

(1949) 07 BOM CK 0014
Bombay High Court (Nagpur Bench)
Case No: None

Pandita Gangaram

APPELLANT

Vs

The Crown

RESPONDENT

Date of Decision: July 18, 1949

Acts Referred:

- Penal Code, 1860 (IPC) - Section 161

Hon'ble Judges: Hemeon, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Hemeon, J.

The applicant Pandita ex-constable was in three cases convicted Under Section 161, Penal Code and sentenced to undergo consecutive term of 6 months, 4 months and 8 months respectively and to pay respective fines of Rs. 50, Rs. 100 and Rs. 200 by the First Class Magistrate, Raipur. These three cases are Nos. 22, 23 and 24 of 1947 and in them Seth Nagarmal was convicted and sentenced to undergo consecutive term of 6 months, 4 months and 8 months respectively and to pay respective fines of Rs. 100, Rs. 100 and Rs. 200 u/s 161 read with Section 109 ibid. In criminal case No. 23 of 1947, Om Prakash was convicted and sentenced to undergo 4 months rigorous imprisonment and to pay a fine of Rs. 100 u/s 161 read with Section 109 ibid, while in criminal case No. 24 of 1947 Bansidhar was convicted and sentenced to undergo 8 months rigorous imprisonment and to pay a fine of Rs. 200 under the same provisions. In appeal the Sessions Judge, Raipur, set aside the convictions and sentences in Criminal cases Nos. 22 and 23 of 1947, but in criminal Case No. 24 of 1947 the convictions and sentences were upheld. Pandita has now come up in revision to this Court and with his application will be considered criminal Revision No. 487 of 1948 filed by Nagarmal and Bansidhar.

2. The prosecution case was, briefly stated, as follows. Pandita, who was a police constable attached to the Kasdol police-station, Baloda Bazar tahsil, Eaipur district was on leave for a month from 11th June 1946 and he halted on 6th July 1946 from 10 a. m. to 1 p. m. at the house of Nathmal (P.W. 2) at mauza Gangai. Having misrepresented that he was going on duty to supervise the bazar arrangements at Bazarbhata and Lawan, he went away; and while he was being carried in a ferry across the Sheonath river in order to go to mauza Kukridih Kala, he met Jhumak (P.W. 3), Dashrath (P.W. 4) and Mabadoo (P.W. 5), who were carrying 5 pieces of dhoti, and learned from them that they had purchased them from the applicant Seth Nagarmal of Kukridih Kala for Rs. 23-10-0 of which three cost Rs. 5 each and the remaining two Rs. 4-6-0 each.

3. Pandita noticed from the prices printed on the cloth that the vendees had been over charged Rs. 10-14-0. He took them back to Kukridih Kala and after he had a talk with Seth Nagarmal and others directed the vendees to see him next morning in order to go to Masturi police-station to make a report there. He took from them the 5 dhotis and Rs. 6-6-0 which Seth Nagarmal had given them as change from the sum of Rs. 30 paid by them. During the evening, Pandita met Seth Nagarmal with the consequence that on the following morning he told the vendees that no offence had been committed and returned the dhotis to them. There, after, he returned to mauza Gangai and was followed by the vendees and others. At Gangai some person complained to Nathmal (P.W. 2) of Pandita's failure to make a report and when he broached the matter to Pandita, the latter admitted that he had received Rs. 90, a carpet and 2 bed-sheets on account of his failure to report the matter.

4. After Nathmal had pointed out to him that the matter was known and he would lose his employment, Pandita replied that he would make a report and not let the matter rest. He also sent Ganesh (P.W. 6), kotwar, to bring the vendees with the dhotis and had a report written by them. When Ganesh returned with Dashrath and Mahadeo and said that Jhumak had gone to Lawan after having locked up the dhotis, he told them to go to their places and return later in the day with Jhumak and the dhotis so that they could all go to Masturi and make a report there. Ganesh was given the carpet and 2 bed. sheets and directed to be ready in the afternoon when the journey to Masturi would be undertaken.

5. Nagarmal and Omprakash came to Nathmal's house and had a talk with Pandita ; and when Jhumak arrived with the dhotis the journey to Masturi was postponed because of heavy rain. During the night, Nagarmal implored Pandita to give up the case but Pandita was not agreeable to this. Omprakash then obtained Rs. 50 from Nagarmal and forced it on Pandita who compelled Nathmal to keep Rs. 30 of that amount.

