

(1960) 12 MP CK 0018

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal A. No. 349 of 1959

State of M.P.

APPELLANT

Vs

Ranjeet Singh and Another

RESPONDENT

Date of Decision: Dec. 19, 1960

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 109, 161
- Penal Code, 1860 (IPC) - Section 161

Citation: (1962) J LJ 187 : (1961) MPLJ 721

Hon'ble Judges: V.R. Nevaskar, J; H.R. Krishnan, J

Bench: Division Bench

Advocate: Balwantsingh, Govt, for the Appellant; C.N. Gaur, for the Respondent

Final Decision: Dismissed

Judgement

H.R. Krishnan, J.

This is a State appeal from the judgment of acquittal of the two respondents dated 31-8-1959 recorded by the Special Judge, Ujjain, in a case arising out of an incident in 1955. The prosecution account is long and wandering and covers several incidents in course of a fortnight; but the culminating point, which is the subject-matter of the charges respectively u/s 161, Indian Penal Code and 161/109, Indian Penal Code, is that the respondent No. 1 Ranjeetsingh who at the relevant time was the Sub-Inspector second in charge of the Mahidpur thana, in the Ujjain District, received an illegal gratification of 100 (in ten marked currency notes of 10 each) at about 4 p.m. on 21-12-1955 at his quarters adjoining the Mahidpur Station House. The alleged giver of the bribe was one Thawarsingh of village kheda in the Makdone thana; but the amount was handled by Shivsingh, Thawarsingh's brother-in-law and a licensee for sale of liquor, along with respondent No. 2 through whom, acting as the go between in this regard, the amount was actually paid. The alleged process of receiving it was the throwing of the bundle of 10 currency notes

on the lap of Ranjeetsingh by the respondent No. 2 with an accompanying gesture, when, he was sitting in a cane chair in his room. Subsequently he lifted the bundle and put it below his seat only to be recovered from him soon after, when a search party headed by Deputy Superintendent of Police Ramnarayan Dube and one Laxminarayan alias Gorubhaiya-Secretary of Tahsil Congress Committee, walked into the room on a signal being given by Shiv Singh at the first instance and picked up and transmitted by Devisingh. This was after an unsuccessful search of the person of Ranjeetsingh by Laxminarayan; but when two of the searching party lifted the Sub-Inspector bodily, the bundle of notes was discovered on the cane chair seat. The alleged consideration for the bribe was that Ranjeetsingh had made Thawarsingh and his friends believe that he was in possession of a warrant for the arrest of Thawarsingh issued by a Court at Agar and for reasons which are nowhere indicated, endorse to him, an officer of Mahidpur, while the alleged warrantee was living in a village in the Makdone thana, and was agreeing to forbear from executing it, and, instead, to tearing and throwing it away. For reasons recorded by him, the learned special Judge refused to hold that the notes were ever taken by Ranjeetsingh or were ever in his possession or recovered from him, or that Bherusingh-respondent No. 2 abetted by aiding the receipt of the bribe. Accordingly, he acquitted both. The case is of special interest as showing that the mere marking of notes or property is not the magic formula for detection, and the neglect of ordinary precaution making a planting very probable.

Even apart from the merits of the allegations and counter-allegations, the learned Government Advocate has urged, to begin with, that the learned special Judge has acted with an inconsistency bordering on "perverse"; because, he has found as a fact that the respondent No. 1 went to the place of Thawarsingh and demanded the bribe and actually made it appear though it was not true that there was a warrant for his arrest. Whether or not the gratification was actually paid, it is urged that the finding in regard to the demand would itself justify a conviction u/s 161, Indian Penal Code because that applies to a public servant:-

Who accepts or obtains or agrees to accept or attempts to obtain.....any gratification whatever.....as motive for doing or forbearing to do any official act.

No doubt, the charge is in terms about the actual acceptance of the gratification as motive for forbearing from executing the warrant of arrest, and tearing it away and similarly of abetting by aiding the actual receipt by the principal offender of the gratification; but it is argued on behalf of the State that, on these materials, a charge of attempting to obtain the gratification could have been framed, and that this case is one without prejudice; therefore on the factual findings recorded by the learned special Judge himself, he ought to have convicted the respondent No. 1 at all events for the offence of attempting to obtain and Bherusingh for abetting such attempt.

