

A

SALIMKHAN SARDARKHAN

v.

STATE OF GUJARAT

SEPTEMBER 18, 1985

B

[AMARENDRA NATH SEN AND RANGANATH MISRA, JJ.]

Indian Penal Code 1860, Section 161 & Prevention of Corruption Act 1947, section 5(1)(d) and 5(2).

C

Pòlice constable - Acceptance of bribe - Charge of - Demand and acceptance of bribe - Denial of - Claim of bribe amount being inserted in pocket - Defence plea accepted by Trial Court and acquitted - Conviction by High Court - Whether valid.

D

The appellant who was a Pòlice Constable was charged under section 161 IPC and section 5(1)(d) read with section 5(2) of the Prevention of Corruption Act, 1947. The prosecution case was that the appellant demanded a sum of Rs. 50 from PW 1 who was a taxi driver and in the habit of parking the taxi where parking was prohibited. PW 1 informed the Anti-Corruption staff, a trap was laid and five Rs. 10 currency notes were treated with phenolpht-halien powder, made over to PW 1 to be paid as bribe. PW 9 the Inspector supervised the trap. After the currency notes were received by the appellant PW 9 and others recovered the money from him. The currency notes were dipped into the mixture of sodium Carbonate and the same turned rosy in colour. Similarly the pocket of one shirt of the appellant and his fingers were put to test and these too turned rosy.

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The defence of the appellant was a total denial of the bribe having been demanded and taken and he stated in the statement under sec. 313 Cr. P.C. that the amount was inserted into his left hand side pocket by PW 1.

G

In the Trial Court it was contended on behalf of the appellant that PWs. 3 and 8 the Pànch witnesses were interested in PW 1 and that PW 1 was previously working in the Pòlice and had been removed from service. The Trial Judge disbelieved the prosecution evidence regarding acceptance of Rs. 50/- by the appellant, and accepted the defence stand that the currency notes had been inserted by PW 1 into the pocket of the appellant, and acquitted the appellant.

H

In appeal by the State, the High Court held that the appellant was a policeman who was about to retire in a short time, that he had been in service for more than 30 years and that it is not possible to believe that a policeman would not come to know if someone inserts currency notes in his left hand side pocket, and reversed the order of acquittal passed by the Trial Court and convicted the appellant.

Allowing the appeal,

HELD: 1. The Trial Court had accepted the defence plea of possibility of insertion of the currency notes without the appellant knowing about it. The High Court reversed the trial court in this regard by merely drawing a presumption on the basis of the appellant having been a policeman. The appellant was already nearing the age of superannuation and had been more than 30 years in service. The High Court lost sight of the fact that the appellant may have lost his agility and that the currency notes could have been inserted without the appellant knowing about it. [857 G-858 A]

2. Very clever people who are young and agile are often victimised by pick-pockets and only when their valuables have been lost the fact is noticed by them. The process in the instant case, is the reverse one. Instead of the pocket being picked, currency notes have been inserted into it. [858 B]

3. The allegation that PWs. 3 and 8 were interested in PW 1 has not been carefully examined by the High Court yet the conclusion of the trial court has been disturbed. PW 7 was admittedly present at the spot and he has categorically spoken that when the appellant's fingers were put into the mixture they did not turn rosy. The trial court had referred to this fact and relied upon it. That evidence which had been accepted probablilises the defence plea that the currency notes had not been received by the appellant in his left hand and, therefore, the insertion of the notes into the pocket of the appellant by some other person was more probable. This is the defence plea which has been accepted by the trial court, and reversal by the High Court was therefore not warranted. [858 D-E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 117 of 1977.

From the Judgment and Order dated 8.7.1976 of the Gujarat High Court in Criminal Appeal No. 11 of 1975.

A Mrs. Sheil Sethi for the Appellant.

S.K. Dholakia and R.N. Poddar for the Respondent.

The order of the Court was delivered by

B A.N. SEN, J. This appeal by special leave is directed against the judgment of the Gujarat High Court reversing the acquittal of the appellant. The appellant was tried for offences punishable under section 161 of the Indian Penal Code and section 5(1)(d) read with s. 5(2) of Act. No. 2 of 1947, on the allegation of having received Rs. 50 as bribe.