6. Next morning (8th July 1946), Pandita paid Rs. 10 to each of the vendees for the expenses of their trip to Masturi and accompanied them to Kukridih Kala where Nagarmal lives, At this place after talks between Pandita, Nagarmal, BanBidhar and

Shankardas, patwari, they set out at noon with the vendees and Ganesh, kotwar, towards mauza Son where Bansidhar resides. On arrival, the party went first to Bansidhar's house and then to Shankardas's where Shankardas paid the vendees Rs. 30 and adjured them not to reveal the profiteering incident to anyone. After supper, Pandita again set out for Masturi with the vendees and Ganesh and, on the way, had a talk with Nagarmal, Bansidhar and Shankardas. Bansidhar obtained Rs. 300 from Nagarmal and paid it to Pandita who gave BSection 140 of that amount to Shankardas and BSection 10 to Ganesh. Pandita also gave Shankardas the dhotis, carpet and bed-sheets.

7. The parties then dispersed and the vendees reached Bazarbhata, their village, next morning. They reported the matter to the village officers and went with them to the house of Nathmal at Gangai. Nathmal had, mean, while, asked Bodhandas (p, w. 7) to take the Rs. 30 which Pandita had given him and make a report at Kasdol police-station and Bodhandas, who had pointed out to him that the vendees also wanted the RSection 10 received by each of them to be taken into consideration, promised to take all four amounts (Rs. 60) to the police-station next day, as it was raining. In the evening, Nathmal wrote the report Ex. P. 2A regarding the incidents of 6th and 7th July 1946 and the report Ex. P-2B regarding the incident of the 8th of that month ; and these reports with the Bs. 60 were delivered at Kasdol police-station on 10th July 1946. On the same day, Ganesb made a report: vide Ex. J?-5 at the same police-station and deposited the RSection 10 there.

8. Next day, Pandita rejoined duty, after-leave, at Kasdol police-station and endorsed on his duty certificate ex. p-1 an account of a visit to Gangai where Nathmal told him that Beth "Nagarmal, his enemy, should be trapped and gave RS. 30 to Jhumak, Daahrath and Mahadeo for that purpose. When these three returned after the purchase of the cloth from Nagarmal, they told him (Pandita) that they had been charged RSection 12.12-0 and he said that, as the correct rate had been charged, there was no of fence. Nathrnal remarked that he should be challaned. Then, Pandita continued, he made inquiries in Kukardi in the presence of Bhankerdas, patwari, and when he met Nathmal and the kotivar of Kukardi, they threatened him and said that they would make a report against him.

9. The incidents with which I am now concerned are those referred to in para. 6 supra, i. e., those of 8th July 1946, Shankardas was allegedly involved in them, but he was acquitted by the trial Court which made the following re. marks prior to ordering his acquittal:

As for accused 4 Shankardas Patwari his presence at the time of giving and taking the bribe of Ea. 300 cannot be doubted. It may be as stated by the Revenue Inspector Netram (D. W. 2) that he had been to Maaturi on 6th July 1946 and was there on 7th July 1946. I am however not prepared to believe that he continued to be in Masturi on 8th July 1946 the day of the incident and entries in bi3 diary do not help him in view of an assailable evidence of Jhumukdass, Dashrath, Mahadeo and

Ganeehram Kotwar. These witnesses have apparently no reason to depose against Him. Their's is a positive evidence which goes to prove that the patwari was present and Pandita gave him Ea. 140 and the cloth. The evidence of Laxminatayan Patwari (D. W. 8) is not sufficient to prove the alibi and he is apparently brought by the patwari to save his skin. The plea taken by the Patwari Sbankardas therefore falls. The question however is whether he committed the offence of abetment as charged against him. It appears to me that mere presence of a person on the occasion of giving of the bribe is not sufficient to make him an abettor unless it can be shown that he somehow co-operated in the payment of the bribe. I see no such thing and it is clear therefore that the patwari must be held innocent.

10. The applicant Pandita in examination relied on the contents of his duty certificate Ex. P-1, denied that he had, on 6th July 1946, at Son paid Jhumak, Dashrath and Mahadeo Rs. 10 each or that he had, thereafter on the same day, paid Rs. 10 to Ganesh, Kotwar, and given Shankarda Rs. 140, a pair of bed-sheets and a carpet. He attributed the evidence of the prosecution witnesses to the fact that they were men of Nathmal to whom he had not listened.

