

OM PARKASH
v.
STATE OF HARYANA

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JANUARY 17, 2006

[S.B. SINHA AND P.K. BALASUBRAMANYAN, JJ.]

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Prevention of Corruption Act, 1988—Sections 12 and 20—Discrepancy in prosecution case—Delay in filing FIR and contradiction in statements of prosecution witnesses not explained by prosecution—Held, accused entitled to benefit of doubt and acquittal.

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The prosecution's case was that 'U' and his family members were accused in a criminal case in which PW-2, was investigating officer. U and appellant approached PW-2 in his residence and offered a bribe of Rs. 10,000/- for helping them in connection with the criminal case. PW-2 took the money in presence of PW-3 and another person and sealed the same in a parcel and prepared a memo on the basis of which FIR was recorded. The DCP came to his residence after 4½ hours and recorded the statement of the witnesses and took into possession the said sealed parcel. Upon investigation, appellant and U were charged under Section 12 of Prevention of Corruption Act, 1988. Special Judge ordered conviction of appellant, which was upheld by High Court. Hence the present appeal.

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Allowing the appeal, the Court

HELD: 1. Admittedly, the offence took place at 7 in the morning. The police station was about 50 yards away from the policelins where PW-2 was residing. It further stands admitted that telephone services were available both at the civil lines as also the police station. But, no attempt was made by PW-2 to inform the SHO of the police station immediately. The First Information Report was admittedly lodged after a long delay. Having regard to the distance of the police station as well as the CIA Office, it is not understandable as to why the DSP came to the place of occurrence only at about 11.30 a.m. and had remained at the spot for about three hours and as to why the statement of PW-2 was not recorded by the DSP. PW-2 himself said that his supplementary statement had been

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A recorded by the PW-4, but the same was not produced in court.

[429-D-F]

B 2.1. From the records, it appears that whereas according to PW-2, the sum of Rs. 10,000/- was put in a packet and sealed, according to PW-3, the DSP on his arrival opened the said packet, counted the money and put the same again in a packet and sealed the same. The DSP (PW-4) did not make any such statement in this behalf nor explained the discrepancies in the statement of PW-2 and PW-3. No explanation was furthermore offered as to why all parties including the accused persons remained at the spot till 11.30 a.m. although no FIR was lodged. [429-G-H; 430-A]

C 2.2. Admittedly, PW-2 although was not authorized to make any investigation, did so. The accused persons also had not allegedly been arrested but were not allowed to leave the place either. In a situation of this nature, the accused should have been taken to the police station immediately. Out of the two witnesses in whose presence the amount was offered, one was not examined. The reason for his non-examination had not been explained by the prosecution. Moreover, the said witnesses although were allegedly present at the place of occurrence on official duties, the fact as to why two Head Constables at a time from the same police station would go to the residence of an Inspector at 7 in the morning has not been disclosed. The entries in their roznamcha for going to the residence of informant have not been produced. Admittedly, no entry in the roznamcha has been made even on their return to the police station. The first informant and the witnesses are Inspector and Head Constables attached to a police station. They are presumed to know the implications of a criminal case. They are, thus, also presumed to know that the First Information Report unless lodged at the earliest possible time may give rise to a suspicion about the correctness of the entire occurrence.

[430-A-E]

G 2.3. In view of the aforementioned discrepancies in the prosecution case, the defence story set up by the Appellant cannot be wholly improbable. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the Prevention of Corruption Act. Even otherwise, where demand has not been proved, Section 20 will also have no application. The Appellant is entitled to benefit of doubt and the judgment of conviction is set aside.

H *Union of India Thr. Inspector, CBI v. Purnandu Biswas, (2005) 8*

SCALE 246 and T. Subramanian v. State of Tamil Nadu, (2006) 1 SCALE 116, referred to. A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 110 of 2006.

From the Judgment and Order dated 21.07.2005 of the High Court of Punjab and Haryana in CrI. Appeal No. 128-SB of 1993. B

Uday Umesh Lalit, Jasbir Singh Malik, D.K. Sharma, Arun Kumar Singh and S.K. Sabharwal for the Appellant.

Rajeev Gaur Naseem and T.V. George for the Respondent. C

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

The Appellant along with one Umrao Singh was convicted for commission of an offence purported to be under Section 12 of the Prevention of Corruption Act (for short "the Act") and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 3000/- each. On an appeal preferred thereagainst the High Court, however, reduced the sentence to six months as against the Appellant and the sentence awarded to Umrao Singh was reduced to the period already undergone. D E

The fact of the matter is as under:

One Ganeshi Lal, Inspector (PW-2) was investigating the case under Section 302/201 of the Indian Penal Code arising out the First Information Report No. 45 dated 19.2.1992 wherein one Kallu Ram resident of Village Rampura was murdered. Allegedly, Umrao Singh and his family members were suspected to be involved in the said case. The prosecution case is that on 28.5.1992 when Ganeshi Lal, Inspector was present at about 7 a.m. at his residence, the Appellant and the said Umrao Singh came to his house and offered him a sum of Rs. 10,000/- with a request that he should help them in connection therewith. Ganeshi Lal allegedly refused to accept the money stating that he was not in a position to help them but on their insistence he accepted the same in presence of Head Constables Mahabir (PW-3) and Abdul Subhan Khan (Not examined). He allegedly sealed the same in a parcel and prepared a memo on the basis of which a First Information Report was recorded by one Nathu Ram, Inspector, Police Station Narnaul. The Deputy Superintendent of Police (DSP), Headquarter thereafter came to his H

A residence, recorded the statement of the witnesses and took into possession the said sealed parcel. Upon investigation, the Appellant with Umrao Singh were charged under Section 12 of the Act. Upon completion of the investigation, a chargesheet was filed and the Appellant and the said Umrao Singh were put on trial.

B The case of the defence, however, was that in connection with the aforementioned murder of Kallu Ram, as some of their relatives were accused, they came to court. They were carrying more than Rs. 10,000/- with them. The complainant snatched the said amount from their hands and when threatened by them that if they would not receive back the amount, the matter would be reported to the higher-ups, the aforementioned false case was thrust upon them.

Mr. Uday Umesh Lalit, learned senior counsel appearing on behalf of the Appellant, took us through the evidences of the prosecution witnesses and submitted:

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- (i) There is a delay in lodging of the First Information Report.
 - (ii) The prosecution witnesses have contradicted themselves as regard mode and manner of the sealing of the parcel.
 - (iii) There was no reason as to why the DSP should have come to the place of occurrence at about 11.30 a.m. only i.e. after more than four and half hours.
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- (iv) In view of the discrepancies in the statements of the prosecution witnesses, the defence version cannot be said to be wholly improbable.

F Mr. Rajeev Gaur Naseem, learned counsel appearing on behalf of the State, on the other hand, submitted that the delay in lodging the First Information Report cannot itself be a ground to throw away the entire prosecution case. The learned counsel submitted that prosecution case has satisfactorily been proved in view of the evidences adduced on behalf of the prosecution.

G The prosecution in support of its case examined three witnesses. Ganeshi Lal (PW-2) is the complainant. According to him, after accepting the money, he prepared a sealed parcel bearing the seal of GLY. He further stated that the DSP, Shri Jagwant Singh (PW-4) came to his residence and recorded the statement of other witnesses and also recorded his supplementary statement.

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The DSP further took into possession the sealed parcel containing currency notes. In his cross-examination, he, however, could not give details about the principal suspects in the aforementioned murder of Kallu Ram. He also could not say how many suspected persons he had interrogated and how many of them were called by him in connection therewith. Even he could not give the number of such suspects interrogated and detained by him. He accepted that Sham Singh, son of the deceased was chargesheeted in the said case. He further accepted that although he had interrogated Umrao Singh and his relations in the presence of villagers, it did not give rise to any suspicion against them as otherwise he would have arrested them. He accepted that the Appellant had met him earlier. He further admitted that the DSP came around 11.30 a.m. and till then allegedly everybody remained at the spot. The accused persons were not arrested by him but according to him were arrested by the DSP. The DSP remained at the spot upto 2.30 p.m. Admittedly, the DSP did not sign the sealed packet. The Police Station, Narnaul was at a distance of only 50 yards from his residence and office of CIA was at a distance of two kms. from bus stand Narnaul. It has further been accepted that no entries about the coming and going of the prosecution witnesses were made in roznamcha in CIA.

PW-3 is a Head Constable. He alleged:

"...Inspector said that giving bribe as an offence and they said that he would do justice. Then he took the currency notes into possession after turning it into a sealed parcel vide memo Ex. PB. I signed the memo. Then Inspector wrote a rukka and sent Abdul Subhan Khan to the S.P. Office. Abdul Khan returned after giving the rukka in the S.P. Office. Thereafter, DSP headquarter came there. He recorded our statements, took the sealed parcel containing notes vide recovery memo Ex. PD."

In his cross-examination, he accepted that there was a telephone in the policeline and also in the police station. He further admitted that he had not made entry in the roznamcha regarding his visit to the house of Inspector Ganeshi Lal. He had also not made any entry after his return to the police station. He further stated:

"The DSP had taken the parcel into possession after thoroughly checking it and counting it, and he put GLY seal again on it. The DSP remained at the spot for a period of about 5-6 hours, i.e., upto 2.15 p.m. or so..."

A If the DSP had come to the place of occurrence at about 11.30 and left at about 2.30 p.m. evidently he did not remain at the place of occurrence for a period of six hours.

B PW-4 is the DSP. According to him, he only took into possession of sealed parcel containing Rs. 10,000/-. In his cross-examination, he accepted that he did not record the statement of Inspector, Ganeshi Lal nor did he feel the necessity of re-verifying the investigation done by Ganeshi Lal because he had already recorded the statement of other five witnesses and interrogated the accused.