C The appellant was a police constable and at the relevant time, on 29.11.73, he was posted at S.T. Bus Stand at Bhabar. PW 1, the informant was plying a taxi and was in the habit of parking the taxi by the side of the bus stand where such parking was prohibited. It is the prosecution case that PW 1 used by pay Rs. 5 per month to the appellant as a consideration for not prosecuting him for such illegal parking. It is the further case
D of the prosecution that a few days before 29.11.73, the appellant told the informant that he should pay him (appellant) a sum of Rs. 60 representing the payment for a whole year @ Rs. 5 per month, as he was in need of money, and it was finally settled that if the amount was paid in lump the informant would get a rebate of Rs. 10 and he would have to pay Rs. 50 only. On the
E information given by PW. 1 to the Anti-Corruption staff, a trap was laid. Five 10 currency notes were treated with phinolphthalain powder and made over to PW 1 to be paid as bribe. PW. 9, the Inspector supervised the trap. PWs. 3 and 8 were called as Panches. At about 8 in the morning on 29.11.73, PW. 1 met the appellant near Jalaram hotel. PW. 9 and his companions remained
F at a distance of about 150 feet. PWs. 1 and 3 went into the hotel along with the appellant. According to PW. 1 he took out the five 10 rupees currency notes and paid them to the appellant who received the notes in his left hand and put them into the side pocket of his khaki shirt. Thereupon as previously arranged, PW. 3 placed orders in loud voice for pondas. At this state PW. 9 and
G others came up to the appellant and recovered the money. It is said that the currency notes were dipped into the mixture of Sodium Carbonate and same turned rosy in colour. Similarly the pocket of the shirt and the fingers of the appellant were put to test and these too turned rosy.

H The defence was a total denial of the bribe having been demanded and taken. The appellant stated under s. 313, CrI.P.C.

that "at about 9.30 A.M. when I was writing my diary in the hotel, Ramji (PW. 1) came in the hotel and sat by my side. Ramji then asked whether I knew the death of one woman. I told him that I do not know any thing about it though I had gone to the hospital to bring the medicine. Then he took tea and got up. The Mankadia Saheb, Pàtel Saheb and Morarji came there, when I was standing up to go to the bus stand then on Ramjibhai making some sign, Mankadia Saheb asked me to take out those notes but I refused to do so and, therefore, Mr. Pàtel took out those notes and counted...."

On behalf of the appellant, it had been contended before the trial Court that PWs. 3 and 8 the Pànch witnesses were interested in PW. 1 and PW. 1 was previously working in the police and had been removed from service. It is on account of this interestedness that these Pànches were not reliable. The learned trial Judge did not believe the prosecution evidence regarding acceptance of Rs. 50 by the appellant and accepted the defence stand that the currency notes had been inserted by PW. 1 into the pocket of the appellant. The entire evidence had been taken into account by the learned trial Judge in reaching his conclusion and he acquitted the appellant of both the charges levelled against him.

This judgment of acquittal was assailed by the State in appeal before the High Court. Dealing with the question as to whether the currency notes could have been inserted into the appellant's pocket, the High Court observed:

"On our part we find it extremely difficult to accept this version. The respondent was a policeman who was about to retire in a short time. He had been in service for more than 30 years. Even if one is extremely credulous, it is not possible to believe that a policeman would not come to know if some one sitting at a distance of 6" inserts currency notes in his left hand side pocket. To us it appears that such a feat cannot be achieved. Even if attempted, the respondent would have come to know about it.

The trial Court had accepted the defence plea of possibility of insertion of the currency notes without the appellant knowing about it. The High Court reversed the trial Court in this regard by merely drawing a presumption on the basis of the appellant having been a policeman. The appellant was already nearing the age of superannuation as found by the High Court and had been for more than 30 years in service. The High Court obviously lost sight of the fact that the appellant may have lost his agility

A and in the peculiar circumstances indicated above the notes could
have been inserted without the appellant knowing it. Very clever
people who are young and agile are often victimised by
pick-pockets and only when their valuables have been lost the
fact is noticed by them. The process here is the reverse one.
B Instead of the pocket being picked, currency notes have been
inserted into it. The view of the trial Court should not have
been discarded merely on the basis of what has been extracted by
us above from the judgment of the High Court.

C The allegation that PWs. 3 and 8 were interested in PW. 1
has not been carefully examined by the High Court yet the
conclusion of the trial Court has been disturbed. PW. 7 was
admittedly present at the spot and he has categorically spoken
that when the appellant's fingers were put into the mixture they
did not turn rosy. The trial Court had referred to this fact and
relied upon it. That evidence which had been accepted,
D probalises the defence plea that the currency notes had not
been received by the appellant in his left hand and, therefore,
the insertion of the notes into the pocket of the appellant by
some other person was more probable. This is the defence plea
which had been accepted by the trial Court. We are inclined to
E think that reversal by the High Court was not warranted.

We accordingly allow this appeal, set aside the judgment of
the High Court and restore the judgment of acquittal passed by
the Trial Court. The bail bonds of the appellant are discharged.

F The appellant was serving as a constable and was due to
superannuate on 10.9.1979. There is nothing on record to show as
to what happened to him when the judgment of acquittal was set
aside. We, however, hope and believe that the reversal of the
judgment of the High Court by us will be taken due note of and
such relief as the appellant is entitled to in regard to his
G service benefits, would be extended to him without any delay.

N.V.K.

Appeal allowed.