

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CrI. A. No. 177/2001

% Reserved on: 29th November, 2010

Decided on: 25th January, 2011

Balbir Singh Yadav Appellant
Through: Mr. K.B. Andley, Sr. Advocate with
Mr. M.L. Yadav, Advocate

versus

C.B.I. Through: Respondent
Mr. Vikas Pahwa, Standing Counsel
for the CBI with Ms. Suchiti Chandra,
Advocate

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Not necessary |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MUKTA GUPTA, J.

1. A complaint was lodged by Naval Kishore, Ex. PW 2/B to the S.P., C.B.I. that there was a quarrel between his mother and the wife of one Baljit Singh which matter was reported to Police Post Mangla Puri, and due to the complaint he was taken to the police post by two constables, where A.S.I. Balbir Singh conducted the enquiry and the parties resolved

the matter in writing amongst themselves. On 01.05.1991 at about 7.00 p.m. the Appellant, ASI Balbir Singh came to his house and demanded ₹2,000/- to get the matter settled. The Complainant pleaded that being a poor man he could not give this amount on which the Appellant threatened to put him behind the bars, if he did not pay ₹1,000/- as bribe by the next evening. The Appellant stated that he would come to his house in the evening on the next day to receive the bribe money. Since, the Complainant was against giving bribe, he requested action to be taken. On this complaint of PW2, a case was registered and trap was directed to be laid.

2. For laying the trap, two witnesses PW5 Ram Kishan and PW 7 Jai Raj were also associated after appraising them of the contents of the complaint. The Complainant produced a sum of ₹1,000/- in the form of 10 currency notes of ₹100/- denomination each. Numbers of these notes were noted in the memo Ex. PW2/C and thereafter phenolphthalein powder was applied to the said currency notes. The Complainant, PW5 and PW7 were explained the procedure and demonstrated the reactions on touching the tainted currency notes. It was specifically instructed that the bribe money be given by the Complainant only on the specific demand of the Appellant in the presence of shadow witness so that he can witness the incident and hear the conversation between him and the Appellant so that he can give a signal by scratching his head by both the hands to the raiding party.

3. The trap party reached the house of the Complainant at about 6:00 p.m. The Appellant came on time as fixed by him at about 7:00 p.m. The Complainant asked if he wanted a glass of water on which the Appellant demanded meat etc. The Complainant sent his younger brother to bring the same. With Ram Kishan PW5, the shadow witness and the Complainant was sitting on a cot at about 7:45 p.m., the Appellant demanded money which was given by the Complainant. The Appellant accepted the amount with his left hand and put the currency notes in the left pocket of his pant. PW 5 scratched his head on which the CBI Officers immediately came forward. The Appellant on seeing the trap disengaged himself and ran towards an open area and also threw the amount in a nearby plot while running. He was caught at some distance and from the open ground scattered notes were collected and seized. The hands of the Appellant were washed and both the hands turned pink. Then his left pocket was also washed which also turned pink. All these articles were seized and sealed. The Appellant was arrested and after completion of investigation, a charge sheet was filed. The Appellant was charged for offences punishable under Section 7 and 13(1)(d) punishable under Section 13(2) of the Prevention of Corruption Act, 1988 (in short 'the PC Act'). After examination of the prosecution witnesses, the statement of the Appellant was recorded under Section 313 Cr. P.C. The learned Special Court vide the impugned judgment convicted the Appellant for the offences charged and sentenced him to

undergo rigorous imprisonment for a period of one year and to pay ₹500/- on each count and in default of payment of fine to further undergo simple imprisonment for a period of 15 days. Both the sentences were directed to run concurrently.

