

(2002) 04 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 840-SB of 2000

Kuldip Rai

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: April 8, 2002

Acts Referred:

- Prevention of Corruption Act, 1988 - Section 13(2), 7

Citation: (2002) 2 CriminalCC 583 : (2002) 2 RCR(Criminal) 781

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Ravi Kant Sharma, for the Appellant; P.S. Tiwana, DAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

M.L. Singhal, J.

In case FIR No.110 dated 16.9.1999, Police Station, Julkan, under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (for short the Act)/Sessions Case No.27-T of 28.4.1995/3.6.1998, vide order dated 22.8.2000, the Special Judge, Patiala, exercising the powers of trial under the Act convicted Kuldip Rai and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.2000/- or in default of payment of fine, to undergo further rigorous imprisonment for 3 months u/s 7 of the Act and further sentenced him to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.3000/- and in default of payment of fine to undergo further rigorous imprisonment for 4 months u/s 13(2) of the Act. Both the sentences were ordered to run concurrently.

2. The prosecution case in brief is that one Gurdit Singh son of Dalbir Singh resident of village Rohar Jagir owns 18 killas of land in village Rohar Jagir. Some of his land is situated in the north adjoining the village. There was transformer lying installed in that land. That transformer used to supply electricity to 8/9 tubewells. That

transformer got burnt 10/12 days earlier to 16.9.1994. He was in dire necessity of watering his crop. For watering the crop, he was to run tubewell. Tubewell could be run with electric energy. There was electric motor in his field in the name of his brother Wazir Singh. Earlier he used to be joint with his brother Wazir Singh and after separation, the electric connection continued to be in the name of his brother Wazir Singh. 3/4 days prior to 16.9.1994, he met Kuldip Rai-accused in his office at Devigarh (it may be mentioned here that Kuldip Rai was Junior Engineer in the Punjab State Electricity Board posted in its office at Devigarh.) He requested Kuldip Rai to replace the transformer lying installed in his field with a new one as the previous transformer had got burnt. Kuldip Rai-accused replied that if he wanted replacement of burnt transformer with a new one, he would pay him Rs. 1100/- as illegal gratification. He requested Kuldip Rai that he was poor and was unable to pay so much amount. On his request Kuldip Rai-accused brought down his demand to Rs. 1000/- and asked Gurdit Singh to bring Rs. 1000/- with him on 16.9.1994 as illegal gratification and the said transformer would be replaced with a new one. Gurdit Singh did not want to pay any illegal gratification. He made a false promise to him that he would be visiting him on 16.9.1994 in his office. He had met Gurnek Singh Brar, Executive Engineer, Punjab State Electricity Board, Patiala, and had requested him to replace the burnt transformer lying in his field with a new transformer so that he would irrigate his land. Gurnek Singh Brar had told him that he would ask Kuldip Rai, Junior Engineer to do the needful. Earlier, he had met SDO, Punjab State Electricity Board, Rohar Jagir. He had also told him that he would ask Kuldip Rai, Junior Engineer to do the needful. On 16.9.1994, Gurdit Singh was going to the Vigilance Bureau, Patiala. Karnail Singh son of Harkesh Singh of his village accompanied him whom he narrated this episode, who suggested him that they should contact Vigilance Bureau for taking action against accused-Kuldip Rai under the Act for demanding illegal gratification. Gurdit Singh made statement before Mr.Tulsi Ram, DSP, Vigilance Bureau Patiala on 16.9.1994 at about 3 p.m. Gurdit Singh, PW 2 produced before the DSP 10 currency notes of the denomination of Rs.100/- each. He treated those currency notes with phenolphthalein powder in the presence of Karnail Singh, PW. After treating those currency notes, P1 to P10 with phenolphthalein powder, he handed over those currency notes to Gurdit Singh, PW. In this behalf, he prepared memo Exhibit PW2/B attested by Gurdit Singh and Karnail Singh, PWs. He instructed him to go to the accused and hand over the currency notes PW 1 to P10 but only on demand by him as illegal gratification. He instructed Karnail Singh, PW (shadow witness) to accompany Gurdit Singh, PW and witness the passing of the aforesaid currency notes by Gurdit Singh to the accused and further hear the conversation that takes place between Gurdit Singh, PW and Kuldip Rai-accused. He further instructed Karnail Singh, PW that as soon as the accused accepted the currency notes treated with phenolphthalein powder as illegal gratification from Gurdit Singh, PW, he would raise a signal to the raiding party. Mr.Tulsi Ram, DSP, Vigilance Bureau, prepared solution of sodium carbonate in a glass of water. He treated one piece of paper with phenolphthalein powder. He

