

STATE OF U.P.
v.
BHAIYA LAL VERMA
(Criminal Appeal No. 285 of 2001)

JULY 7, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND AFTAB
ALAM, JJ]

Prevention of Corruption Act, 1947:

s.5(2) and s.161 IPC – Government servant – Caught while accepting illegal gratification – Conviction by trial court – Acquittal by High Court – Held: High Court recorded contradictory findings – It noted that marked currency notes were recovered from accused – There was no reason to discard evidence of prosecution witness – Order of High Court set aside – Conviction and sentence awarded by trial court restored – Penal Code, 1860 – s.161.

The respondent-accused was prosecuted u/s 5(2) of the Prevention of Corruption Act, 1947 and s.161 IPC. PW-3, an Agricultural Inspector, made a confidential complaint to the District Magistrate that the accused, who was working in the office of the District Agriculture Project Officer, was harassing him by giving threats of recovery on the basis of fictitious bills and demanded Rs.150/- from him. A trap was laid and the accused was caught with two marked currency notes of Rs.100/- and Rs.50/-. The trial court convicted the accused and sentenced him to rigorous imprisonment for two years under each count, and directed him to pay a fine of Rs. 5,000/-. On appeal by the accused, the High Court acquitted him holding that recovery order against PW.3 had already been issued and thereafter the accused could not have frustrated the recovery on any ground. Aggrieved, the State filed the instant appeal.

A Allowing the appeal, the Court

HELD: 1.1. The High Court overlooked the fact that the recovery order against P.W.3 itself contained the signature of the accused. There was thus no question of his being not involved in the recovery. [para 6] [130-A & B]

B 1.2. The High Court attached unnecessary importance to the evidence of PWs.1 and 2 to hold that they did not clearly hear the demand for bribe. It is contrary to the evidence on record. PW 2 stated that the appellant enquired from police party the reason for his arrest. This is a very material piece of evidence which hints at an element of surprise in the conduct of the appellant instead of an exhibition of shock. This clearly supports prosecution case of demand of bribe by appellant for stalling the recovery. There was no reason indicated to discard the evidence of PW 3. [para 7] [130-C,E & F]

C 2.1. The recovery of the marked currency notes from the accused has not been disputed. The evidence of PW 3 clearly establishes the demand and acceptance of bribe and the recovery. The High Court noted that in the personal search the marked currency notes were recovered from the accused. The High Court recorded contradictory findings. At one place it has noted that the recovery memo contained the signature of the accused but at another place it says that the copy of the recovery memo was neither handed over to the accused nor his signature was obtained on that. With this erroneous conclusion the High Court came to hold that the recovery memo was prepared behind the back of the accused. According to High Court's own conclusion it was not really so. [paras 6 and 8] [130-B & C; 131-A,B & C]

D 2.2. The order of the High Court is clearly indefensible and is set aside. The order of conviction recorded by the trial court is restored. [para 9] [131-D & E]

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 285 of 2001

From the final Judgment and Order dated 20.7.2000 of
the High Court of Judicature at Allahabad in Criminal Appeal
No. 2633 of 1987

S.G. Hasninan, Mohd. Fuzail Khan, Archana Singh and
Anil Kumar Jha for the Appellant. B

Anis Ahmed Khan and Shoaib Ahmad Khan for the Re-
spondent. C

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to
the order passed by a learned Single Judge of the Allahabad
High Court allowing the criminal appeal filed by the respondent
(hereinafter referred to as the 'accused'). The accused was con- D
victed by learned Special Judge (E.C. Act) Banda in Special
Case No. 3 of 1985 for offence punishable under Section 5(2)
of the Prevention of Corruption Act, 1947 (in short the 'Act').
He was sentenced to undergo rigorous imprisonment for two
years and was directed to pay a fine of Rs.5,000/- with default E
stipulation. He was also convicted for offence punishable un-
der Section 161 of the Indian Penal Code, 1860 (in short the
'IPC') and sentenced to rigorous imprisonment for two years.
Both the sentences were directed to run concurrently.

