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(1956) 11 AHC CK 0047

Allahabad High Court

Case No: Criminal A. No. 798 of 1954

Hari Ram APPELLANT

Vs

State RESPONDENT

Date of Decision: Nov. 29, 1956

Acts Referred:
Penal Code, 1860 (IPC) â€" Section 161

Citation: (1956) 11 AHC CK 0047

Hon'ble Judges: V.D. Bhargava, J

Bench: Single Bench

Advocate: S.B.L. Gour, for the Appellant;

Final Decision: Allowed

Judgement

V.D. Bhargava, J.
This is an appeal on behalf of one Hari Ram who has been convicted u/s 161 IPC and sentenced to one year''s rigorous

imprisonment.

2. He was the Lekhpal of village Deoli and had been challaned by the police for accepting Rs. 90/ - from one Pirthi Singh as an illegal gratification

as a motive for recording his name in the revenue papers over the Dehar in village Deoli.

3. The prosecution story in brief, is that there was a certain Dehar which had been brought into cultivation. Pirthi Singh was its zamindar before the

abolition of zamindari. As this Dehar had been brought into cultivation by him along with his co-sharers he wanted to have entered his name and

the names of other co-sharers in the village papers. The Lekhpal had not entered their names but had entered the names of some other persons.

When Pirthi Singh approached the accused he said that he would make the entry if Pirthi Singh would pay him Rs. 150/ - for himself and for

Mughi, the Pradhan of the Gaon Sabha. Ultimately the matter was settled at Rs. 110/ -. Pirthi Singh, thereupon contacted Nawab Singh and

sought this advice and on his advice both of them went to the Collector who wrote a slip to the District Planning Officer and Magistrate directing

him to do the needful. Sri Hari Kishan Mehrotra P.W.1, the Magistrate, took down the statement of Nawab Singh and also asked him to bring

Pirthi Singh. Pirthi Singh also gave a statement to Mr. Mehrotra and that statement was also recorded. Thereafter Pirthi Singh handed over

eighteen currency notes of Rs. 5/ - each which was initialed by Sri Mehrotra and Pirthi Singh was directed to inform him when the bribe was to be

given. As the bribe had been settled to be given on 3-9-1953 either in the Soldiers Board or in the Tehsil Bulandshahr, Pirthi Singh and Nawab

Singh both again went to Bulandshahr. Pirthi Singh searched for the accused and he was not at Soldier''s Board and he was found in Tehsil and it

was settled that the bribe was to be given at Tehsil and Sri Mehrotra was informed who reached the Tehsil with the Deputy Superintendent of

Police, Thereafter when the money had been transferred a sign was made by one Harpal Singh P.W.3 and these people went there, searched the

accused and these eighteen currency notes and some other things were recovered from his possession. It is said that Pirthi Singh P.W.4, Gokul

Chand P.W.2, Harpal Singh P.W.3, Bhagwati Prasad P.W.5 and Nawab Singh P.W.6 were present and it was Harpal Singh who had signalled

that Pirthi Singh had already given bribe to the accused and that these persons arrived there. After the search and recovery of these currency notes

and on obtaining sanction from the Collector the prosecution was lodged.

4. It is true that it is very difficult to detect a case of bribery without the aid of a trap vet it is also not safe for the courts to rely on the persons who

are laying the trap. They are known as ""agents provocateur"". They are in the nature of accomplice particularly, who actually tenders the money.

The other witnesses and the Magistrate may be in a better position and therefore in a bribery case it is very necessary to examine the evidence

rather closely and unless there is independent corroboration by the witnesses or by the circumstances of the case, it would not be safe to convict

only on the sole testimony of the accomplice, who had tendered the money. From this point of view we have to examine the evidence in this case.