A second preliminary point is also urged that the evidence adduced about the actual obtaining of the gratification fits in with the special Judge's finding about the demand for a bribe and while the latter was believed, the former should also have been considered to be true.

The real difficulty for the State on these preliminary grounds is that, for one thing, the finding in regard to the earlier stages of the happening is not legally sound and even if it were, a conviction cannot be recorded in this case on the possible alternative charge, because it was not present as such to the accused during the trial and would in any event lead to a miscarriage of justice. Reserving consideration of the merits of the case, one has only to read paragraph 33 of the judgment of the special Judge. There were two accused and whatever the merits of Bherusingh's defence, it was absolute exculpatory and should not have been used, in any view of the matter, as evidence against Ranjeetsingh. The special Judge does use it and explains it away thus:-

The statement of Bherusingh accused u/s 342, Criminal Procedure Code is not being used as evidence against Ranjeetsingh, but is being utilized to lend assurance to the prosecution evidence in that respect.

With all respects, it is clear that the learned special Judge has actually used Bherusingh's statement as evidence against the accused Ranjeetsingh. The prosecution evidence in any criminal case is not something hanging in mid-air unconnected with the accused. In this case, Bherusingh's statement being exculpatory is obviously not evidence against himself. If it is to be used "to lend assurance to"-in other words, to strengthen or corroborate-the prosecution evidence, it is only against the other accused Ranjeetsingh. The conclusion arrived at by his method is obviously illegal.

Apart from that, there is the question of prejudice. There may be cases in which the culminating incident which is the subject-matter of the charge, is very closely connected-both, in time and place-with the other incidents; so that when the attention of the accused is fixed on this culminating incident mentioned in the charge, it is not far away from the rest of the allegations; but this is not the position here. As will presently appear, we are dealing with a long and rambling story and happenings in the course of a fortnight all over the place, so that, when the accused is called upon to answer a charge based on one incident (ever the culmination) he may not be aware of the legal implications of the other incidents-may not, at all events, be considering their importance. Charged with the actual receipt of the gratification, he is at pains to repudiate it and is not obviously giving equal attention, or any attention as for that matter, to what is supposed to have happened several days or a week earlier. He would touch upon them generally; but he would not be concentrating his attack on the allegation in the charge. Thus, this is a case in which the absence of a charge as such on the attempt to obtain gratification will seriously prejudice the accused, if having been charged with obtaining it at another

time and place, he is sought to be convicted for attempting to obtain it. This disposes of the two preliminary points raised on behalf of the appellant.

In the district of Ujjain, there are two contiguous thanas-Mahidpur and Makdone. The respondent No. 1 Ranjeetsingh was posted at Mahidpur thana (as will be referred to by the Sub-Inspector). In the Makdone thana at some distance, there is a village-kheda which is the home of Thawarsingh-apparently, a well-to-do cultivator doing moneylending and directly or indirectly connected with sale of liquor. At the time of the trial, he was a joint licensee for sale of liquor along with his brother-in-law Shivsingh P.W. 4 the other brother-in-law Amarsingh P.W. 9 being possibly another co-sharer. They live in the village Panchola about a mile from kheda and also in the Makdone thana. It is alleged that on the 8th December 1955, Ranjeetsingh passed through village kheda on his way to the Makdone police station and made some inquiries about Thawarsingh. There is however, no direct evidence and Thawarsingh speaks of hearing it from somebody else who, however, has not been examined. On the next day, Ranjeetsingh actually came to kheda and according to Thawarsingh, stayed with him for the night eating his food and drinking liquor, which Thawarsingh was in a very suitable position to supply. While eating and drinking, the Sub-Inspector stated that he was in possession of a warrant from a Court at Agar for Thawarsingh's arrest and suggested that he would not execute it but tear and throw it away if Thawarsingh paid him 100. Nothing particular happened on the 9th but according to the prosecution, the suggestion was slowly working, Ranjeetsingh himself leaving either on that day or on the next morning and moving farther to a place called Raghavi where he arrived on the night of 10th.

