

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-92-SB of 2000

DATE OF DECISION: APRIL 23, 2015

KURA RAM

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. A.S.DHALIWAL , ADVOCATE FOR THE APPELLANT.
MR. A.S.JATTANA, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

Accused Kura Ram has challenged the conviction and sentence passed by the trial Court under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988.

It is the brief case of the prosecution that the Punjab State Electricity Board (for short 'PSEB') originally installed a transformer in the land of PW3 Niranjan Singh which fell down due to hail storm which caused havoc on 2.7.1995. PW3 moved an application to the SDO, PSEB for installation of the transformer. The application was marked to the accused for immediate action. It is contended by PW3 Niranjan Singh that he contacted accused Kura Ram who was working as a Junior Engineer in PSEB, but he put off the installation of the transformer on one pretext or the other. On 6.7.1995, Niranjan Singh met the accused who demanded a sum of ₹1500/- for doing the work. The deal was struck at ₹1200/- for doing the work. The accused asked Niranjan Singh to bring the money and also a

tractor-trolley for shifting the poles from the store to the place of work. Niranjana Singh was not willing to part with any amount. He met PW4 Joginder Singh and narrated him the demand made by the accused. Thereafter, Niranjana Singh sent his son with the tractor-trolley to the accused for lifting the electric poles from the store. PW3 accompanied by PW4 Joginder Singh proceeded to the office of DSP, Vigilance Bureau, Kapurthala and suffered a statement Ex.PF before PW8 DSP Ajay Malooja. Niranjana Singh produced a sum of ₹1200/-. The same was treated with phenolphthalein powder. PW8 demonstrated as to how the solution prepared with water and sodium carbonate changes its colour to pink.

Thereafter, the police party headed by PW8 proceeded to Darshan Dhaba. On the way, one Makhan Lal, Patwari was also joined with the police party. Accused informed PW3 Niranjana Singh that the electric poles had already been delivered to his son and demanded ₹1200/-. PW3 handed over the tainted currency notes of ₹1200/- to the accused in the presence of PW4 Joginder Singh, who put the amount in his pocket. On signal, PW8 descended on Darshan Dhaba and apprehended the accused. Sodium Carbonate solution was prepared. The accused was directed to wash his hands in the solution, upon which the colour of the water turned into pink. The currency notes of ₹1200/- were recovered from the pocket of the accused. The pocket of the shirt of the accused was dipped in the sodium carbonate solution and it also turned pink in colour. After obtaining sanction from the Chief Engineer, who was the appointing Authority, challan was submitted against the accused.

On the side of the prosecution, PW1 Sukhraj Kaur who was

serving as Divisional Superintendent, Sub Urban Division, PSEB, Kapurthala was examined to establish the services of the accused in PSEB. PW2 Gian Singh proved the sanction Ex.PD accorded by the Chief Engineer who was the appointing Authority of the accused. PW3 Niranjn Singh was the complainant who has spoken about the above details leading to the successful trap. PW4 Arvinder Singh was the shadow witness. PW8 DSP Ajay Malooja was the head of the raiding party.

The accused set up a plea in his statement under Section 313 Cr.P.C. as follows:-

“That prior to the present occurrence a raid was conducted by party of P.S.E.B. headed by me at the premises of complainant. I had caught the complainant stealing electric energy and the S.D.O. had ordered me to disconnect his electric connection as a result thereof the complainant was feeling inimical towards me. In order to wreck vengeance the complainant on the day of occurrence came to the store at Kapurthala tried to forcibly thrust some money into my pocket. I tried to prevent him with the result the money fell on the ground and in the meantime, I was apprehended by the police and was taken to Vigilance Department where I was falsely implicated. No hand wash or pocket wash had been conducted. PW Joginder Singh is the close friend of complainant. He was not present at the time of occurrence and become a witness later on. I am innocent.”

The trial Court having relied upon the evidence of PW3, PW4 and PW8 arrived at a conclusion that the accused who made a demand of

bribe of ₹1200/- accepted the same.

No doubt, complainant Niranjan Singh who was examined as PW3 has spoken about the damage caused to the transformer and the pole erected in his land due to hail storm, postponement of installation of poles by the accused, demand of ₹1200/- as an illegal gratification, the statement suffered by him before PW8, phenolphthalein powder test demonstrated by PW8 in his office, tendering of the bribe money of ₹1200/- to the accused and the acceptance of the bribe money by him leading to the successful trap laid by PW8. PW4 also corroborates the evidence of PW3.

Learned counsel appearing for the appellant would vehemently submit that PW3 had a previous enmity with the accused, who detected the electricity theft committed by PW3 and fabricated the present case with the assistance of PW4 and PW8. To support his contention, he referred to the evidence of PW5 and the defence set up by the accused under Section 313 Cr.P.C.