5. Nawab Singh made the first statement before Sri Mehrotra that Pradhan had demanded Rs. 110/ - through Patwari. This land, according to

Nawab Singh, was brought into cultivation only a year before this incident i.e., after the abolition of the zamindari. Pradhan''s name was Mughi and

Nawab Singh admittedly has enmity and litigation is going, on between him and Mughi. From this statement it is clear that Nawab Singh may have

been interested in implicating Mughi and therefore he may not be said to be an independent witness. Pirthi Singh in his first statement recorded

before Mr. Mehrotra his also deposed that he had a case with the parents of the present Pradhan Mughi regarding transfer of land. He has in his

another statement said that he gave the money to the Lekhpal in the verandah of the Tehsil and after taking the currency notes the Appellant came

and took his seat on the bedding of Gokul and he had further said that when this money was given there was no body else present. Thus,

according to this statement, it is clear that there was no eye-witness of the transference of this money and there remains the sole testimony of Pirthi

Singh that he gave this money to the Lekhpal.

6. The defence of the Appellant was that when he became a lekhpal one Har Saran Das, who was a newspaper agent, asked him to procure some

ghee as there was a marriage in his family and he gave Rs. 90/ - to the accused. The accused passed on these ninety rupees to the complainant and

asked him to send ghee for Har Saran Das. That the Ghee was not supplied by Pirthi Singh and the marriage had been performed, that

subsequently on demand by Har Saran Das he had to give his wife''s golden bangles to him and that on several demands Pirthi Singh had given him

this amount that day in the Tehsil. Har Saran Das has been produced to prove that he had advanced Rs. 90/ - to the Appellant which were given in

his presence to Pirthi Singh and that the Ghee was not supplied and therefore the accused got bangles placed with him. He is a man of good status

and his income is above Rs. 500/ - a month. Another D.W.2, Premanarain, has been produced who has deposed that a demand was made by the

Appellant from the complainant.

7. On the prosecution side eight witnesses have been produced. P.W.1 is Sri Mehrotra, the Magistrate, who had taken the statements of Nawab

Singh and Pirthi Singh and who had signed the notes and who had accompanied them when the bribe was given. He did not see actually the

passing of the notes nor he heard any discussion between the accused and the complainant. In what account this money had been transferred

cannot be ascertained from his deposition. Gokul Chand P.W.2 is the witness who is supposed to be an eye-witness. He says that the money had

been transferred at his Bistara while Pirthi Singh in his earlier statement had stated that when money was passed on nobody was present and he

had also stated that the money was paid in the eastern verandah of the Tehsil. In these circumstances, it is very difficult to believe Gokul Chand.

Harpal Singh is another witness who had come there by chance and was asked by the Magistrate to inform him when the money had been passed

and it was at his signal that these persons had gone. He had also stated that he did not hear any talk between the accused and the complainant.

Pirthi Singh P.W.4 and Nawab Singh are the two witnesses who had been moving and they are the accomplices and their evidence cannot be

relied upon unless, as I have already said it had been corroborated by other witnesses. But so for as the talk is concerned, there is no witness at all

to corroborate their evidence. Bhagwati Prasad is a witness for the recovery but there is no dispute about the recovery of notes. Babu Ram

Sharma P.W.7 is a formal witness who had written the first information report while the last witness P.W.8 is Balbir Singh who had investigated the

case. It was before him that the statements of Nawab Singh and Pirthi Singh were recorded and it was he who had asked for permission to

investigate the case and had obtained the sanction.

8. There is another circumstance which appears to be rather strange. If the Appellant wanted to take a bribe he would not have liked to nominate a

public place like the Soldier''s Board or a Tehsil to accept the bribe. It may have been a different thing that he would have accepted a bribe there if

it was offered without any arrangement but according to the prosecution the Soldier''s Board or the Tahsil was nominated place where the bribe

was to be accepted. The probability is that the Appellant would have asked the complainant to bring the money at his house. In the circumstances,

as I see no corroboration of the sole testimony of Pirthi Singh about the object of the passing of the money, I think the Appellant is entitled to the

benefit of doubt. Therefore, his appeal is allowed, his conviction is set aside. The accused is on bail. He need not surrender to his bail and his bail

bonds are discharged.