11. The applicant Seth Nagarmal claimed that he had sold the dhotis at the controlled rate to Jhumak, Dashrath and Mahadeo and denied that he had paid Rs. 300 as a bribe to Pandita. He added that Nathmal and he were always quarrelling over money-lending transactions, that Nathmal resented the fact that he had bid against him in the auction sale in May 1946 of the Vijay Laxmi Rice Mills of Akaltara and that Nathmal had engineered the case against him.

12. Banshidhar declared that he had no talk with Pandita, Nagarmal and others on 6th July 1946 at Kukridih, denied that he had paid Jhumak, Dashrath and Mahadeo each Rs. 10 to purchase their share or that he had received Rs. 300 from Nagarmal and paid them to Pandita as a bribe for the suppression of the profiteering case. He also declared that Nathmal was inimical to him and had incriminated him because of the reasons given by Seth Nagarmal.

13. Sheoprasad (D. W. 1) averred that Jhumak, Dashrath and Mahadeo had been charged Rs. 12-12-0 and not Rs. 23-0-0 for the dhotis supplied to them by Nagarmal. Netram (D. W. 2), Revenue Inspector, and Laxminarayan (D. W. 3), patwari testified to Shankardas's presence at Masturi on 8th July 1946, but I am not concerned with their evidence because, as shown, he was acquitted by the trial Court.

14. With regard to the incidents on 8th July 1946, the evidence of Jhumak, Dashrath and Mahadeo was corroborative and it was reinforced by that of Ganesh (P.W. 6), the proprietor of Kukridih Kala, the village in which the appellant Nagarmal has his cloth shop. It is true that this witness was declared hostile, but this was merely due to the fact that he was endeavouring to shield the patwari Shankardas. The critical time in the case was just after Pandita and his companions left Son to go to Maaturi;

and the following versions of the aforesaid witnesses demonstrate their freedom from substantial divarications. (After quoting the evidence of Jhumak (P.W. 3), Dashrath (P.W. 4), Mahadeo (P.W. 5) and Ganesh (P.W. 6) his Lordship proceeded.)

15. Jhumak, Dashrath and Mahadeo were signatories of the report Ex. P-2B, the relevant portion of which runs as follows:

The constable then said, "Let us go to the polioe-statlion, Masturi, at night as it is a moon-lit night¹ Then we started from there. Jhumukdaa, Dasratb, Mahadeo, Ganeshram and the constable, we five from there went along the way to the police-station, Masturi, saying that we were going to the police-station. The patwari and the Seths might have heard it. Then four men came from there together. They were Sawalrarn, Banaidhar, Nagarmal and. the patwari coming. The patwari then came running to us and asked us to wait for some time as the Setha were coming. We then stopped and remained standing. The Seths came up. Then there under the oulvert (or bridge) of canal the Seths while holding some talk made the constable sit down and then we also sat down. Thereafter the lamp that had been brought along was lighted. Then Seth Bansidhar gave Ea. 30o, three hundred rupees, to the constable and said that he should dismiss the case. The constable then gave RSection 140 to the patwari and RSection 10 to Ganeahram katwar, kept BSection 150 with himself, burnt the writing, etc, that he had done, near that culvert and said that he, the constable, and the patwari had dismissed their caee together. Thereafter the constable handed over the five dhoti pieces, chadar than 1, X(X illegible) and dari 1 which had been given as bribe, to the patwari. I, Jhumukdas and others said that out property should be given to up. Patwari and constable thereupon said to us that they would give us the price o(our cloth in the way. Then when we demanded it in the way, they did not pay. Then the patwari and Setha, etc., went back from there.

16. Ganeah too had made a report vide Ex. p-5 to the police and from it I quote the following extract:

....The said constable then asked this man to accompany him to the police-station, Masturi, for report. Along with the three men named above and the constable, this man set out for Maaturi. At mauza Son in the way the "patwari of Kukurdi whose name is not known, Nagarmal Seth, Bansi Stth and Sawalmal Sath met these persons. They had some talk♦it is not known what talk♦with the constable in seclusion, After the talk Bansi Beth gave lie. 300 to the constable. Those notes were counted by the constable and the patwari who divided the money between themselves. Out of them the constable gave one ten-rupee note to this man near the par (embankment) of canal and said that he was giving that note to this man as a reward and asked this man to take it and return home. This man returned from there. Taking Jhumuk, Dasrath and M&hadeo in his coropany the constable went away towards mauza Lohari. The Setha also went back to their houses. Since the constable had been taking this man along for making a report and had after giving

the note as a reward sent this man back, this man grew suspicious and for this reason he has brought the ten-rupee note given as a reward by him for depositing it at the police-station.