Learned Addl.A.G., Punjab would submit that the previous enmity alleged by the accused was not established, as rightly observed by the trial Court. He would further submit that the tainted money was in fact recovered from the pocket of the accused. The evidence of PW3, PW4 and PW8 would go to establish that in fact the accused accepted the bribe after making a demand.

PW5 was the Assistant Executive Engineer, PSEB, Nadala. He has categorically admitted during the course of evidence that it was correct that PW3 Niranjana Singh was found stealing electricity. The theft of electricity committed by PW3 Niranjana Singh was detected by accused Kura

Ram. Disconnection of the electricity connection was also ordered pursuant to such a detection of theft of electricity committed by PW3.

The copy of the disconnection order was exhibited as Ex.DC. It appears that the disconnection order also was served by accused Kura Ram on the complainant Niranjana Singh. Under such circumstances, I am at a loss to understand how the trial Court has come to a conclusion that there was nothing to establish the contention of the accused that the theft of electricity committed by PW3 was detected by the accused.

On a thorough scanning of the evidence of PW5, it is found that PW3 Niranjana Singh had challenged the recovery notice issued in the aftermath of the theft of electricity detected by the accused by filing a suit in the Court of Sh. S.C.Marwaha, Civil Judge (Sr.Divn.), Kapurthala. But the said suit was dismissed on 10.5.1996.

The above evidence of PW5 adduced by the prosecution would go to establish that PW3 had a previous enmity with the accused and such an enmity, he had with the accused, continued even on the day of occurrence, as the suit laid by him was dismissed only after the present occurrence.

In my view, the defence set up by the accused in his statement under Section 313 Cr.P.C. cannot be simply discarded that a sum of ₹1200/- was thrust upon his pocket and he was fighting to ward-off the attempt made by the accused. Further, it would be travesty of justice if the accused is convicted based on the uncorroborated oral version of PW3 who had an animosity with accused.

It was submitted by learned counsel appearing for the appellant

that the accused filed a petition to recall PW3 Niranjana Singh to confront him with the occurrence of theft committed at his premises. Inasmuch as PW3 was not summoned and subjected to further cross-examination, despite an order passed in favour of the accused, his testimony cannot be relied upon by the Court of Law.

Learned Addl.A.G., Punjab would submit that PW3 was recalled for a limited purpose of cross-examination as regards the occurrence of theft that took place in the premises of PW3. Therefore, his evidence as regards the successful trap laid against the accused cannot be doubted.

Of course, as contended by learned Addl.A.G., Punjab, the evidence of PW3 Niranjana Singh cannot be doubted solely on the ground that he was not recalled for cross-examination despite the order passed by the trial Court in favour of the accused, inasmuch as the accused was permitted to recall and cross-examine PW3 only in connection with the theft allegedly committed in his premises. But, as already observed by me, PW3 had every reason to fabricate a case on account of previous enmity he had with the accused.

PW3 never whispered anything about the request made by the accused to come down to Darshan Dhaba for delivery of the bribe amount. He was very categorical that the accused asked him to come to his office not only with the bribe amount but also with a tractor-trolley for the purpose of transporting the poles to his field. But it is very strange that PW3 and PW4 had proceeded to Darshan Dhaba for delivering the alleged bribe amount to the accused. In my considered view, the prosecution failed to explain as to

how the accused who allegedly asked PW3 to come to his office rushed to Darshan Dhaba for receipt of the bribe amount. The presence of PW3 and PW4 at Darshan Dhaba for delivering the alleged bribe amount to the accused without any prior communication from the accused also creates a doubt in the case of the prosecution.

It is the case of the prosecution that PW3 was instructed to bring the bribe money of ₹1200/- alongwith the tractor-trolley for the purpose of transporting the poles. PW3 has deposed that he sent his son alongwith the tractor-trolley for transporting the poles. It is not the version of PW3 that he passed on an information to the accused through his son that he would bring the money and in the meantime, the accused could make an arrangement for transportation of the poles to his fields. In the absence of any intimation from PW3, if at all the accused had intended to receive the bribe, he would not have transported the poles in the tractor-trolley brought by the son of PW3 without insisting for the bribe money. The conduct of accused in transporting the poles in the tractor-trolley brought by the son of the accused without receipt of any money from PW3 would go to show that the accused had in fact not intended to receive any bribe from PW3.

To top it all, Makhan Lal, who was the sole independent witness in this case was not examined to corroborate the evidence of PW3 that the accused made a demand of ₹1200/- and accepted the same.

The above facts and circumstances would go to show that PW3 who had a previous enmity with the accused had booked a false case as against the accused. Therefore, I am of the considered view that the prosecution miserably failed to establish that the accused demanded the

bribe and accepted the same.

In view of the above, the accused is acquitted of the charges under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 and as a result, the judgment of conviction and order of sentence passed by the trial Court stands set aside and the appeal is allowed.

The appellant is on bail. The bail bond executed by the appellant stands discharged.

April 23, 2015
Gulati

(M. JEYAPPAUL)
JUDGE