dipped that piece of paper in that solution of sodium carbonate and the colour of the solution became pinkish and he then threw away that solution. In this behalf, he prepared memo Exhibit P W3/A which was attested by Gurdit Singh and Karnail Singh, PWs. This was by way of demonstrating to them the effect of sodium carbonate with phenolphthalein powder.

3. Statement Exhibit PW2/A was sent to Police Station Julkan for the registration of case against the accused with endorsement Exhibit PW8/A thereon. On the basis of that statement, case FIR No. 110 was registered at Police Station Julkan, under Sections 7 and 13(2) of the Acton 16.9.1994.

4. Thereafter, DSP Vigilance Bureau along with Gurdit Singh and Karnail Singh left for Devigarh, Mohar Singh, Secretary Co-operative Society Devigarh was joined. Gurdit Singh and Karnail Singh were sent to contact the accused in his office. Kuldip Rai-accused was available in his office. Kuldip Rai-accused was available in his office. Gurdit Singh, P W gave the aforesaid currency notes Exhibit P1 to P10 to the accused on his demand as illegal gratification. After accepting 10 currency notes of the denomination of Rs. 100/- from Gurdit Singh, the accused put them in the right pocket of the pants worn by him. After the accused had accepted the currency notes P1 to P10 as illegal gratification from Gurdit Singh, PW Karnail Singh raised signal which attracted Mr.Tulsi Ram, DSP Vigilance Bureau, Mohar Singh, Secretary, Cooperative Society Devigarh etc. to the spot. Mr. Tulsi Ram, DSP Vigilance bureau gave his identity to the accused that he was DSP, Vigilance Bureau, Patiala, the that he would be subjecting him to search. He sent for a glass of water in which solution of sodium carbonate was prepared. In that solution, the accused dipped his hands one after the other. Colour of the solution became pinkish. This solution was transferred into a small bottle which was sealed. This sealed small bottle was taken into possession vide memo Exhibit PW2/E. From the search of the accused, 10 currency notes of the de-nomination of Rs.100/- was recovered from the right side of the pocket of the pants worn by him. Mohar Singh, PW compared the numbers of those currency notes with the numbers lying entered in recovery memo Exhibit PW2/B. These numbers tallied with the numbers of the notes lying entered in fard hawalgi Exhibit PB which were taken into possession vide memo Exhibit PW2/C which was attested by the witnesses. He prepared another solution of sodium carbonate in a glass of water in which the right side pocket of the pant worn by Kuldip Rai was dipped and the colour of the solution became pinkish. This solution was transferred in another small bottle which was sealed. It was taken into possession along with the pants of the accused Exhibit PW2/D. On the further search of the accused, a sum of Rs. 105/- was recovered.

5. Both the small bottles, one containing solution of hand wash and the other containing wash of the right side of the pocket of the pants worn by the accused, were sent to the Forensic Science Laboratory, Punjab, Chandigarh. Vide report Exhibit PC, Forensic Science Laboratory found the presence of sodium carbonate

ions and phenolphthalien ions. Sanction Exhibit PA was obtained from Chief Engineer, Distribution (South) Punjab State Electricity Board, Patiala. After obtaining sanction from the authority competent to remove him from his job for prosecuting him under Sections 7 and 13(2) of the Act the accused was challaned under Sections 7 and 13(2) of the Act.

