KHILLI RAM

v.

STATE OF RAJASTHAN

October 30, 1984

[D. A. DESAI AND RANGANATH MISRA, JJ.]

Constitution of India 1950, Article 136, Special leave to appeal—Appreciation of evidence—Not a jurisdictional bar—Where serious injustice would be done evidence may be looked into/Indian Penal Code 1860, Section 161 & Prevention of Corruption Act 1947, Sections 5(1)(d) and 5(2)

Offence under-trap arranged for giving bribe—Acceptance of gratification—Evidence and proof-powder treatment process with regard to currency notes—Not followed—Accused whether entitled to be acquitted.

Practice & Procedure : Supreme Court—Special leave to appeal—Appreciation of evidence—When arises.

The prosecution alleged that PW 2 had given a First Information Report of two offences but appropriate investigation was not being done and charge-sheet was not being furnished to the Court. When PW. 2 contacted the Appellant —the Head Constable of the Police Station, he demanded money. PW. 2 thereupon informed the Anti-Corruption Department about the demand and the Deputy Superintendent of Police agreed to lay a trap. Details were fixed and the trap was laid. An amount of Rs. 50 was passed on as the bribe. Five currency notes each of Rs. 10 denomination with marked initials were made over to PW. 2 to be given as bribe to the accused. The prosecution further alleged that the accused came pursuant to the request and the money was passed on and the payment of bribe was duly detected.

The Special Judge accepted the prosecution case, convicted the Appellant under section 161 of the Indian Penal Code as also section 5(1)(d) and section 5(2) of the Prevention of Corruption Act, 1947 and imposed a consolidated sentence of two years' rigorous imprisonment. The conviction and sentence were upheld in appeal by the High Court.

Allowing the Appeal, to this Court,

HELD : 1. The restriction on appreciation of evidence in an appeal by special leave is a self-imposed one and is not a jurisdictional bar. Whileordnai

rily this Court would refrain from re-examining the evidence in a case where serious injustice would be done if the evidedce is not looked into it would not be proper for the Court to shun attention by following the self-imposed restriction. [1140 C] A

Ram Prakash Arora v. *State of Punjab*, [1972] Crl. L. J. 1293 and *State of Bihar* v. *Basawan Singh* [1959] S.C.R. 195; referred to. B

In the instant case, certain important features have been overlooked both by the trial Court as also by the High Court. The two panch witnesses have not only turned hostile, but have disclosed facts which support the defence version of the incident. PW. 2, the decoy witness has stated facts which probabilise the defence stand. Even the literate Constable-PW. 7 who has not been declared hostile has supported the defence version. The place and the manner in which the bribe is said to have been offered and received make the prosecution story totally opposed to ordinary human conduct. [1139 H; 1140 A-B] C

2. Sufficient material has been brought out to merit interference. The evidence of the panchas is not available to support the prosecution case. There is discrepancy in many material aspects. The prosecution story is opposed to ordinary human conduct. The discrepancies go to the root of the matter and if properly noticed would lead any court to discard the prosecution version. Without powder treatment, for the absence of which no explanation has been advanced the prosecution story becomes liable to be rejected. An overall assessment of the matter indicates that the story advanced by the prosecution is not true and the defence version seems to be more probable. The conviction of the appellant is therefore set aside and he is acquitted. He is discharged from his bail bond. [1145 C-E] D

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Prakash Chand v. *State (Delhi Administration)*, [1979] 2 S.C.R. 330 and *Kishan Chand Mangal* v. *State of Rajasthan* [1982] 3 S.C.C. 466; referred to.

