sum of Rs. 500/- as illegal gratification for doing the said " work and finally the matter was settled for Rupees 100/- each. It is further alleged that the appellant asked them to come on the next day along with Rs. 200/- in his office at Jalalabad and meanwhile, he would prepare the said copies.

4. Since both Sulakhan Singh and Karam Singh were not willing to give bribe, they came to the office of the Vigilance Department on the next day, and met Shri Surjit Singh Nagra, the then Inspector Vigilance, Ferozepore (P.W. 4) in his office where he was silling along with Tara Chand Sharma, also Inspector Vigilance. At about 11 a.m. Sulakhan Singh made statement, Exhibit PE and he also produced before the said inspector Nagra, Rs. 200/- consisting of four currency notes of Rs. 50/- denomination each whose numbers were noted down in Memo Exhibit PF. Inspector Surjit Singh Nagra (P.W. 4) applied phenolphthalein powder to those currency notes, and after searching the person of Sulakhan Singh, the currency notes were handed back to him. Thereafter the scheme of the raid was prepared and according to the scheme, Sulakhan Singh was directed to pay the money to the accused on demand, and Karam Singh (P.W. 3) was directed to accompany and after passing of the currency notes, he was directed to give a signal by placing his hand on head. Exhibit P.W. was sent with endorsement Exhibit PE/1 to the Police Station through Constable Gurcharan Singh for registration of the case.

5. The raiding party thereafter left in the Government jeep for Jalalabad. At the octrpi post. Constable Gurcharan Singh was dropped to lodge the report, and accordingly formal FIR Exhibit PE/2 was recorded by Sub Inspector Karamjit Singh. Then the raiding party went up to the statue of Udham Singh, where the jeep was parked and from there, Sulakhan Singh (PW 2) and Karam Singh (PW 3) went ahead to the office of the accused and the raiding party followed them and stood at some distance. The accused was found sitting there in his office and one Anwar Ram, Member Panchayat of their village, was also sitting along with him. The accused asked for the money, upon which Sulakhan Singh (PW 2) handed over to him the tainted currency notes, Exhibits P. 1 to P. 4 which he took in his hand and gave the

copies of the daily diary (Roznamcha) Exhibit PG and Khasra Girdawari, Exhibit PH regarding the land of Karam Singh (PW 3) and a copy of the entry in the Roznamcha Exhibit PJ and Khasra Girdawari Exhibit PK regarding the land of Sulakhan Singh (P.W. 2). Sulakhan Singh (PW 2) thereafter put these copies in the bag and sat on the cot with Anwar Ram, and Karam Singh (PW 3) was asked to bring tea and while coming out he gave the scheduled signal to the remaining members of the raiding party, on receipt of which Inspector Surjit Singh Nagra (P.W. 4) along with Tara Chand Sharma and Karam Singh (P.W. 3) went inside the office of the accused. The accused was holding the currency notes in his hand and threw the same by the side of the chair on seeing the police party. Inspector Surjit Singh Nagra (P.W. 4) then disclosed his identity to the accused and sent for a glass of water, in which he added some sodium carbonate and prepared the solution in which he first got the hands of Anwar Ram washed but the colour of the solution did not change and in that very solution, then the hands of the accused were got washed and it resulted in the change of colour to pink. This changed pink colour solution was put into a phial, Exhibit PE and sealed and was taken into possession vide memo, Exhibit PL. P.W. 4 then took up the currency notes lying on the ground and got compared the numbers of the same with seizure memo Exhibit PF. and the same tallied. The currency notes, Exhibits P. 1 to P. 4 were taken into possession vide Exhibit PM. Thereafter, Inspector Nagra made a search of the accused, and nothing was recovered, in respect of which Memo Exhibit PN was prepared. Then P.W. 4 conducted the search of complainant Sulakhan Singh (PW 2) and recovered the copies of the Rapat Roznamcha, Exhibits PG and PJ and of Khasra Girdawaris, Exhibits PH and PK, which were taken into possession vide Exhibit PO. From the search of the office of the accused, Inspector Nagra (PW 4) recovered Rs. 150/-, one purse and one pen which were taken into possession vide Memo Exhibit PR. He also prepared a rough site plan of the place of the recovery and arrested the accused.

