

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1343-SB of 2004

Date of decision: 09.09.2015

Parampal Singh

.....Appellant(s)

Versus

State of Punjab

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

*** * ***

Present: Mr. Om Pal Sharma, Advocate for the appellant(s).

Mr. Ajaib Singh, Additional Advocate General, Punjab.

DARSHAN SINGH, J.

1. The present appeal has been preferred against the judgment of conviction dated 1.7.2004 vide which appellant-Parampal Singh has been held guilty and convicted for the offences punishable under Sections 7 and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called 'the Act') and the order of sentence of the even dated vide which the appellant was sentenced as under:

“U/s 7 of the Prevention of
Corruption Act, 1988

To undergo rigorous imprisonment for
two years and to pay a fine of
Rs.2,000/-. In default of payment of fine
to further undergo rigorous imprisonment

for one month.

U/s 13(2) of the Prevention
of Corruption Act, 1988

To undergo rigorous imprisonment for
two years and to pay a fine of
Rs.2,000/-. In default of payment of fine
to further undergo rigorous imprisonment
for one month.

Both the sentences were ordered to run concurrently.”

2. The brief facts of the prosecution case are that PW-4 Nachhattar Singh was having an electric connection in his house situated in a village Arayian Wala Kalan Distt. Faridkot. He could not deposit the electricity charges in time. Thus, his electrical meter was ordered to be removed and the same was removed by the present appellant on 6.10.2001. Later on, complainant-Nachhattar Singh deposited the entire charges due against him on 8.10.2001 and the reinstallation of the electric meter at his house was ordered. Complainant-Nachhattar Singh contacted the present appellant-Parampal Singh, who was posted as a lineman of the concerned area, for installation of the meter. Accused-appellant demanded a bribe of Rs.500/- from him for reinstallation of the meter. Complainant showed his inability to pay this amount and ultimately, the deal was struck for a sum of Rs.300/- Thus, Nachhattar Singh narrated all these facts to PW-5 Piara Singh. On 11.10.2001, the complainant contacted PW-7 Mehal Singh, Deputy Superintendent of Police (for short "DSP"), Vigilance Bureau, Faridkot and narrated the entire story. Then, his statement Ex.PC was recorded by DSP Mehal Singh. Complainant-Nachhattar Singh presented three currency

notes of denomination of Rs.100/- each. The numbers of those currency notes were noted and the memo Ex.PD was prepared. Phenolphthalein powder was applied to the said currency notes. Those currency notes were again handed over to complainant-Nachhattar Singh with the instructions that he should hand over the said notes to the accused-appellant only on his demand. PW-5 Piara Singh was instructed to act as a shadow witness. He was instructed to hear the conversation between the accused and the complainant and to give a signal when the bribe money is accepted by the appellant. The Investigating Officer gave demonstration of the solution of the phenolphthalein powder and the sodium carbonate. The memo to this effect Ex.PJ was prepared. DSP Mehal Singh made his endorsement Ex.PC/1 on the statement of the complainant and sent the same to the Police Station Vigilance Bureau, Ferozepur on the basis of which the formal FIR Ex.PC/2 was registered.

3. Thereafter, a raiding party was constituted by joining PW-6 Avninder Pal Singh, Agricultural Development Officer and Sanjiv Kumar, clerk. They were introduced with the complainant and the shadow witness. The raiding party went to village Arayian Wala where the accused-appellant was posted. The other members of the raiding party stopped at some distance from the village. Complainant-Nachhattar Singh and shadow witness Piara Singh were sent to the accused to act as per the directions already given. The accused-appellant was present at the shop of Gurbachan Singh. When the complainant reached there, the accused demanded the

money from him. Complainant handed over the tainted currency notes of Rs.300/- to the appellant. The accused-appellant put those currency notes in the front left side pocket of his shirt. PW-5 Piara Singh, the shadow witness, gave the signal to the police party which reached at the spot. The accused-appellant was apprehended. DSP Mehal Singh introduced himself to the accused. The solution of sodium carbonate was prepared and the handwash of the accused was taken which turned into light pink colour. The said solution was stored in the empty nip and was converted into sealed parcel bearing the seal impression 'MSS'. The same was taken into possession vide memo Ex.PE. The search of the appellant was conducted. Three currency notes of denomination of Rs.100/- each were recovered from the front left side pocket of the shirt of the accused. The numbers of said currency notes were tallied with the memo Ex.PD. The recovered currency notes were taken into possession vide memo. Ex.PF. The pocket wash of the shirt of the accused was also taken into the solution of sodium carbonate which also turned light pink in colour. The said solution was also stored in a sealed nip bearing seal impression 'MSS'. The said solution and shirt were also taken into possession vide separate memos. The Investigating Officer prepared the rough site plan of the place of occurrence. The accused-appellant was arrested. After completing the necessary formalities of the investigation and obtaining the sanction order for the prosecution of the appellant, the report under Section 173 Cr.P.C. was presented in the Court.