Meanwhile, the mention of a warrant of arrest naturally upset Thawarsingh. He went and reported to his brother-in-law and asked them to find out, if necessary after associating some more villagers, whether indeed there was a warrant for his arrest. Shivsingh and his friends tried to find out from Ranjeetsingh who was not prepared to open out, but brushed aside their inquisitiveness by saying that the police do not go about showing the warrants. Still, for about a week there were movements by the friends of Thawarsingh, a batch of them going to the thana at Mahidpur and satisfying themselves when Ranjeetsingh showed them some yellow paper with Thawarsingh's name written and told them that it was the warrant. Meanwhile Bherusingh who really belongs to a village called Dhabli in the Mahidpur thana area, makes his appearance in the story. He has relations at kheda and seems, like the other visitors to this village, to have a softness for liquor. Between looking up his relations and drinking himself to sleep Bherusingh suggested to Thawarsingh and his friends that he could help in fixing up things with Ranjeetsingh. Bherusingh appeared at the thana when the party went to investigate the existence or otherwise of the warrant and made it clear to the villagers that the darogaji would accept the bribe but only through him. It is extra-ordinary that during the one week or so, when they were all moving about, it did not strike any of

them that the warrant at kheda would be executed normally by the Police of Makdone and not of Mahidpur, and that they might as well ask the Makdone police what it was all about; and this, in spite of the fact that the party included man of business and licensees who go and meet excise and police officers from time to time,

Be that as it may, on 17-12-1955, two complaints or reports-Exs. 1 and 2, worded exactly alike, were handed in, respectively, at the Makdone thana and at the office of the Tarana Congress Committee signed by Thawarsingh. Thawarsingh's own account of their preparation is vague; but the point is they are long and circumstantial accounts setting out events which had already become complicated and praying that the matter should be examined as early as possible and justice done to him. Neither report, it may be mentioned here, refers to Bherusingh although the allegation is that from the earlier stages, he was offering to be, and was practically accepted as a sort of middleman between the intending giver and the intending receiver of the bribe.

It is not clear what action the Sub-Inspector, Makdone took; but before things could move from there, they started moving from the Tehsil Congress Committee at Tarana. The petition was at the first instance received by Motilal-President, who passed it on to the Secretary Laxmi Narain alias Goru Bhaiya. He in his turn endorsed it on the 19th to the Superintendent, Police, Ujjain in the following peremptory language-

Forwarded to the Superintendent, Police, Ujjain for necessary action, please.

The latter for his part, very properly made it over to Ramnarayan Dube, Deputy Superintendent of Police in charge of the anti-corruption Branch who somehow happened to be at Ujjain at the appropriate moment. Whether Laxminarayan had also peremptorily phoned Ramnarayan Dube at Indore for this purpose, or whether his being at Ujjain on that occasion was a pure coincidence, is not of much consequence. It was decided that a trap should be laid. Though Laxminarayan and Thawarsingh were available, it was too late by that time on the 20th and accordingly, the trap was to be laid on the 21st not quietly in secrecy as is usual, but with a certain amount of noise and elaborateness, by a party starting from Ujjain and collecting various persons on the way, as it were, in a procession.

On that day, the Deputy Superintendent of Police and Laxminarayan collected among others, Shivsingh and Devisingh P.Ws. 4 and 7; they were to take Bherusingh also, not as one of the trappers presumably, but as the middleman. The arrangement was that the ten-rupee notes that were specially marked should be taken by Shivsingh along with Bherusingh to the Sub-Inspector at his thana or his quarters; then they should be passed on to him. Devisingh was to stand at a short distance in view of Shivsingh; the search party proper headed by Ramnarayan Dube, Laxminarayan and others should be at a short distance out of sight of the officer. As

soon as the money was passed, Shivsingh was to drop the chader or towel from his shoulder, a signal that Devisingh was to pick up, and to pass on to the search party who were to walk in, search Ranjeetsingh, recover the notes and do the rest.