6. Special Judge, Patiala, charged the accused under Sections 7 and 13(2) of the Act vide order dated 28.4.1995. The accused pleaded not guilty to the charge and claimed trial.

7. At the conclusion of the trial, Special Judge, Patiala, exercising the powers of trial under the Act, convicted and sentenced the accused as mentioned above, vide order dated 22.8.2000. The accused has challenged this order of conviction and sentence passed against him through this appeal.

8. I have heard the Learned Counsel for the parties and have gone through the record of the case.

9. As per DSP Vigilance Bureau, Patiala, Mr.Tulsi Ram, Gurdit Singh and Karnail Singh came to his office at Patiala on 16.9.1994 where Gurdit Singh made statement Exhibit PW2/A and produced before him 10 currency notes of the denomination of Rs.100/- each and he treated those currency notes with phenolphthalein powder. After treating those currency notes with phenolphthalein powder, he handed over them to Gurdit Singh, PW vide memo Exhibit PW2/B. While handing over those currency notes to Gurdit Singh, through memo Exhibit PW2/B, he instructed him that he would go to Kuldip Rai, Junior Engineer and hand over the said currency notes to him but only on demand by him. He instructed Karnail Singh too act as shadow witness and witness the transaction of the passing of currency notes by Gurdit Singh PW to the accused and hear the conversation that takes place between them. As per DSP Vigilance Bureau, Mr.Tulsi Ram, no part of the transaction took place on 15.9.1994. In fact, Gurdit Singh and Karnail Singh did not contact him at all on 15.9.1994. It was suggested to him that 15.9.1994 he along with the witnesses went to raid the accused in his office but he was not found there. He denied this suggestion. It was suggested to him that no amount of Rs. 1000/- was handed over to Gurdit Singh on 16.9.1994 at Patiala. He denied this suggestion.

10. Gurdit Singh, PW2 stated that he had taken the vigilance officials to the office of the accused once, earlier to the incident but the accused was not available. On the first occasion, when the accused was not available,-two other witnesses were also with him besides the vigilance staff. Phenolphthalein powder had been applied to the currency notes on the first occasion when the accused was not available. He handed over those notes back to the police. At the time of raid, the police again handed over the said currency notes to him. As per Gurdit Singh, PW, thus he along with two other witnesses and the vigilance staff had raided the accused once, earlier also but he was not available. Karnail Singh, PW 3 also stated that one day earlier to

this recovery, also they had gone to the office of the accused with the vigilance party but the accused was not available there. On the earlier occasion, they had enquired from some official about the accused but he was not available. That day, SDO was also not available. That day, they had gone along with the Vigilance Inspector and other vigilance officials. That day, the party left them at Devigarh and directed them to come to Patiala on the following day. He and Gurdit Singh reached Patiala at about 12 noon. As the accused was not traceable on the earlier occasion, no proceedings were taken that day. On the day of raid currency notes P1 to P10 were with the Inspector who handed over those currency notes to Gurdit Singh at Devigarh when they were directed to go to the office of the accused. Karnail Singh is, thus, discrepant with DSP Vigilance Bureau, Patiala, Mr. Tulsi Ram and Gurdit Singh is also discrepant with him as to when the currency notes were treated with phenolphthalein powder. As per DSP Vigilance Bureau, Patiala, Mr. Tulsi Ram, this exercise took place at Patiala on 16.9.1994. As per Karnail Singh, PW this exercise took place at Devigarh. As per Karnail Singh, statement of Gurdit Singh was recorded on the earlier day and the demonstration was also given on the earlier day and the currency notes were also treated with phenolphthalein powder on the earlier day and were handed over to the Vigilance Inspector on the earlier day. On the day of raid, those currency notes were with the Inspector and the Inspector handed over those currency notes to Gurdit Singh at Devigarh. PWs Karnail Singh and Gurdit Singh who are the key witnesses of the prosecution are, thus, seriously discrepant with DSP Vigilance Bureau, Patiala, Mr. Tulsi Ram as to the very foundation of the case.