4. The appellant was charge-sheeted for the offences punishable under Sections 7 and 13(2) of the Act by the learned Special Judge, Faridkot vide order dated 1.7.2002 to which he pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined as many as 12 witnesses.

6. When examined under Section 313 Cr.P.C. the accused-appellant pleaded that he never demanded any money from the complainant nor did he receive the same. He is innocent and has been falsely implicated by the complainant in connivance with the vigilance officials in order to grab prize money from the Government as well as money from him. He was summoned in the office of DSP Vigilance Bureau and then was arrested in this false case. The proceedings regarding hand wash and pocket wash are fake and whole of the writing work was done while sitting in the vigilance office. In the defence evidence, accused examined Gurbachan Singh, in front of whose shop the accused was apprehended, as DW-1. He deposed that accused was never apprehended by the police and vigilance bureau from his shop. Sukhdev Singh appeared as DW-2. He had worked as a T-mate with the appellant and deposed that on 11.10.2001 upto 5 P.M, no police official came to the accused nor he was apprehended on that day. Thereafter, the defence evidence was closed.

7. On appreciating the evidence on record and the contentions raised by the learned counsel for the parties, the

accused-appellant was held guilty and convicted for the offences punishable under Section 7 and 13(2) of the Act. He was awarded the sentence as mentioned in the upper part of the judgment.

8. Aggrieved with the aforesaid judgment of conviction and the order of sentence, the present appeal has been preferred.

9. I have heard Sh.Om Pal Sharma, Advocate, learned counsel for the appellant, Sh. Ajaib Singh, learned Additional Advocate General for the State of Punjab and have gone through the file carefully.

10. Learned counsel for the appellant contended that the accused-appellant has been falsely implicated in this case. The accused alone was not posted as a lineman in that area. Complainant-Nachhattar Singh in collusion with the officials of the Vigilance Bureau got the appellant falsely implicated in order to extort money from the appellant and to grab the prize money from the Government. He contended that PW-5 Piara Singh, the shadow witness, is an old friend of the complainant. So, no reliance can be placed on his statement.

11. He further contended that the place of occurrence is the chowk of the village where various shops were situated. It is also the admitted case of the prosecution witnesses that number of public men had assembled at the spot but no independent witness has been associated in the investigation. So, the testimonies of the official witnesses should not be relied upon.

12. He further contended that there are material

contradictions in the statements of the prosecution witnesses with respect to the time of trap, gathering of the public men at the spot, on the point of recovery of the electric meter, recording of the statements of the witnesses and preparing the documents. These contradictions when taken up collectively renders the prosecution case doubtful. To support his contentions, he relied upon case **Mohan Singh versus State of Haryana 1995 (2) RCR (Criminal) 66.**

13. He further contended that the bribe money is only Rs.300/-. The petitioner is 63 years of age. He has already suffered a lot and has lost his job. He is also facing the proceedings/prosecution for the last about 14 years. He deserves the leniency in the sentence.

14. On the other hand, the learned State counsel contended that from the statements of PW-4 complainant-Nachattar Singh and PW-5 Piara Singh, it is established that the accused-appellant had demanded the bribe of Rs.500/- from the complainant for reinstallation of electric meter at his house. The acceptance of the bribe is also established from the testimonies of PW-4 Nachhattar Singh and PW-5 Piara Singh. The tainted currency notes have been recovered from the possession of the appellant. He had kept the said currency notes in the left pocket of his shirt. He further contended that the discrepancies pointed out by the learned counsel for the appellant are the minor in nature which are bound to occur with the lapse of time. The case of the prosecution is also corroborated from

the report of the FSL Ex.PL with respect of the hand wash and the pocket wash. Thus, he contended that there is no infirmity in the conviction of the appellant as recorded by the learned trial Court.

15. I have duly considered the aforesaid contentions.

16. The conviction of the appellant in this case has been assailed by the learned counsel for the appellant on the grounds that no independent witness has been joined though the place of occurrence was a busy place and public men had assembled at the spot. There are material contradictions in the statements of the prosecution witnesses and that the accused-appellant has been falsely implicated.