6. The prosecution examined Jagir Singh, Naib Sadar Kanungo (PW 1) who proved Exhibit PA, appointment order of the accused and his transfer from Ratta Khera to Bahamaniwala, vide Exhibit PB. He also proved Exhibit PI, sanction for prosecution of the accused. The prosecution also examined complainant Sulakhan Singh (PW 2), Karam Singh (PW 3) and Inspector Surjit Singh Nagra (PW 4), who was the Investigating Officer of the case. The prosecution, however, did not examine Anwar Ram on the ground that he was won over by the accused.

7. In his defence, the accused examined D.W. 1 Amolak Raj, Naib Tehsildar, who deposed that on 6th February, 1986, Mohinder Singh Nambardar of village Bahamaniwala filed an application, Exhibit DB which was sent by him to the Patwari Halqa concerned and accused Ram Kishan was the Patwari those days. He also examined Mohinder Singh, (D.W. 2) who deposed that the accused came to their village to effect the recovery and Sulakhan Singh had not paid the amount and thereafter there was some estrangement between the accused and Sulakhan Singh. The accused also examined Swaran Lata, Enquiry Clerk in the office of the Deputy

Commissioner, Ferozepore (D.W. 3) who stated that a complaint (photostat copy of which is Exhibit DG) against the accused was received on 14th February, 1986. The accused also tendered in defence copy of the judgment, Exhibit DD.

8. Relying on the evidence of the prosecution, the learned Special Judge convicted and sentenced the accused, as stated hereinabove. Aggrieved by the judgment passed by the Special Judge, the present appeal has been filed by the appellant.

9. Mr. Mahajan, learned counsel, appearing on behalf of the appellant, drew my attention to Exhibits PG, PH, PJ and PK and submitted that endorsement on these documents showed that the copies of these documents were prepared and delivered to the complainant on 8th March, 1986 against payment. He further submitted that as per the case of the prosecution, the raid was conducted on 9th March, 1986 and since the copies of the documents had already been delivered on 8th March, the question of demanding any amount by way of bribe did of arise and as such the conviction of the appellant was not sustainable. In support of his contention, the learned counsel placed reliance on two judgments of this Court in Darshan Kumar Vs. State of Punjab, and Dalip Singh v. State of Punjab 1988 (1) R Cri R 123. It may, however, be pointed out here that the above mentioned documents Exhibits PG, PH, PJ and PK which are the office copies of the documents alleged to have been delivered to P.W. 2 and P.W. 3, do not bear the signatures of the said two witnesses.

10. The learned counsel, further submitted that the conviction of the appellant was based on the evidence of the complainants and the Investigating Officer only. He submitted that Anwar Ram, who was admittedly the independent eye-witness, was not examined by the prosecution. He also submitted that both P.W. 2 and P.W. 3 who were trap witnesses were inimical to the appellant. According to him, this fact was proved by the evidence of Mohinder Singh Nambardar, (DW 2), who had stated that the appellant had come to their village to effect the recovery and Sulakhan Singh, (PW 2) had not paid the amount and thus there was some estrangement between the accused and Sulakhan Singh. He also drew my attention to the statement of D.W. 3, who had deposed that as per the record of the Deputy Commissioner's office, Ferozepore, they had received the complaint Exhibit D.C. which was submitted by Sulakhan Singh (PW 2) against Ram Kishan Patwari (accused) and the said complaint was received on 14th February, 1986, and the same was sent to S.D.M. Fazilika on 5th March, 1986 for inquiry but no report of S.D.M. Fazilika had been received. He also submitted that Karam Singh, in his cross-examination had also admitted that he and Sulakhan Singh (PW 2) belonged to one party and they were co-villagers. Karam Singh being member of the same party, to which Sulakhan Singh belonged had also helped the prosecution to make out a fabricated case against the appellant. The learned counsel, therefore, contended that keeping in view the enmity between the appellant and the trap witnesses, Sulakhan Singh and Karam Singh, the evidence of the complainant and the