11. As far as Mohar Singh, PW7 is connected, he has stated that on 16.9.1994, Inspector of Police came to him. He asked him that he was wanted by DSP Vigilance Bureau as they were to apprehend a person while accepting illegal gratification and whatever he watches at the spot, he had to depose to it in Court. From there they came to Punjab State Electricity Board Office at Devigarh. At that time 4/5 persons were standing there. Search of the accused was taken in his presence. From his search, 10 currency notes of the de-nomination of Rs. 100/- each were recovered from the pocket of the pants worn by him. Numbers of these currency notes tallied with the numbers mentioned in memo Exhibit PW2/B. Hands of the accused were dipped in the solution of sodium carbonate and the colour of the solution turned pink. Similarly, the right side pocket of the pants worn by the accused was washed in another solution of sodium carbonate. Colour of that solution also turned pink He was declared hostile on the request of the Public Prosecutor for the State. When he was cross-examined by the Public Prosecutor for the State, he supported the prosecution case with regard to some of its essentials. He has not stated that accused was raided in his presence which is the main essential. In this case, Karnail Singh and Gurdit Singh, PWs who are key witnesses of the prosecution, cannot be believed because of their being seriously discrepant with DSP Vigilance Bureau, Patiala, Mr. Tulsi Ram. No raid took place on 15.9.1994 on the accused as per the

plain case of the prosecution but at the trial Gurdit Singh and Karnail Singh deposed that they went to contact the accused with currency notes P1 to P10 on 15.9.1994 with a view to hand them over but the raid ended in fiasco because of the non-availability of the accused. After the raid had ended in fiasco, he handed over the currency notes to the police. On 16.9.1994, he again got back the same currency notes from the police. Currency notes were treated with phenolphthalein powder on 15.9.1994. No wonder Karnail Singh and Gurdit Singh were dead set at involving the accused. Even otherwise, Karnail Singh and Gurdit Singh cannot be viewed as independent witnesses as they are witnesses of the trap. In a case under the Prevention of Corruption Act witnesses of the trap are required to be corroborated by independent evidence. Karnail Singh and Gurdit Singh are the main actors in the play in the success of the raid. Mohar Singh, PW7, is no doubt, an independent witness but in his examination-in-chief, he has nowhere stated that in his presence, Gurdit Singh was instructed to go to the accused and pass on the currency notes P1 to P10 to him but only on demand by him. He has not stated that Karnail Singh, PW was instructed to accompany Gurdit Singh and witness the entire transaction and hear the conversation that takes place between the two. In his cross-examination by the Police Prosecutor for the State, he did depose to these facts. His omission to state these facts which are vital facts, in his examination-in-chief, and his deposing to these facts in his cross-examination by the Public Prosecutor for the State, would adequately detract from the truth of his statement. No wonder he toed the line of the prosecution during his cross-examination by the Public Prosecutor for the State out of fear. He stated that the signal was given by the police officials who were in plain clothes. In this case, evidence produced by the prosecution, cannot be said to be full proof as to warrant the snatching of the livelihood of the accused and exposing him and his family to ignominy and starvation.

12. These types of cases are to be treated on a different footing so far as the appreciation of evidence is concerned. If conviction takes place in these cases, not only the accused goes to jail but also he loses his livelihood and earns ignominy also. While appreciating evidence in these cases, the Court has to be careful and circumspect keeping always in view that if two views are possible, that view should be adopted which is favourable to the accused.

13. For the reasons given above, I am of the opinion that this appeal should be allowed.

14. This appeal is accordingly allowed. Conviction and sentence passed upon the appellant are set aside and he is acquitted of the charge framed against him. Fine if already paid, shall be refunded to him.