17. In order to establish the charges levelled against the appellant, the prosecution was bound to establish the demand of bribe by the appellant from the complainant-Nachattar Singh, the acceptance thereof the recovery of the bribe amount from the possession of the appellant.

18. In order to establish the aforesaid ingredients, the prosecution has relied upon the testimonies of PW-4 complainant Nachhattar Singh, PW-5 Piara Singh, the shadow witness, PW-6 Avninder Pal Singh, ADO, the trap witness and PW-7 DSP Mehal Singh, the Investigating officer. The corroboration has also been sought from the statements of other prosecution witnesses who are the witnesses of formal nature and the witnesses of record.

19. There is no dispute that the place of occurrence is a busy place. At the time of occurrence, the appellant was present in front of

the shop of DW-1 Gurbachan Singh. It is also not disputed that when the accused-appellant was apprehended by the vigilance official, the public men had gathered at the spot but they were not associated in the investigation. Thus, it can be taken that the independent witnesses were available to the Investigating Officer but they have not been associated. Mere this fact that though the independent witnesses were available to the Investigating Officer but have not been associated is itself no ground to outrightly discard the testimonies of the official witnesses. Learned counsel for the appellant has not been able to show as to how the testimonies of the prosecution witnesses should not be treated as trustworthy. There is no absolute rule that their depositions should be treated with suspicion. The testimonies of the official witnesses should not be discredited *ipso facto* due to their official designation. In a latest judgment titled as **Vinod Kumar versus State of Punjab, 2015 (1) RCR (Criminal) 647**, the Hon'ble Apex Court has laid down that there is no invariable rule that evidence of the witnesses of raiding party must be discarded in the absence of any independent corroboration. The same ratio of law has been reiterated in another latest judgment rendered by the Hon'ble Apex Court in case **D. Velayutham versus State Rep. By Inspector of Police, Salem Town, Chennai 2015(2) RCR (Criminal) 237**.

20. The plea of false implication raised by the accused does not appeal to the reasons. He has pleaded that he has been falsely implicated by the complainant in connivance with the vigilance

officials in order to extort money from him and to claim the prize money from the Government. The present appellant was not the only employee of the electric Board deputed in village Arayan Wala Kalan, Distt Faridkot. So, there was no reason for the complainant to choose only the appellant to make the target for the false implication in order to extort money and the prize money. There is no material to show that complainant-Nachhattar Singh had moved any such application against any other public servant. There is also no material on file to show any connection between the complainant and the vigilance officials. The case of the prosecution is also supported by PW-6 Avninder Pal Singh, a respectable Government Officer. The complainant and the vigilance officials are not expected to have any influence over him to falsely depose against the appellant. PW-7 DSP Mehal Singh, the Investigating Officer of the case, has categorically stated that he has not recommended any prize money in favour of the complainant. The complainant has also stated that he has not received any prize money. So, the plea of false implication raised by the appellant has no legs to stand as there was no motive on the part of the complainant and the vigilance officials for the false implication of the appellant. In these circumstances, there is no justification to ignore or discard the testimonies of the prosecution witnesses simply on the ground that the independent witnesses available at the spot have not been associated particularly when their statements are cogent, reliable and inspires confidence. At the most the Court can closely scrutinize their evidence.

21. Learned counsel for the appellant has pointed out some contradictions/discrepancies in the statements of the prosecution witnesses on the point of time of trap, collection of the public man at the spot, on the point of recovery of the electric meter, with respect to the recording of the statements of the witnesses and preparing the documents. I do not find any serious discrepancy in the statements of the witnesses which can go to the core of the case. Complainant Nachhattar Singh has stated that they reached the village at 1 P.M for the purpose of trap. PW-6 Avninder Pal Singh, the witness of trap, has stated that they reached village Arayian Wala Kalan approximately at about 2 P.M. PW-5 Piara Singh, the shadow witness and PW-7 DSP Mehal Singh have not been specifically questioned about the time of trap. So, there is no serious contradiction about the time of trap. No doubt, the prosecution witnesses are discrepant about the factum of gathering of the public men at the spot after the apprehension of the appellant but this contradiction does not go to the root of the case as it does not touch the testimonies of the prosecution witnesses with respect to the demand and acceptance of the bribe and recovery of the bribe money. The electric meter was not taken into possession on the date of trap rather it was recovered on the next day i.e. on 12.10.2001. So, the discrepancy with respect to the recovery of the electric meter has also no effect on the trap proceedings.