Investigating Officer was ought to have been corroborated by independent witnesses and in the absence of such corroboration, the conviction of the appellant could not be sustained. In support of his contention, the learned counsel placed reliance on Raghbir Singh Vs. State of Punjab, ; Surjit Singh v. State of Punjab 1987 (1) R Cri R 621; Surjit Singh v. State of Punjab 1987 (2) Rec. Cri R 241; Joginder Kumar Sood v. State of Punjab 1989 (1) Rec. Cri R 257; Amarjit Singh and others Vs. State of Punjab, ; Ram Jaspal Kanungo v. State of Punjab 1991 (2) Rec. Cri R 547; Som Parkash Vs. State of Punjab, ; State of Punjab v. Gurjeet Singh 1992 (3) Rec Cri R 151 (Sic); State of Punjab v. Rattan Singh 1992 (3) Rec. Cri R 316 (Sic); Ram Kishan Juneja v. State of Haryana 1993 (1) Rec. Cri R 312; Ramesh Kumar v. State of Haryana 1993 (2) Rec. Cri R 608; Gurcharan Singh Vs. State of Haryana, ; Babu Lal Bajpai Vs. State of U.P.,.

11. Lastly the learned counsel contended that in case the conviction of the appellant was to be upheld, the sentence imposed upon him should be reduced to the one already undergone as the occurrence in the present case happened in March, 1986 and more than 8 years have already passed from the date of occurrence and the appellant had not committed any other offence prior to this case.

12. Mr. Garg, learned Assistant Advocate General for the State, submitted that Exhibits PG, PH, PJ and PK had been prepared on 8th March, 1986 by the accused as the matter between the accused and the complainants was settled on that day as per settlement, the accused was to deliver these documents on 9th March, 1986 on receipt of the bribe money he had demanded. He submitted that these documents were not delivered on 8th March, 1986 as they did not bear the signatures of the complainants and in fact these documents were delivered to Sulakhan Singh (P.W. 2) at the time when he handed over the currency notes, Exhibits P. 1 to P. 4 on 9th March, 1986. The learned counsel further submitted that the complaint Exhibit DC, dated 12th February, 1986 was filed by Sulakhan Singh, P.W. 2, against the appellant on totally different facts as the accused was not preparing the electoral rolls correctly and this complaint had no bearing on the facts of the case as the accused was caught red-handed while accepting the amount of bribe. He further submitted that D.W. 2, in his cross-examination, had himself admitted that u/s 67 of the Punjab Land Revenue Act, the procedure for making the recovery is that a demand notice is required to be issued to the defaulters and in the present case, no such demand notice was issued to Sulakhan Singh, P.W. 2. Even otherwise, D.W. 2, in his cross-examination, had admitted that Sulakhan Singh and two other persons against whom the recovery was to be effected, had got the stay order from the Court. Lastly, the learned counsel submitted that there was no hard and fast rule that the evidence of the Police officers who laid the trap and the trap witnesses cannot be accepted without corroboration. In support of his contention, the learned counsel placed reliance on two judgments of the Supreme Court in State of U.P. Vs. Dr. G.K. Ghosh, ; Rup Singh Vs. The State of Punjab, and a judgment of this Court in Shashi Pal Singh v. State of Punjab 1989 (1) Cur LJ 29.

13. I have given my anxious consideration to the submissions made by the learned counsel for the parties and have perused the record. In this connection, it will be relevant to refer to the judgments of the Supreme Court given hereinbelow on the point as to whether the evidence of the Police Officers and of the trap witnesses require necessarily corroboration.

14. In Hazari Lal Vs. State (Delhi Administration), the Supreme Court has held as follows:

"We are not prepared to accept the submission of Shri Frank Anthony that he is the very Police Officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of prudence which has crystallised into a rule of law nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case, a Court may be disinclined to act upon the evidence of such an officer without corroboration, but equally in the facts and circumstances of another case, the Court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance."