The words "the three men named above" referred to Jhumak, Dashrath and Mahadeo.

17. The only possible conclusion is that in the vicinity of Son, Nagarmal had through Bansi. dhar paid on the evening of 8th July 1946 a sum of Rs. 300 to Pandita who gave Rs. 140 of it to Shankardas patwari, Rs. 10 to Ganesh and re-tained the balance for himself. The payment of the Rs. 800 necessarily indicated that Nagarmal had done something nefarious or something which he thought might involve him in trouble; and this something plainly related to the sale of the dhotis to Jhumak, Dashrath and Mahadeo. They claimed that they had been charged Rupees 23.10-0 for them, an amount which was Rs. 10-14-0 in excess of the control price, and that Pandita came to know of it when he questioned them. Nagarmal was sent for and when questioned remained silent, according to Jhumak, but Dash, rath and Mahadeo both stated that he asserted that he had charged the correct price.

18. Even if, however, he so asserted, it did not signify that he had, in fact, charged the correct price, I am aware that the carbon copies of Exa. D-2 & D-4 concerning the transactions in question show that the dhotis had been sold in accordance with the control rate and that it would appear that Jhumak signed the original of Ex. D-2 while Dashrath and Mahadeo appended their thumbmarks to the originals of Exs. D-3 and D. 4, but this did not necessarily signify that they had not paid more than the amounts stated therein and it is common knowledge that in many profiteering cases the amounts shown in cash memos are less than the amounts actually paid by purchasers. It seems to me also that Nagarmal would not have been so deceived by Pandita if he had not overcharged Jhumak, Dashrath and Matador; and with this is the extremely cogent circumstance that these three witnesses had not initiated the campaign against Nagarmal. They had, on the other hand, casually encountered Pandita while he was being carried in a ferry across the Sheonath river and it was he who, having learned of the excess charges from them, approached Nagarmal in the matter. They had no reason to give false story to Pandita when he adventitiously found them with the dhotis and they were not inimical to Nagarmal. In fact, they were old customers of his and I am not prepared to believe that they were part of a conspiracy engineered by Nagarmal for the purpose of embroiling him.

19. The contention that the evidence of Jhumak, Dashrath, Mahadeo and Ganesh could not be accepted without corroboration, as they were accomplices, cannot prevail. This argument was founded on the assumption that they had each received Rs. 10 as hush money and that Pandita had given Jhumak, Dashrath and Mahadeo a sum of Rs. 10 "to meet home expenses and also journey expenses." These amounts were, however, forced on them and they returned them when they made their reports to the police. Moreover, they were not "particeps

oriminis" as they could not be said to have joined hands with Pandita for the purpose of securing a bribe from Nagarmal, with Nagarmal for the purpose of bribing Pandita so that Nagarmal would not be proceeded against for having overcharged; them for the dhotis or even with Nathmal for the purpose of bringing Nagarmal into trouble. They were, in other words, not accomplices in the real sense of the term, but humble persona who found themselves unwittingly on the fringes of a series of events in which to them men of substance or importance were involved. More, over, scrutiny of their evidence demonstrates that it is substantially true,

20. Much was made of the fact that copies of the statements of these witnesses to the police were not made available to the defence. Banwari-lal (P.W. 8), Sub-Inspector, stated that he had recorded the statements of the witnesses separately and sent them to the Circle Inspector with the diary; and Jhumak said :

Our statements were taken by Kasdol Sub-Inspector. We were questioned separately and he recorded something.

It was, however, reported that the statements were not with the Circle Inspector; and the diary itself shows that the investigating officer had merely recorded a digest of the entire information gleaned from a batch of witnesses after interrogation.

21. This did not make the evidence of the witnesses in question inadmissible, but as was laid down in AIR 1948 74 (Nagpur) where there is prejudice of this kind to the accused, the testimony of such witnesses must be received with extreme caution. The extent of the prejudice is difficult to gauge, but in this case it cannot have been appreciable. The provision to the defence of copies of statements made to the police to enable it to see what the witnesses first said and to contradict their evidence. Here material for that purpose was provided by the reports Exs. P-2-B and 5 and the case was thus not one in which the defence was deprived of every statement made to the police. Nor is there the slightest reason to suppose that the witnesses would have told the police something radically different from the contents of the reports and from their versions in Court.