4. Learned counsel for the Appellant contends that since the dispute between the Complainant and Baljit's family had already been settled vide Ex. PW2/B, there was no reason for the Appellant to intervene and get the matter compromised. Moreover, there was neither any FIR lodged nor any complaint pending before the Appellant which could have been got settled by the Appellant. Thus, the entire case is a concoction and the Appellant has been falsely implicated. Moreover, the two ladies amongst whom it is alleged that the fight had ensued on 07.04.1991 i.e. the wife of the Complainant and the mother of Baljit Singh, have not been examined. In the absence of any complaint exhibited and a compromise already arrived at, with no surviving dispute, there was no occasion for the Appellant to have got the matter settled or demanded bribe in that connection. The entire prosecution hinges on the testimony of PW 2 Naval Kishore, the Complainant, PW 5 Ram Kishan the shadow witness, PW 7 Jairaj the recovery witness and PW 6 Satish Solanki. The Complainant in his testimony has not stated as to when the Appellant allegedly reached his home on 02.05.1991 and demanded the bribe amount. Thus, in the absence of demand of bribe amount, no case for conviction on the charges framed is made out.

5. It is next contended by the learned counsel for the Appellant that the Complainant has turned hostile and thus his testimony should not be relied upon to convict the Appellant. As per the compromise Ex. PW2/A, the dispute is stated to be between the Complainant and Baljit Singh's mother whereas while deposing in the court the Complainant deposed that there was a quarrel between his wife and mother of Baljit Singh. There is discrepancy not only qua the quarrel but also as regards being put up in the lock up. Whatever he stated in the court was not as stated by him in his complaint and he was duly confronted with the same. In view of the contradictions and material improvements in the testimony of the Complainant, his testimony cannot be relied upon and requires to be discredited.

6. It is further contended that since the Appellant had accepted the money from the left hand and put the same in the left pocket, there was no reason why his right hand also turned pink. Thus, the evidence have been tutored in this regard. The alleged currency notes have not been recovered from the Appellant but from the open area. The Appellant neither demanded money nor accepted the same. The Complainant tried to thrust money in his pocket and the Appellant resisted the said attempt and threw the money. Reliance is placed on *Babu Lal Bajpai vs. State of Uttar Pradesh AIR 1994 SC 1538* to contend that in such a case no conviction can be upheld. PW6 is an interested witness and was present when the said compromise Ex.PW 2/A was arrived at and it has

been brought out in the cross examination that he had motive to falsely implicate the Appellant and so his testimony should not be relied upon. Thus, the impugned judgment and order on sentence be set aside and the Appellant be acquitted of the charges framed.

7. Learned counsel for the CBI on the other hand contends that in the present case, all the three essential ingredients of the offences charged are established beyond reasonable doubt by the prosecution. A demand on 01.05.1991, demand at the time of the trap and acceptance of bribe amount have all been duly proved, coupled with the motive for demanding bribe. It is contended that both Baljit Singh and his mother Gyano Devi has been examined, as PW4 and PW3 who have also fortified that there was a dispute between the two families. Ex. PW2/A though termed as Razinama i.e. a compromise, however, is not a full and final settlement but only a document wherein the Complainant admits his fault and undertakes to pay the money in two installment of Rs. 1625/- each, the first installment to be paid on 05.05.1991 and second on 05.06.1991. Complainant PW2 has proved the entire prosecution case. Even PW 5 Ram Kishan, the shadow witness has given the details of the incident, thus proving the demand, acceptance and seizure of tainted currency notes. The testimony of PW2 and PW 5 is further corroborated by PW 7 Jai Raj, the trap witness, PW 12 Inspector S.C. Yadav, the Investigating Officer and PW11 N.K. Prasad. PW6 Satish Solanki has proved the motive to demand the bribe amount

and as to how the Complainant was harassed at the police station on the 07.04.1991. Reliance is placed on *Paramjeet Singh @ Pamma v. State of Uttrakhand 2010 (10) SCALE 258* to contend that even part testimony of hostile witness which proves the prosecution case can be relied upon. Moreover, the Court is duty bound to draw the presumption under Section 20 of the PC Act. As per this Section, if it is proved that the accused has accepted or obtained or has agreed to accept or attempted to obtain for himself or for any other person any gratification it shall be presumed that he has accepted or obtained that gratification as a motive or reward such as mentioned in Section 7. Minor inconsistencies or variations in the testimony of the witnesses are not material and should be ignored during the appreciation of evidence. The conduct of the accused in running away from the place of occurrence on seeing the trap team is relevant under Section 8 of the Evidence Act. Hence, it is prayed that the appeal be dismissed.