According to the prosecution things went even one better than the plan. On the way, Shivsingh looked up for Bherusingh at Dhabli, but was told that he had already left for Mahidpur, obviously without any news of trap that was being laid, or the possibility of his becoming an accused. The rest of the party stayed at the Bungalow while Shivsingh and Devisingh walked in the Bazaar and found Bherusingh. Without divulging the intended trap, they fixed it up with him that he should take them to the Sub-Inspector (Ranjeetsingh) and give him the 100 which was the gratification for tearing off unexecuted the arrest warrant which, of course, did not exist. There they learnt that the Sub-Inspector was not on duty on that day (which incidentally fits in with his own story of being ill and on leave); so they went to his quarters. Devisingh took his position at a suitable place behind the door while Bherusingh and Shivsingh entered the room in which Ranjeetsingh was sitting already with two or three others chatting with him. There was a cot and some chairs including a mondha or cane chair on which Ranjeetsingh was just then sitting. Bherusingh made the significant introduction whereupon the Sub-Inspector is alleged to have asked why he had brought them as the matter might still be left hanging. Devisingh placed in the hands of Shivsingh the ten notes which had already been listed in a panchnama and marked with a dot below the Ashoka Crest on each of them. Shivsingh put the money into Bherusingh's hands and insisted that it should be given to the darogaji in his view, so that he could satisfy Thawarsingh that the money had actually been paid and not secreted by the intermediaries. Accordingly, Bherusingh walked to the officer and threw the bundle of notes on his lap. The Sub-Inspector, in his turn, picked the bundle and pushed it below his seat, all this in the presence of several visitors who happened to be there. Nothing was said, but Bherusingh made a significant gesture by his fingers which Shivsingh, at any rate, understood to mean "100". By then the agreed signal was given and Gorubhaiya and the District Superintendent of Police and others entered. The later was presumable not in uniform, and so showed his identity card to the Sub-Inspector and said that he wanted to search. He and his assistant police officer gave personal search. Thereupon he and Laxminarayan began to search the clothing of the Sub-Inspector but to no effect. Thereupon the Deputy Superintendent of Police and possibly, some of his helpers bodily lifted the Sub-Inspector from his chair as the latter was saying that he was ill and could not easily stand up. At this moment, the bundle of notes was found on the cane chair and was picked up by one of the two on which there is some vagueness. Then a case was started.

The defence of Ranjeetsingh was that he did not go to the village Kheda and he knew nothing of these matters and he did not receive any notes. That day, he was too ill to attend to his duties and was resting in his quarters when these people came in. Already there were some visitors, a few of them whom he had called as

defence witnesses. The Deputy Superintendent of Police and his party made a search but found nothing. None of them gave personal search and when they bodily lifted him, somebody picked up the notes and charged him with having kept them in his possession. He certainly did not keep them.

Bherusingh was not thought of at any early stage either as a possible intermediary or an abettor; in fact, none of the earlier papers mentioned him and the only reference at this stage to Bherusingh is obviously latter insertion in the punchnama "marphat Bherusingh". There he was not even interrogated. This is a mysterious part of the story, and can only be understood on the theory that the organizers of the trap had intended that Bherusingh should pay another part, but at a latter stage changed their mind or were forced to so by Bherusingh's own conduct. Be that as it may, Bherusingh's defence is that because of certain earlier happenings, it was greed that Shivsingh should give him 400 out of which he gave 100 on that day at Mahidpur where Bherusingh had come to start a case about the loss of a buffalo. He took the money and went to see the Sub-Inspector in connection with the theft case. The latter was resting and Bherusingh sat down there and casually kept the notes on the cane chair; the Sub-Inspector came and sat on it with the result that later on when the search party came and lifted him, the notes were found there. It is this part of the statement which the learned special Judge has used as he says "to strengthen the prosecution evidence."

The learned special Judge was not inclined to believe the story of recovery because of its intrinsic improbability, and the absence of any stage at which it could be found that the Sub-Inspector had consciously taken the money in his possession. This is a very proper finding; but I am inclined to hold that the position is far worse for the prosecution. There is no good assuming that merely marking certain notes and picking them up from somewhere near the accused would prove the case of their receipt. Apart from the intrinsic improbability, the entire device of the trap, was altogether useless when everyone who was allowed to be present was not searched by or before the Sub-Inspector. As pointed out by the learned special Judge, it was a small room and already 8 or 10 persons had crowded in. There was of course, the Sub-Inspector at one stage sitting on his cane chair and had probably been resting on a cot a short while before. There were the visitors already, three of them according to Laxminarayan and probably, one or two more according to the Sub-Inspector. Then there were Devisingh, Shivsingh and Bherusingh, the last also being inside the room whatever might have been the purpose with which he had been invited to join. The party that entered consisted of four persons namely, the Deputy Superintendent of Police one Indoorkar-another police officer, a constable and Laxminarayan. It was perfectly easy in that confusion for anybody, as for that matter, Laxminarayan himself who had been doing the search, and who did not give his own personal search to the Sub-Inspector to slip the notes on to his chair.