C If Ganeshi Lal was the complainant, ordinarily his statement should have been taken. He further stated:

D "...I did not feel it necessary to ask the purpose from the witnesses Abdul Khan and Mahabir nor did I check their departure from the roznamcha of CIA staff. I believed whatever they told that they have come for some official work. I correctly recorded the statements of Abdul Subhan Khan and Mahabir including marked portion A to A of Ex. DA. I cannot explain the omission..."

There was, thus, even no proper investigation.

E The learned Special Judge in his judgment noticed that the First Information Report was recorded around 11 O'Clock and it reached the Court of Chief Judicial Magistrate after three and half hours. The learned Special Judge, as regard the correctness of the defence, surmised:

F "...As we know, in India, every officer particularly Police Officers are taken with doubtful eyes, in the public works. But, it cannot be said that in every case, the police had acted malafidely. This is to be seen from the evidence whether the case against the accused is made up malafidely or not. As both the accused were suspected in murder case. It is possible for any person who suspected in a criminal case to approach the police officer with the money to scare him away from the police challan. As it is known to every person that police officials are not honest. Even the other officials or officers are not honest what to talk of police officers. Alike it, general public at large cannot be said to be so honest and the said persons can approach the police officers or officials. This is how the accused might have reached in the office of Inspector Ganeshi Lal with the money. The persons

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living in India particularly in Northern India have become so much daring that they can come to the officers or officials and they can offer the bribe in the presence of other officials. Head Constable is nothing but a straw as against Inspector Ganeshi Lal because he is always under the thumb of Inspector. I had seen the Inspector in the court while he had appeared in the court as a witness. Though, he was dressed properly but it cannot be said that inspector was habitual in accepting the bribe.”

The High Court was of the opinion that in view of the fact that the defence in support of its version did not adduce any evidence and in those circumstances the version of the prosecution witnesses cannot be thrown away merely on the ground that they are official witnesses and no independent witness was associated.

The High Court unfortunately did not advert to the evidence of the prosecution witnesses in details nor did it consider the salient features of the case.

It is not in dispute that the offence took place round about 7 O' Clock in the morning. The police station was about 50 yards away from the policelines where PW-2 used to reside. It further stands admitted that the telephone services were available both at the civil lines as also the police station. No attempt was made by PW-2 to inform the SHO of the police station immediately. The First Information Report was admittedly lodged after a long delay. Having regard to the distance of the police station as well as the CIA Office, we fail to understand as to why the DSP could come to the place of occurrence only at about 11.30 a.m. We further fail to comprehend as to why the DSP had remained at the spot for about three hours. It is also difficult to understand as to why the statement of Ganeshi Lal was not recorded by the DSP. Ganeshi Lal himself said that his supplementary statement had been recorded by the PW-4. but the same was not produced in court.

From the records, it appears that whereas according to PW-2, the sum of Rs. 10,000/- was put in a packet and sealed with GLY seal, according to PW-3 the DSP on his arrival opened the said packet, counted the money and put the same again in a packet and sealed the same. The DSP (PW-4) did not make any such statement in this behalf nor explained the discrepancies in the statement of PW-2 and PW-3.

No explanation was furthermore offered as to why all parties including

A the accused persons remained at the spot till 11.30 a.m. although no FIR was lodged. Admittedly, Ganeshi Lal although was not authorized to make any investigation, did so. The accused persons also had not allegedly been arrested but were not allowed to leave the place either. Why they were not taken immediately after the occurrence to the police station is a mystery.

B In a situation of this nature, the accused should have been taken to the police station immediately. Out of the two witnesses in whose presence the amount was offered, Abdul Subhan Khan was not examined. The reason for his non-examination had not been explained by the prosecution. Moreover, the said witnesses although were allegedly present at the place of occurrence on official duties, the fact as to why two Head Constables at a time from the same police station would go to the residence of an Inspector at about 7 O' Clock in the morning has not been disclosed. The entries in their roznamcha for going to the residence of informant have not been produced. Admittedly, no entry in the roznamcha has been made even on their return to the police station.

D The first informant and the witnesses are not ordinary people. They were Inspector and Head Constables attached to a police station. They are presumed to know the implications of a criminal case. They are, thus, also presumed to know that the First Information Report unless lodged at the earliest possible time may give rise to a suspicion about the correctness of the entire occurrence.

F In view of the aforementioned discrepancies in the prosecution case, we are of the opinion that the defence story set up by the Appellant cannot be said to be wholly improbable. Furthermore, it is not a case where the burden of proof was on the accused in terms of Section 20 of the Act. Even otherwise, where demand has not been proved, Section 20 will also have no application. [*Union of India Thr. Inspector, CBI v. Purnandu Biswas*, (2005) 8 SCALE 246 and *T. Subramanian v. State of Tamil Nadu*, (2006) 1 SCALE 116].

G For the reasons aforementioned, we are of the opinion that the Appellant is entitled to benefit of doubt and, thus, the judgment of conviction and sentence passed against the Appellant is set aside and he is acquitted. If the Appellant is on bail, he is discharged from his bail bond. Accordingly, the appeal is allowed.

H D.G.

Appeal allowed.