15. In the case of State of U.P. Vs. Dr. G.K. Ghosh, a three Judges Bench of the Supreme Court had held as follows (at p. 909);

"The Court may, therefore, depending on the circumstances of a case, feel safe in accepting the prosecution version on the basis of the oral evidence of the complainant and the police officers even if the trap witnesses turn hostile or are found not to be independent. When therefore, besides such evidence there is circumstantial evidence which is consistent with the guilt of the accused and not consistent with his innocence, there should be no difficulty in upholding the prosecution case."

16. Again in a recent judgment, in Paras Ram Vs. State of Haryana, it was held "that the evidence relied upon was of two Police officials does not ipso facto give rise to doubt about its credibility. There is nothing on record to show that these police officials were hostile to the appellant and their evidence was not shaken in cross-examination. That the private party who was called as a witness by the prosecution did not support it, does not, in the circumstances, lead to the conclusion, that the appellant was innocent."

17. From the decisions of the Supreme Court in the above mentioned cases, it is thus clear that the prosecution version on the basis of oral evidence of the complainant and the Police Officers, without corroboration of a public witness can be accepted when besides such evidence, there is circumstantial evidence which is consistent with the guilt of the accused. I am, therefore, not inclined to accept the contention of the learned counsel for the appellant that the evidence of the

complainant, and the Police officers must necessarily be corroborated by independent witnesses to convict the accused in a case u/s 5(1)(d) read with Section 5(2) of the Act and Section 161 of the Indian Penal Code.

18. Coming to the facts of the present case, both Sulakhan Singh and Karam Singh (P.W. 2 and P.W. 3) have proved that on 8th March, 1986, they had met the appellant for supply of copiesj of the Rapt Roznamcha regarding the possession and the Khasra Girdawari and the appellant had agreed to supply the same in case the said two persons paid a sum of Rupees 100/- each as illegal gratification. It has, further, been proved by them that the copies would be supplied on the next day when these witnesses would pay the said amount. It has further been proved by these witnesses and Investigating Officer, Surjit Singh Nagra (P.W. 4) that four currency notes Exhibits P. 1 to P. 4 were tainted with phenolphthaleine powder and these notes were duly accepted by the appellant at the fixed time when P. W. 2 and P. W. 3 approached him, and the copies of the requisite documents were handed over to Sulakhan Singh. These witnesses have further proved that seeing the Vigilance party, the appellant who was holding the said currency notes in his hand, threw the currency notes on the side of the chair and thereafter, the hands of the accused were got washed and the colour of that solution turned pink which was put into a phial Exhibit P. 5. It may be pointed out here that with the same solution, the hands of one Anwar Ram, who was sitting there, were washed first but the colour of that solution did not change. It has also been proved by P.W. 4 that four currency notes, Exhibits P. 1 to P. 4 which were thrown by the appellant, were picked up and on comparison, it was found that the number of the currency notes tallied with the Superdgi Memo.

19. From the oral evidence of the aforesaid three witnesses (P.W. 2, P.W. 3 and P. W. 4), coupled with the circumstantial evidence that the numbers of the currency notes thrown by the appellant, tallied with the notes mentioned in the Superdgi Memo and further when the hands of the accused were got washed with the solution, the colour of the solution turned pink, it will be safe in accepting the case of the prosecution and to uphold the finding of the learned trial Court convicting the appellant.

20. I do not find any merit in the submission made by the learned counsel for the appellant that since Anwar Ram who was an independent eyewitness and was admittedly present at the time of conducting the raid, was not examined by the prosecution, the appellant could not be convicted. As held by the learned trial Judge, it is the discretion of the prosecution agency to examine a particular witness or not. Besides, as stated earlier, the prosecution did not examine the witness as he was won over by the accused. It is also evident from the evidence that Anwar Ram was already sitting with the appellant at the time of the raid and was thus known to him. In cross-examination of Surjit Singh Nagra (PW 4) it was suggested to him that the said Anwar Ram had made protest that Sulakhan Singh wanted to pay the amount

forcibly and this suggestion was, however, denied by P.W. 4. In view of this suggestion, the appellant could have summoned Anwar Ram who was known to him, to rebut the evidence of P.W. 2, P.W. 3 and P.W. 4 but he also did not examine Anwar Ram in his defence though he had examined certain other witnesses in his defence.