22. Of the guilt of Pandita there can be no question and it would appear that after he came to know that Nagarmal had overcharged Jhumak, Dashrath and Mabadeo he embarked on a campaign of squeezing as much money as he could from him. This too was the view of the learned Sessions Judge whose judgment contains the following passages :

There is no doubt that the accused Pandita had a sinister object of squeezing the maximum amount of gratification from these blackmarketeers and was using the perpetual threat of the report as a lever to achieve his object.

This was perhaps a frantic effort of the accused constable Pandita in collusion with Shankardaa patwari to squeeze money from the accused Nagarmal, as he failed till

then to achieve his purpose.

Pandita's conviction is maintained,

23. The question then is whether Nagarmal and Bansidhar were rightly held liable for the abetment of Pandita's offence. Ordinarily, as *Illus. (a)* to Section 109, Penal Code, shows, a person who offers an illegal gratification to a public servant for any of the purposes stated in Rule 161 *ibid* is liable for abetment of an offence under that section. Dr. Kedar contended, however, that the position is different when a bribe is demanded by a public servant and he quoted the following observations of the authors of the Indian Penal Code (page 385 of Eatanlal's "Law of Crimes", 17th edition):

But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not propose that such a person shall be liable to any punishment.....we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant, who, unless temptation had been put in his way, would have acted uprightly.

24. This contention which was also raised in *Emperor v. Dinkar Rao*, 55 ALL. 654 : AIR 1933 ALL. 613 : 34 Cri. L.J. 623 was repelled by the Division Bench in the following terms :

It is interesting to note that the authors of the Code did not contemplate the punishment of a person who complies with a demand made by a public servant for a bribe, but it appears that their views were not accepted by the Legislature. The Code does not give effect to their views. We are bound to give effect to the language of the statute and cannot give effect to draftsmen's views which were probably intentionally rejected by the Legislature.

25. That was a case in which a Judge had, without any guilty intention and with the object of trapping the bribe givers, suggested his willingness to take a bribe, indicated its amount and in due course received it, The Division Bench held that the bribe givers were in virtue of *Bxpl, 3* to Section 108 liable for abetment of an offence u/s 161, Penal Code. They were also of the view that if the Judge had taken the money as a bribe, i. e., with guilty intention, the bribe givers would have been guilty u/s 109 of abetting an offence u/s 161.

26. The claim that Nagarmal and Bansidhar were not liable as they acted under duress is not tenable either in law or in fact. A Full Bench held in *Queen-Empress v. Maganlal*, 115 (P.B.), that the limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal are those prescribed in Section 94, Penal Code, and that witnesses who in order to avoid pecuniary injury or personal molestation had offered or given bribes to a public servant were abettors

of the offence of taking an illegal gratification. Jardine J, after an exhaustive survey of earlier cases said :

It follows from all these authorities that in dealing with the question of guilty or not, the law does not, where there is no fear of instant death, require the Court to discuss the philosophy of free will, or determine whether the person who bribes to secure some advantage to himself is a victim of extortion, or feels helpless or not. Except in mitigation of penalty, this sort of language is rather rhetoric than relevant argument.

27. Even on the facts there was in the present case not so much duress as hard bargaining as to the amount to be paid to Burke a report against Nagarmal for having profited in his transactions with Jhumak, Dashrath and Mahadev. Pandita was not satisfied with the amount offered and set out for Masturi police-station on 8th July 1946. Realising the peril in which he stood, Nagarmal and his associates resolved to increase the amount of the bribe and Pandita was, as shown, satisfied with the Rs. 800 then paid to him. Bhankardas, who received Rs. 150 of the amount was perhaps fortunate in his acquittal, but both Nagarmal and Bansidhar were rightly found liable u/s 161 read with 18. 109, Penal Code and their convictions thereunder are upheld.

28. The sentence of eight months rigorous imprisonment and a fine of Rs. 100 awarded to Pandita was not excessive, as he was the prime mover in the whole affair and took undue advantage of the fact that he was a police officer. The sentences of eight months rigorous imprisonment and a fine of Rs. 200 awarded to Nagarmal and Bansidhar were excessive in comparison with the sentence awarded to Pandita who was responsible for the initiation of the plan to induce Nagarmal to purchase his silence. Their moral guilt was less than his and they are entitled to a proportional mitigation of punishment. The sentences of imprisonment awarded to them are in each case reduced to four months rigorous imprisonment and they shall each pay a fine of Rs. 200 as already ordered.

29. Pandita's application is dismissed and so is with the aforesaid modification that of Nagarmal and Bansidhar.