3. The accused was, according to the prosecution evidence, in full uniform. He had been called up to the bus stand which is a public place. There is evidence to show that there were many people moving around and the area was crowded. There is also evidence that the place where PW. 2 met the accused with the money was close to a hotel where people were standing. In such a surrounding a police-man in uniform would ordinarily not accept a bribe. The police station was not far away and if the accused wanted actually to receive the bribe he would try to choose a better environment for it than the one where the bribe is said to have been given. Human compunction would not permit a man in the position of the accused to behave in the manner prosecution has pictured him to have. There is also evidence that the money had not really been received by the accused and PW. 1 raised shouts that the bribe had been accepted before the amount was paid. PW. 3 has also stated that he did not see anybody giving or taking illegal gratification. [1143 B-D] F G

4. There is no material at all on the record to explain why the powder treatment process was not followed even though the detection is alleged to have been handled by experienced people of the Anti-Corruption Department. It is difficult to accept the position that PW. 6 was not aware of the powder treat- H

A ment. It has been in vogue for well over three decades. If such powder treatment had been made the passing of the bribe would indeed not have been difficult to be proved. [1145 A-B]

Raghbir Singh v. *State of Punjab* 1976 Crl. L J. 172, referred to.

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 50 of 1976.

Appeal by Special leave from the Judgment and order dated the 2nd October, 1975 of the Rajasthan High Court in S.B. Criminal Appeal No. 850 of 1971.

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V.B. Raju and *N.N. Sharma* for the Appellant.

Badri Das Sharma for the Respondent

The Judgment of the Court was delivered by

D

RANGANATH MISRA J. This appeal by special leave seeks to assail the conviction of the appellant under section 161 of the Indian Penal Code as also section 5(1) (d) and section 5(2) of the Prevention of Corruption Act, 1947 ('Act' for short), and a consolidated sentence of two years' rigorous imprisonment. Appellant's conviction by the E Special Judge has been upheld in appeal by the Rajasthan High Court.

Appellant at the relevant time was a Head Constable attached to the Bhusawar Police Station within the District of Bharatpur. Prosecution alleged that PW. 2 Ram Swaroop had given first Information Report of two offences but appropriate investigation was F not being furnished to the Court. He had approached Shanker Lal, Head Constable attached to the Police Station and had, on demand, paid him some money by way of bribe to expedite submission of the charge-sheet, Shankar Lal got transferred and appellant came in his place. Wneh contacted, appellant also demanded money. PW. 2 G thereupon informed the Anti Corruption Department about the demand and Kastoori Lal, Dy. Superintendent of Police attached to the Anti Corruption Department at Jaipur agreed to lay a trap. Details were fixed up and the trap was laid on March 30, 1969. An amount of Rs. 50 was to be passed on as the bribe. Five currency notes each of Rs. 10 denomination with marked initials were made H over to PW. 2 to be given as bribe to the accused. For that purpose

Ram Swaroop, PW. 2, Kastoori Lal, PW. 6, Prabhu Dayal, a literate Constable attached to the Anti Corruption Department, PW. 1, accompanied by two Panch witnesses Girdhari, PW. 3 and Gulji, PW. 4 came to Bhusawar. Ram Swaroop came to the bus stand adjacent to the Police Station. Banshi Kumar, the waterman at the bus stand (DW. 1) was requested by PW. 2 to inform the accused at the Police Station that he (Ram Swaroop) had come prepared for the purpose as arranged earlier and accused should came and contact him. Prosecution further alleged that the accused come pursuant to the request and the money was passed on and the payment of bribe was duly detected. In due course sanction was obtained and the case came up for trial before the Special Judge. Prosecution led evidence of 8 witnesses—five as indicated above and PW. 5, the Superintendent of Police (Intelligence), Jaipur; PW. 7 Kedar Nath, a literate Constable attached to the Bhusawar Police Station and PW. 8 the Superintendent of Police, Bharatpur, who proved sanction for the prosecution. Certain documents were also produced to support the charge. Defence examined four witnesses in support of its stand that the accused had not received any bribe and he was falsely implicated without any basis. The Special Judge accepted the prosecution case and convicted the appellant in the manner already indicated. His appeal to the High Court has failed.

Ordinarily the Supreme Court does not enter into re-appreciation of evidence in exercise of its jurisdiction under Article 136 of the Constitution (see *Ram Parkash Arora* v. *State of Punjab*).[1] It is also true that in the case of *State of Bihar* v. *Basawan Singh*[2] a five Judge Bench of this Court has laid down that if any of the witnesses are accomplices, their evidence is admissible in law but the Judge should indicate in his judgment that he had the rule of caution in mind—namely, the danger of convicting the accused on the uncorroborated testimony of an accomplice and give reasons for considering it unnecessary to require corroboration; if, however, the witesses are not accomplices but are merely partisan or interested witnesses, who are concerned in the success of the trap, their evidence must be tested, in the same way as any other interested evidence is tested, and in a proper case, the Court may look for independent corroboration before convicting the accused person.