8. I have heard learned counsel for the parties and perused the record. From the evidence adduced by the prosecution, in my opinion it can be safely concluded that the prosecution has proved beyond reasonable doubt all the essential ingredients required to prove offences defined in Sections 7 and 13(1)(d) PC Act i.e., the initial demand, demand at the time of trap and acceptance. In addition, prosecution has proved beyond reasonable doubt the motive for demanding bribe. From the testimony of PW2 Naval Kishore, the Complainant, PW4 Baljeet

Singh and PW3 Smt. Gyano Devi, mother of Baljeet Singh, it stands proved that prior to the demand made by the Appellant, there was a quarrel between the parties and PW3 was taken to the police post. From the testimony of the witnesses, it is borne out that Naval Kishore was called to the police post and a settlement Ex. PW2/A arrived at between the parties which was in fact an undertaking by the Complainant Naval Kishore to pay ₹3,250/- in two installments. The first installment of ₹1,625 was to be made on 5th May, 1991 and the second on 5th June, 1991 to Baljeet Singh. PW6 Satish Solanki who was a witness to Ex. PW2/A has further corroborated the prosecution case and stated that on 7th April 1991 while he was going to his office he saw two policemen taking PW2 in a rickshaw. On enquiry, they informed him that they were taking him to police post. When he reached at the police post and met the Appellant, one lady and a gentleman were also present there. The compromise Ex. PW2/A was recorded between the parties which was signed by him at point 'X'. He also deposed that when he reached police post Naval Kishore was made to sit on the ground and he was being abused and threatened badly. Though motive is sought to be attributed to this witness by suggesting that he is falsely implicating the Appellant because he did not add Sec. 307 IPC on the complaint of one Raghubir Singh who is of the same caste and known to PW2, however, the same is not a reason for PW6 to implicate the Appellant on this count as PW2 has replied that both are from different castes. It is settled law that part

testimony of the hostile witness which proves the prosecution case can be relied upon for the purposes of corroboration as held by Hon'ble Supreme Court in *Paramjeet Singh @ Pamma v. State of Uttrakhand 2010 (10) SCALE 258*. Thus the testimony of PW2, PW3, PW4 and PW6 clearly proves motive on the part of the Appellant as a complaint was already pending in terms of which the Complainant had to give ₹3,250/- to Baljeet Singh. The pendency of the complaint before the Appellant was a reason to intervene in the dispute and demand money to sort out the matter.

9. The initial demand made by the Appellant has been proved by the testimony of PW2 wherein he has stated that on 1st May 1991, the Appellant came to his house and asked to give ₹2,000/- and he would finish off the case i.e. “₹2000 de do, mai us case ko jo hua hai matlab rafa dafa kar dunga” on which the Complainant told the Appellant that he did not have so much money, the Appellant then threatened the Complainant that in that case he would put him behind the bars. Thereafter the Complainant said that he being a poor man could pay only ₹1,000/- This fact stands corroborated by the complaint Ex. PW2/A made by PW2 to the CBI the next day itself on which the trap was laid. This witness has also explained that he was asked by the CBI Officer as to why he wanted to get the Appellant arrested on which he had replied that the Appellant has really troubled him and if he did not give him money, the Appellant would arrest him. I do not find statement to be a

material improvement as contended by learned counsel for the Appellant. A complaint on the basis of which FIR is registered need not contain all detailed facts and suffice it is if the gist of the allegation is stated in the complaint.