2. Background facts in a nutshell are as follows: F

Sri Rajendra Singh Kushwaha, Assistant Agriculture In-
spector of Rajkiya Krishi Sadhan Purti Bhandar Badokhar
Buzurg, Banda moved an application before the District Mag-
istrate, Banda confidentially on 2.4.1984 stating that Sri Bhaiya
Lal Verma, the accused who was the Accountant in the office of
District Agriculture Officer and Project Officer in collusion with
the Project Officer (Agriculture) Sri. Lal Mani Ram was harass- G
ing him by giving threats of recovery on the basis of fictitious
bills. Sri Bhaiya Lal Verma the Accountant had promised him H

A that if he pays Rs.150/- to him no action will be taken against
him. Sri Bhaiya Lal Verma had called him in the office on 2-4-
1984 and has agreed to accept Rs.150/- as bribe. Hence re-
quest was made that the Accountant Sri Bhaiya Lal Verma may
B be caught red handed while accepting Rs.150/- as illegal grati-
fication so that the applicant may discharge his duties impar-
tially. The then District Magistrate, Banda marked the said ap-
plication to the Additional District Magistrate (Finance and Rev-
C enue) and ordered him to lay the trap. Thereafter, the then Addi-
tional District Magistrate (F), Banda Sri J.N. Vishwakarma di-
rected Sri. R.L. Gupta, the then Executive Magistrate and Addi-
tional S.D.M./S.D.O. Naraini Banda to record the statement of
the complainant and to prepare the fard of currency notes which
D were to be given in the bribe and thereafter the papers were to
be handed over to C.O. Sadar for laying trap. In compliance
with the order of A.D.M. (F) Banda, Sri R.L. Gupta, Additional
S.D.M. Banda recorded the statement of the complainant Sri.
Rajendra Singh on 2-4-1984 at 5.45 P.M. Sri Rajendra Singh
E confirmed the facts mentioned in the application moved before
the District Magistrate, Banda. He further stated that he has
brought one currency note of Rs.100/- denomination, and one
currency note of Rs.50/- denomination, numbers of which are
AA/35 377745 and 3 DH 355826 respectively. Sri R.L. Gupta
F prepared the fard of the said currency notes on 2-4-1984 at 6
P.M. He marked to currency notes with his initial which were to
be given in the bribe to Sri Bhaiya Lal Verma. Thereafter, the
aforesaid currency notes were handed over to the complainant
G Shri Rajendra Singh Kushwaha. The fard was read over to him
and his signatures were also obtained. Thereafter Sri R.L. Gupta
the Additional S.D.M. Banda called Sri. O.P. Kakkar the then
C.O. Sadar in the office of A.D.M. (F), Banda on 2-4-1984 at
about 6 P.M., and handed over the application dated 2-4-1984
H of Sri Rajendra Singh Kushwaha containing orders of the Dis-
trict Magistrate and Additional District Magistrate (F) for laying
trap. He also handed over the statement of Sri Rajendra Singh
and the fard of currency notes, as referred to above, to him. Sri
O.P. Kakkar took Rajendra Singh with him and proceeded to-