There are certain features in this case which appear to have been overlooked both by the trial Court as also the High Court. The

(1) [1972] Crl. L.J. 1293.
(2) [1959] S.C.R. 195

A two panch witnesses have not only turned hostile, but have disclosed fact which support the defence version of the incident. PW. 2, the decoy witness has stated facts which probabilise the defence stand. Even the literate Constable PW. 7 who has not been declared hostile has supported the defence version. The place and the manner in which the bribe is said to have been offered and received make B the prosecution story totally opposed to ordinary human conduct—a feature which the two Courts have overlooked. We are of the opinion that this is a case where the evidence has to be looked into with a view to finding out whether the prosecution case can at all be accepted. The restriction on appreciation of evidence of an appeal by special leave is a self-imposed one and is not a jurisdictional bar. While we reiterate that ordinarily this Court would refrain from re- C examining the evidence, in a case where serious injustice would be done if the evidence is not looked into it would not be proper for the Court to shun attention by following the self-imposed restriction.

Prosecution has examined 8 witnesses in all. PW. 5, as already D noted, is the Superintendent of Police (Intelligence) at Jaipur who is not a material witness at all. Similarly, PW.8 being the Superintendent of Police of Bharatpur, is connected with sanction for prosecution and is not material for any other purpose. This leaves six witnesses in the field. Of them, PWs. 1 and 6 are of the Anti Corruption Department, PW. 1 being a literate Constable attached to E that establishment and PW. 6 being the Dy. Superintendent of Police under whose active supervision the trap was laid. PW. 2 is the decoy witness himself on whose report the trap was laid. PWs. 3 and 4 are the Panch witnesses and PW. 7 is a literate Constable attached to the Police Station.

F PW. 2 is a supplier of water at the bus stand like DW. 1. From his own evidence it appears that he has been involved in laying of traps. In his cross-examination he has admitted : "before this occurence, I took the Dy. S. P. for arresting another employee Shankerlal. The statement A V in Ex. P. 8 was given by me in the presence of the Deputy Sahib." He seems to have made two other G complaints before the police and those were found to be false and police had already decided to prosecute him under s. 182, I.P.C. It is after that incident that present move had been taken. PW. 2 has admitted in his cross-examination : "Prior to this I took the Deputy Sahib to get Shankerlal caught but Shankerlal could not be caught and the Deputy said that you have harassed me for nothing." It is H the case of the prosecution that Shankerlal was the Head Constable

attached to the police station and that PW. 2 had negotiated with him. PW. 3 who is a Panch witness has stated that the Deputy Superintendent of Police had told him that Ram Swaroop was giving illegal gratification to Shankerlal. PW. 3 was previously employed in the Police Department, and had been discharged. According to him, the name of the accused was never discussed and even at the time of payment it was Shankerlal who was supposed to receive the bribe. PW. 3 has said that he is not a literate person and his statement and signature had been extracted from him under pressure. PW. 4, the other Panch witness has similarly stated that he had been told that Shankerlal was to be bribed and he made no statement with reference to the accused. In view of this evidence it becomes doubtful whether the Panch witnesses had really anything to do with the offer of bribe to the present accused. Since PW. 2 admitted the position that the Deputy Superintendent of Police had been taken previously in respect of a bribe to Shankerlal and the two Panch witnesses have referred to that incident, it appears logical to infer that these two witnesses were really referring to the other incident. The defence version seems to be that the trap had been arranged with reference to Shankerlal. Ram Swaroop on reaching the bus stand requested DW. 1 to ask Shankerlal to come but since Shankerlal was absent from the Police Station, the accused who was the senior-most of the lot then available within the police station came out. This part of the defence story has been supported by PW. 7 Kedar Nath, a Constable attached to the Police Station, He in his cross-examination has stated : "Banshi Kumar said that Shankerlal Head Constable is being called at the stand. There I, Babu Ram, Constable and Khilli Ram (accused) were present. We said, 'Khilli Ram, you being the Head may go'. Accordingly he went." To that effect is the evidence of DW. 1, the person whose services Ram Swaroop had admittedly taken to call the accused from the police station. He stated : "Shankerlal was sent for from the police station at 6 p.m. 2 years 20 days ago. Then one more person was with him. I went to the Police station Bhusawar. Shankerlal was not found there. The two constables and the accused present in the Court were there. On the advice of the police constables the accused accompanied me to the bus stand." The evidence of PW. 7 and DW. 1 thus clearly support the position we have indicated above. It is quite probable, therefore, that PW. 2 had negotiated with Shankerlal only and so far as the accused is concerned there was no negotiation and he had come out to the bus stand after being told by DW. 1 in the manner and circumstances indicated by PW. 7 and DW. 1. If that be so,