10. The Prosecution has also been able to prove the demand and acceptance at the time of raid by the testimony of PW2 the Complainant and PW5 Ram Kishan, the shadow witness. These witnesses in their testimony have stated that the Appellant came on the appointed time i.e., about 7 – 7:15 pm on a two wheeler scooter and when he was asked about a glass of water, he demanded meat, so PW2 sent his brother to get the same. PW2 and PW5 sat with the Appellant Balbir Singh on the cot. When the brother of PW2 did not return after about half an hour, the Appellant got up and said “Paise Lao” He further said “Aapka case theek ho jayega, phikar karne ki zarurat nahin hai.” Then PW2 took out ₹1,000/- from his pocket and handed over to the Appellant. The accused took money in his left hand and kept in his left pocket of pant. On this PW5 gave the pre-arranged signal, raiding party rushed towards the place. Seeing the raiding party, the Appellant started running from there and threw the money in the nearby vacant plot. But he was caught. The money was picked up from the vacant plot. On counting, it was found to be ₹1,040/- including ten currency notes of 100/- denomination, one note of 20/- denomination and two notes of 10 denomination each. Solution of sodium-carbonate was prepared and the right hand was

washed in the glass tumbler which turned pink and similarly the left hand and the left pocket of the pant of Appellant also turned pink, which all were seized and sealed. The fact of Appellant running away and throwing the money in nearby vacant plot and that the hands and pocket turned pink have been duly corroborated by PW7 Jai Raj trap witness and the Investigating Officer PW12 Inspector S.P.Yadav. The Report of PW11 N.K. Prasad, Sr. Scientific Officer also records that on the analysis of bottles Exs. LHW, RHW and PW, it was found that all the three contained phenolphthalein and Sodium Carbonate.

11. I do not find any merit in the contention of learned counsel for the Appellant that since the matter was settled between the parties and there was no complaint pending before the Appellant, he could not have asked for the bribe. Ex. PW2/A though termed as *Razinama* is in fact an undertaking by PW2 to pay PW4 the money in two equal installments, which dates of payment were nearing and the Complainant had not paid even the first installment to PW4 by then. Thus, it cannot be said that the matter was settled between the parties and there was no reason for the Appellant to demand bribe. Rather there was sufficient motive on part of the Appellant as he was seized of the complaint lodged by PW4.

12. The fact of a quarrel between the families of PW2 and PW4 has been proved by all the three witnesses, i.e., PW2, 3 and 4 and also the undertaking of PW2 to pay the money supports the same. Thus, non-examination of the wife of PW2 is not fatal to the prosecution case as

contended by the learned counsel for the Appellant. PW3 has also identified the Appellant as the ASI dealing with the complaint when they went to the police post after the quarrel.

13. Reliance of the learned counsel for the Appellant on the decision in *Babu Lal Bajpai (Supra)* is misconceived. The facts therein were totally different. There was no demand and the only evidence adduced was that the Complainant tried to thrust the money in the pocket of the accused, he resisted the said attempt and threw the money on the floor. In the present case, there is no resistance by the Appellant. There was no thrusting money. In fact, the Appellant threw the money only on seeing the trap being laid on him while running away from the place of occurrence. Thus, the conduct of the Appellant of running away from the scene of occurrence immediately after the incident is also relevant under Sec. 8 of the Evidence Act.

14. Emphasis has been laid by learned counsel for the Appellant on the inconsistency derived during the cross examination of PW2 on 4th April, 1995. It may be noted that the evidence of PW2 was recorded on 29th March 1993 and thereafter his cross examination was conducted on 19th August, 1993 where nothing could be elicited from him. However, in further cross examination on 4th April, 1995, PW2 had forgotten certain things like names of the powders used etc. This discrepancy is bound to occur if the witness is examined and cross examined after a couple of

years and cannot affect the prosecution case so as to grant benefit of doubt to the Appellant.

15. For the aforesaid reasons, I find no merit in the appeal, the same is accordingly dismissed. The bail bond and the surety bond are cancelled. The Appellant be taken into custody to undergo the remaining sentence.

(MUKTA GUPTA)
JUDGE

January 25, 2011
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