21. I also do not find any substance in the contention urged by the learned counsel for the appellant that P.W. Sulakhan Singh was having enmity with him and since P.W. 2 and P.W. 3 belonged to one party, P.W. 3 had also supported the version of P.W. 2. The ground for alleged enmity is based on the evidence of D.W. 1, who stated that Mahinder Singh, Nambardar of Bahamaniwala had filed application, Exhibit DE, for recovery of certain dues and he had sent the said application to the appellant, who was Patwari of the Halqa concerned, but in cross-examination, he admitted that he had not kept any record of that application in his office, and there was no receipt number on this application, though there was a Despatch and Receipt Register in his office. Mahinder Singh Nambardar, who was examined as DW 2, admitted in his cross-examination that all the persons against whom the amount of recovery was mentioned, had got stay order against the recovery. Even demand notice as required u/s 67 of the Punjab Land Revenue Act was not served. Besides, it has not been proved by the defence that the appellant had submitted any report regarding this alleged recovery which could have annoyed Sulakhan Singh, P.W. 2. The appellant had also examined DW 3, Swaran Lata who had proved that the D.C. Office, Ferozepore had received a complaint on 14th February, 1986 from P.W. Sulakhan Singh, against the appellant. In her crossexamination, she stated that the said complaint was sent to S.D.M. Fazilka on 5th March, 1986 for inquiry. In this complaint, it had been alleged that the appellant was not preparing the electoral rolls correctly, but this complaint has no bearing on the facts of this case as the appellant was caught redhanded while accepting the amount of illegal gratification. Even no enmity was alleged against Karam Singh, P.W. 3, who has also deposed that the appellant had demanded the amount of bribe from him for supply of copies of certain documents and he had accepted the said amount in his presence. From the allegation that P.W. Karam Singh P.W. Sulakhan Singh belonged to the same party, no inference can be drawn to the effect that he had deposed falsely on account of the enmity. Further the "learned counsel for the appellant could not make any criticism of the evidence of Surjit Singh Nagra (PW 4) who also proved the prosecution version of the case. The evidence of PW 2 and PW 3 cannot, therefore, be rejected. The view I have taken finds full support from a judgment of the Supreme Court in Sarup Chand Vs. State of Punjab.

22. I also do not find any merit in the contention urged by the learned counsel for the appellant that since the copies of the documents were prepared on 8th March, 1986 itself, the date on which P.Ws. Sulakhan Singh and Karam Singh had met the appellant, there was no question of accepting any bribe. According to the case of the prosecution, on 8th March, 1986, the appellant had told P.W. Sulakhan Singh

and PW Karam Singh that he would keep the copies of the documents ready and that they could get the same on 9th March, 1986 after making the payment of the amount of bribe demanded by him. In view of these facts, the documents might have been prepared by the appellant on 8th March, 1986 and kept ready for delivery on the next date. Though there is an endorsement on the office copy of each of the documents to the effect that the copy has been supplied but the said office copy does not bear the signatures of PW Sulakhan Singh or PW Karam Singh for having received the copy. Thus the delivery of these documents on 8th March, 1986 has not been proved and as such, the ratio of the judgments in the case of Darshan Kumar 1988 Cri LJ 446 (supra) and Dalip Singh (supra), relied on by the learned counsel for the appellant is of no assistance to the appellant.

23. For the reasons recorded herein above, I affirm the conviction of the appellant u/s 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act and also u/s 161, IPC. However, keeping in view the fact that the appellant had to undergo the tension of a pending trial and a pending appeal for more than 8 years and it will have an adverse impact on his employment, I reduce the substantive sentence of two years R.I. u/s 5(1)(d) read with Section 5(2) of the Act to one of six months. On the same ground, the sentence u/s 161. IPC is also reduced to one of six months. The sentence of fine u/s 5(1)(d) read with Section 5(2) of the Act is, however, sustained. Both the sentences of substantive imprisonment will run concurrently. The appellant is directed to surrender to bail in order to undergo the substantive sentence imposed upon him.