Certain precautionary steps are necessary before such searches for marked notes or property to assure the Court that there has been no planting by designing or over-zealous people. Whenever they are discovered, there are two-and for all practical purposes, only two alternatives. The accused might have intentionally received the marked goods in which event the factual portion of the prosecution case can be deemed to have been proved. Alternatively, a member of the trapping party or one in the secret might have planted the goods either pushing it into the personal apparel or some part of the residence or just letting it drop. It is not necessary for the accused to prove definitely that the planting had been done by such and such a person at such and such point of time. Obviously, if it is possible, no planting could have happened. All that he has to do (and can be expected to do) is to show that in the circumstances, planting was probable and since he had not consciously received the goods and they have been found all the same, planting is the only alternative.

The main precaution is that as few people as possible should be permitted to be present at the time of the search. Certainly, there is no sense in trying to make a search, which at all events is attended by excitement, in the middle of a big crowd; if it is necessary to have a number of persons about, the officer responsible for the search should see that they are authorized, have legitimate functions in the conduct of the search, and subject at that time to his control. It is usual to retain in the party the person who tendered the money or the goods so that he could point out. Sometimes the officer likes to have his colleagues or subordinates, and this is, particularly advisable where the work of search requires a number of hands either on account of the size of the premises the number of suspects to be searched, or because of the risk or physical danger. In addition, whenever there is a house search, properly so called, it is necessary to have two respectable residents of the locality; naturally, persons unconnected with the police. In this case, for example, it is difficult to understand what part the three or five visitors were to play and why they were not requested to go out. The Deputy Superintendent of Police thought it necessary to associate two officers with him and that by itself may not be a serious matter. Out of Shivsingh and Devisingh, one need alone have been present. As for Bherusingh, if it was considered proper to treat him as accused, then he should at least have been cautioned then and there. Laxminarayan himself is not a member of the police force, nor a resident of the locality, nor a person who had himself handed in the bribe or was going to do so. If somebody had reported to him that the Sub-Inspector of Mahidpur, wanted to, receive a bribe, he had only to bring it to the notice of the authorities. Having done it, he like any other citizen had no more function in this regard, unless he came under one or other of the descriptions already given. The association of this unauthorized person and his allotment of important function to him renders the results of the search most suspect. It is essential that whoever is allowed to be present, must give personal search to the accused. In this case, Laxminarayan stated that after entering, the two senior

police officers gave personal search. He himself according to him was searched before going into the house of the Sub-Inspector-"Jane ke pahile meri jama talashi le li thi"-obviously, by the Deputy Superintendent of Police in the absence of the person in jeopardy. The Sub-Inspector was the person most in danger, and it was his personal search that was left to Laxminarayan, who had no legitimate business in this connection; and failure on his part to give his personal search to the Sub-Inspector vitiates the entire search. Nothing was easier than for Laxminarayan just to plant when he was doing the personal search and when either he, or the police officers were bodily lifting the Sub-Inspector. Similarly, the several other persona who were to be present at that time, were not searched by the Sub-Inspector.

In the result, the discovery of the notes from the chair of the Sub-Inspector is most suspicious and was most likely the result of a plant and not of his consciously receiving it. As for the alleged earlier happenings, they are so highly improbable that they carry no conviction. The report itself was belated, that is to say, eight days after the alleged demand. No doubt, the special Judge seems to have thought that there had been a demand on the 9th; but he arrives at the conclusion by the improper admission of the exculpatory statement of the co-accused.

In the result, I find that the appeal is without substance and I would accordingly dismiss it.

V.R. Nevaskar, J.

I agree.