implicating the accused for the offence of receiving bribe would be without any basis.

PW. 2 stated in his evidence that the appellant had demanded a sum of Rs. 100. When this was pointed out to him in cross-examination he stated that the accused demanded Rs. 100 from him for taking out the application and this was settled between to be paid to the accused. This part of the story runs counter to the deposition of PW. 6 who stated : "Ram Swaroop came to my office on 30.3.69 and said that Shankerlal has been transferred and in his place Khilli Ram, Head Constable has came and the latter has settled with me to accept bribe of Rs. 50." The discrepancy is indeed a material one in the facts of the case.

The defence of the appellant has all throughout been that he never received any bribe. PW. 1 in his evidence in chief has stated that the Deputy Superintendent of Police demanded the bribe amount to be taken out and the accused stated that he had not received the amount. To the same effect is the evidence of PW. 2. This evidence of PWs. 1 and 2 makes it clear that the first reaction of the accused when accosted was a denial of receipt of any bribe. That has reiterated the same in his examination under s. 342, Cr. P. C. According to the defence version of the matter there was really no passing of any money. PW. 1, the Constable accompanying the Dy. Superintendent of Police, according to the prosecution, searched the person of the accused and found the five currency notes. There is no acceptable evidence that the Constable had given search of his person before he started searching the person of the accused. PW. 6, the Dy. Superintendent of Police was at a distance. He had not seen the actual passing of the money. Once PWs. 3 and 4 the Panch witnesses did not support the prosecution case, the only evidence for the passing of the money has to rest is of PWs. 1 and 2. Both of them were vitally interested in the fate of the prosecution and would, therefore, be disposed to support the prosecution case. We have already indicated that PW. 2 was anxious to satisfy the police as he was about to face the prosecution under s. 182, I.P.C. for having made false allegation in two cases. The Deputy Superintendent of Police has stated that he had taken PW. 2 to task for having brought him once to Bhusawar on the allegation that Shankerlal was to receive the bribe and that had failed. In these circumstances it is quite likely that these two witnesses would go out of their way to support the prosecution version.

If Shankerlal was the person with whom PW. 2 had negotiated in the matter of taking of the bribe, it would indeed be difficult to accept, the position that the accused readily agreed to receive the amount when offered. The accused was, according to the prosecution evidence, in full uniform. He had been called up to the bus stand which is a public place. There is evidence to show that there were many people moving around and the area was crowded. There is also evidence that the place where PW. 2 met the accused with the money was close to a hotel where people were standing. In such a surrounding a police man in uniform would ordinarily not accept a bribe. The police station was not far away and if the accused wanted actually to receive the bribe he would try to chose a better environment for it than the one where the bribe is said to have been given. Human compunction would not permit a man in the position of the accused to behave in the manner prosecution has pictured him to have. There is also evidence that the money had not really been received by the accused and PW. 1 raised shouts that the bribe had been accepted before the amount was paid. PW. 3 has narrated this part of the story thus.

> "There the Deputy Sahib and we all stood at on place and Ram Swaroop (PW. 2) and Prabhu Dayal (PW. 1) went towards the police station. Both had some talks. Prabhu Dayal remained this side and Ram Swaroop went inside the police station. Ram Swaroop returned and looked here and there. In the meantime Prabhu Dayal constable shouted that the money has been found, come on ; come on..."