wards the spot. He also took the then S.H.O. P.S. Kotwali Sri. Shiva Nandan and constables Rajendra Kumar Tiwari, Dinesh Kumar and Gulab Singh from Kutchery Chauraha with him and proceeded by jeep towards the office of District Agriculture Officer and Project Officer. They left the jeep near the Telephone Exchange. From there they proceeded towards the place of occurrence on foot. Sri Shiv Prasad Yadav and Sri Mithlesh Kumar Dwivedi met him near the Telephone Exchange. He took them with him and gave information about his purpose. They reached near the office and sent Rajendra Singh for giving illegal gratification. They remained standing in the Verandah by the side of the eastern window affixed in the northern wall of the big room lying in the middle of the office. At that time light was on in the office and it was about 6.45 P.M. Sri Bhaiya Lal Verma was sitting on the table and was talking with one person. The police party and the public witnesses heard and saw from the window that Rejendra Singh informed Bhaiya Lal Verma that he has brought Rs.150/- which he had demanded for not making recovery from him and he should accept the said amount. Thereafter Rajendra Singh offered Rs.150/- to Bhaiya Lal Verma, who accepted the currency notes of Rs.150/-. He took out purse from his pocket and kept the said currency notes in the purse. Thereafter, he kept the purse in the left pocket of his bush-shirt. On being satisfied that Bhaiya Lal has accepted bribe, the office was raided immediately and Bhaiya Lal was apprehended inside the room. His personal search was made in accordance with rules. One currency note of the denomination of Rs.100/- having No.AA/35 377745 and one currency note of the denomination of Rs.50/- having No.3 DH 355826 with marked initials of Sri. R.L. Gupta were recovered from the purse kept in the left pocket of his bush shirt. Besides it, two currency notes of the denomination of Rs.100/- each and two currency notes of the denomination of Rs.50/- each were also recovered from the said purse. In the purse, photograph of the accused was there. During search, the person with whom the accused was talking before taking bribe escaped quietly from there. On interrogation, he disclosed his name as Bhaiya Lal Verma son

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A of Korey Lal Verma and stated his full address. The aforesaid
currency notes along with purse and the photo of the accused
and the bush shirt which the accused was wearing were taken
into possession by the police at the spot and the aforesaid ar-
ticles were sealed at the spot. The recovery memo Ex. Ka. 1
B was prepared at the spot by Sri Shiv Nandan Singh at the dic-
tation of Sri O.P. Kakkar. The recovery memo was read over to
the police personnel and the public witnesses and their signa-
tures were obtained. Thereafter, the accused Bhaiya Lal was
C brought to P.S. Kotwali and was lodged there. The recovery
memo and the other papers were also filed at P.S. Kotwali. On
the basis of the recovery memo the case was registered against
the accused Bhaiya Lal Verma for offences punishable under
Section 161 I.P.C. and under Section 5 (2) of Act. The case was
D investigated by Sri Akshay Kumar Singh, the then Deputy S.P.
Babenu. During investigation, he recorded the statements of
the witnesses and prepared the site plan. The sanction to prose-
cute the accused was granted by Sri Rishi Ram Sharma, Di-
rector Agriculture, Uttar Pradesh on 14th January, 1985. After
completion of the investigation, the charge sheet was filed
E against the accused for commission of offences punishable
under Section 161 IPC and Section 5(2) of the Act.

The accused pleaded innocence. He admitted that he was
posted as Accountant in the office of District Agriculture and
Project Officer Banda in April, 1984. In his statement recorded
F under Section 313 of the Code of Criminal Procedure, 1973 (in
short the 'Code'), it was his stand that Sri Ram Adhar Awasthi
was dealing with files relating to recovery. He had no concern
with the files of recovery. He took the stand that there was en-
mity between the then Plant Protection Officer, Banda who in
G collusion with Rajendra Kumar Kushwaha registered the false
case against him. He examined two witnesses to substantiate
his defence.

The prosecution examined Sri Mithlesh Kumar Dwivedi
(PW.1), Shiv Prasad (PW2), Rajendra Singh (PW3), Akshay
H Kumar Singh (PW4), Rishi Ram Sharma (PW5), Om Prakash

Kakkar (PW6), Munna Lal Katiyar (PW 7) and Ram Lakhan Gupta (PW8) in support of its case. Sri Mithlesh Kumar Dwivedi (PW1) proved the recovery Memo Ex.Ka. 1. Sri Rajendra Singh (PW3) proved the application dated 2.4.1984 Ex.Ka.2. Sri Akshay Kumar Singh (PW 4) proved the site plan Ex.Ka.3 and the charge sheet Ex.Ka.4. Sri Rishi Ram Sharma (PW5) proved the sanction order Ex.Ka.5. Sri Om Prakash Kakkar (PW6) also proved the recovery memo Ex.Ka.1. Sri Munna Lal Katiyar (PW7) proved the FIR Ex.Ka. 6 and the copy of G.D.Ex.Ka. 7. Sri Ram Lakhan Gupta (PW8) proved the order of A.D.M.(F) dated 2.4.1984 Ex.Ka.8, order dated 2.4.1984 of District Magistrate Ex.Ka.9, the statement of Rajendra Singh Ex.Ka. 10 and the Fard of currency notes Ex.Ka.11. Sri Ram Adhar Awasthi (DW1) proved the initial of accused Bhaiya Lal Ex.Ka. 12 on the Photostat copy of order Ex.Ka.1. The currency notes Ka.1 to Ex.6, a purse Ex. 7, bush shirt Ex.8, specimen of seal Ex.9 and the photo of the accused Ex.10 were produced in the evidence.