PW. 4 stated that he did not see anybody giving or taking illegal gratification. DW. 1 has stated :

> "I told pointing toward Ram Swaroop and his companions that they are summoning. Thereupon the companion of Ram Swaroop (referreing to Prabhu Dayal) shouted near the 'Imli' tree that 'caught, caught'. He took out from the pocket of his pant notes like and putting them in his hand shouted, 'caught, caught'."

DW. 3 the hotelier has stated : "I and the Inspector went together, then the notes were in the hand of a Constable." He has further said that the Constable was shouting that the amount had been recovered from Khilli Ram. DW. 4, an independent witness

described this part of the story thus : "At the same time, Banshi waterman and Killi Ram accused present in the Court came from the side of Police Station. The man standing near Ram Swaroop (obviously Prabhu Dayal), shouted : 'caught, caught'. He took out the currency notes of Rs. 50 from his (witness') pocket and raised this alarm." In cross-examination this witness stated that the person who raised the cry said that the notes have been recovered from Khilli Ram but Khilli Ram was saying that he did not take the notes.

Two other aspects are relevant to be indicated here. According to PW. 1, Kastoori Lal, the Deputy Superintendent of Police ordered him to take the search of the accused whereupon he proceeded to do the needful. PW. 2, however, stated that it was the Dy. Superintendent of Police who recovered the notes from the accused. PW. 6 has, however, indicated that under his orders search was conducted by PW. 1. There is again material discrepancy as to from where the amount was recovered. PW. 2 has stated that the accused kept the notes of Rs. 50 given by him in the left side pocket of his shirt. PW. 6 has stated : "When Prabhu Dayal conducted the search of the accused, Ext. P-1, 2, 3, 4 and 5 notes of the denomination of Rs. 10 each were found out from the right side pocket of the shirt of the accused." Ext. P-1 is the recovery memo purported to have been prepared att he spot. It indicates : "Then the settled five currency notes of the denomination of Rs. 10 each were recovered from the right hand pocket of the worn shirt of khaki uniform." There is thus a discrepancy as to the place from where recovery was made.

It was pointed out by this Court in *Raghbir Singh* v. *State of Punjab*[1] :

> "Where a trap is laid for a public servant, it is desirable that the marked currency notes which are used for the purpose of trap, are treated with phenolphthalein powder so that the handling of such marked currency notes by the public servant can be detected by chemical process and the Court does not have to depend on oral evidence which is sometimes of dubious character for the purpose of deciding the fate of the public servant."

Ordinarily in cases of this type the powder treatment is made. There is no material at all on the record to explain why such a

1. [1976] Crl. L.J. 172.

process was not followed in the instant case even though detection is alleged to have been handled by experienced people of the Anti Corruption Department. PW. 6 was a very senior officer and in fact by the time the trial took place he had retired from service. It is difficult for us to accept the position that he was not aware of the powder treatment. It has been in vogue for well over three decades now. If such powder treatment had been made, the passing of the bribe would indeed not have been difficult to be proved.

We are prepared to agree with counsel to the State of Rajasthan that ordinarily a case of type is difficut to prove and the law is settled that even the uncorroborated testimony of trap witnesses can bc acted upon as indicated by this Court in the case of *Prakash Chand* v. *State (Delhi Administration)*[1], and *Kishan Chand Mangal* v. *State of Rajasthan*[2], but in the present case the evidence of the panchas is not available to support the prosecution case. There is discrepancy in many material aspects. The prosecution story is opposed to ordinary human conduct. The discrepancies go to the root of the matter and if properly noticed would lead any court to discard the prosecution version. Without powder treatment, for the absence of which no explanation has been advanced, the prosecution story becomes liable to the rejected. An overall assessment of the matter indicates that the story advanced by the prosecution is not true and the defence version seems to be more probable. In these circumstances we are of the view that sufficient material has been brought out to merit interference in this appeal. We allow the appeal, set aside the conviction of the appellant and acquit him. He is discharged form his bail bond.

N.V.K. *Appeal allowed.*

(1) [1979] 2 S.C.R. 330.
(2) [1982] 3 S.C.C. 466.