Placing reliance on the evidence of prosecution witnesses more particularly PWs. 1, 2 & 3, the trial court found the accused guilty and convicted and sentenced him as aforesaid. However, in appeal, the High Court directed acquittal.

4. In support of the appeal, learned counsel for the State submitted that the approach of the High Court was clearly erroneous. Recovery of the money has been clearly established. No reason has been indicated to discard the evidence of PW 3.

5. Learned counsel for the accused, on the other hand, submitted that the High Court on analysis of the evidence came to hold that the prosecution has failed to establish the accusations.

6. One of the reasons which has weighed with the High Court to direct acquittal is the statement of PW 1. According to High Court his evidence clearly proved that recovery order was issued against the complainant on 29.3.1984 and it contained signatures of the superior officer as well as the accused. The

A High Court came to hold that once the recovery order has been issued, the accused could not have frustrated the recovery on any ground. The recovery can be frustrated only before the issuance of the recovery order. The reasoning of the High Court is clearly fallacious in as much as it overlooked the fact that the recovery order itself contained the signature of the accused. If that is so, there was no question of his being not involved in recovery. The High Court noted that in the personal search one currency note of Rs.100/- having No.AA/35 377745 and the other currency Note of Rs.50/- having No.3 DH 3555826 were recovered from him.

7. The High Court attached unnecessary importance to the evidence of PWs.1 & 2 to hold that they did not clearly hear the demand for bribe. It is contrary to the evidence on record. The High Court's conclusion is that after examining the statement of these two witnesses it is apparent that none of these witnesses had heard any conversation between the appellant and the complainant. Apart from it, it is further clear from their statements that it was not possible for anyone to hear the conversation from that place where they were standing. Shiv Prasad (PW 2) stated that appellant enquired from police party the reason for his arrest. This is a very material piece of evidence which hints at an element of surprise in the conduct of the appellant instead of an exhibition of shock. This clearly strikes at the root of prosecution case of demand of a bribe by appellant for stalling the recovery. There was no reason indicated to discard the evidence of PW 3.

8. It is not to understand how the root of the prosecution case of demand of bribe was rendered vulnerable. Merely because the accused enquired from the police the reason for his arrest, that does not establish the innocence. The question as to why he was being arrested and then telling the complainant that he had not done a good thing to him and he had deceived him rather goes to show that the accused was blaming the complainant for having betrayed him. It was not a statement of innocence and on the contrary it was a statement showing anguish

that the complainant had got him caught. As noted above, the recovery of the money has not been disputed. The evidence of PW 3 clearly establishes the demand and acceptance of bribe and the recovery. The High Court had recorded contradictory findings. On one hand it has noted that the recovery order contained the signature of the accused but at another place it says that the copy of the recovery memo was neither handed over to the accused nor his signature was obtained on that. With this erroneous conclusion the High Court came to hold that the recovery memo was prepared behind the back of the accused. According to the High Court's own conclusion it was not really so. Interestingly, the suggestion made by the accused during the cross-examination of PW 3 was that he had handed over the money to the accused stating that the amount is the price of ghee for the Project Officer. This is an indirect way of accepting that money has been received by him. In fact there was practically no denial of this aspect and the recovery has also not been denied.

9. Above being the position, the order of the High Court is clearly indefensible and is set aside. The order of conviction recorded by the trial court is restored. The custodial sentence shall be one year which is the minimum sentence prescribed.

10. The appeal is allowed to the aforesaid extent.

R.P.

Appeal allowed.