22. It is settled principle of law that normal discrepancies do not corrode the credibility of a party's case though the material

discrepancies do so. The normal discrepancies in the evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time and due to mental disposition. These types of discrepancies are always there however honest and truthful a witness may be. The material discrepancies are those which are not normal and not expected of a normal person. The Court has to label the category to which a discrepancy may be categorized and to consider its effect. To support this view, reference can be made to cases, **Dalbir Singh versus State of Haryana 2008(3) RCR Criminal 353** and **Bur Singh and another versus State of Punjab 2008 (4) RCR (Criminal) 834**. In case **Vinod Kumar versus State of Haryana, 2015 (1) RCR (Criminal) 532**, the Hon'ble Apex Court has laid down that no true witness can possibly escape from making some discrepant details but the Court should bear in mind that it is only when discrepancies in the evidence of a witness are so incompatible with the credibility of his version that it would be justified in jettisoning his evidence. The minor discrepancies on trivial matters not touching the core of the case or not going to the root of the matter could not result in rejection of the evidence as a whole. The Court can ignore the discrepancies which do not shed the basic version of the prosecution.

23. The discrepancies pointed out by the learned counsel for the appellant do not go to the root of the matter and are not sufficient to shed the basic version of the prosecution. Such discrepancies are bound to occur even in the statements of the truthful witnesses with

the lapse of time and cannot be made a ground to reject the testimonies of the prosecution witnesses.

24. Mere this fact that PW-5 Piara Singh, the shadow witness was having acquaintance with the complainant being his co-villager is also no ground to reject his statement. His relationship and acquaintance with the complainant is no ground to consider him an interested witness to this extent that he will falsely depose to seek the conviction of the accused, when there is absolutely no allegation against him of having any personal grudge against the appellant.

25. On appraisal of the evidence adduced by the prosecution, all the essential ingredients of the demand of bribe, acceptance thereof and the recovery of the bribe money from the possession of the appellant are fully established. PW-2 Rajinder Kumar, the Junior Engineer, has deposed about the disconnection of the domestic connection of complainant Nachhattar Singh. He further deposed that the complainant had cleared the outstanding bill on 8.10.2001 and he issued the chit Ex.P3 directing the present appellant-Parampal Singh and Mahant Singh, Lineman, to effect the reconnection. It is not disputed that the appellant was not the only lineman of the area but complainant-Nachhattar Singh has categorically stated that his electric meter was removed by the present appellant on 6.10.2001 and after depositing the bill, he contacted him on 8.10.2001 for reconnection of the electric connection by showing the chit issued by PW-2 Rajinder Kumar, JE. At that point of time he raised the demand of bribe of Rs.500/- and ultimately, the deal was struck for

payment of Rs.300/-. PW-4 complainant-Nachhattar Singh has further categorically stated that at the time of trap when he went to the accused, he demanded money from him and then he gave Rs.300/- to the accused. The statement of the complainant has also been corroborated by PW-5 Piara Singh, the shadow witness. So, from the aforesaid evidence, it is established that the accused-appellant Parampal had demanded the bribe of Rs.500/- from the complainant Nachhattar Singh for reconnection of his electric connection but ultimately, the deal was struck for payment of Rs.300/- as bribe. So, the demand of bribe on the part of the appellant is fully established.

26. From the statements of PW-4 Nachhattar Singh, complainant and PW-5 Piara Singh, the shadow witness, it is established that the bribe amount of Rs.300/- were accepted by the appellant which was handed over to him on his demand. Complainant-Nachhattar Singh has categorically stated that the accused counted the notes in the presence of Piara Singh. They also deposed that the accused put those currency notes in the front left pocket of his shirt. Thus, the counting of the tainted currency notes by the appellant and then to keep those currency notes in his shirt's pocket clearly establishes the conscious and deliberate acceptance of the bribe money by the appellant. This ocular evidence is also corroborated from the scientific evidence. After apprehension of the accused, his hand wash and pocket wash was taken in the solution of the sodium carbonate which turned light pink in colour. Those

solutions were stored in the sealed nip and were later on sent to the Forensic Science Laboratory (FSL), Punjab Chandigarh. The report of the FSL Ex.PL shows that the phenolphthalein powder was detected in said washes. It shows that the appellant had come in contact with the tainted currency notes and had kept the same in his pocket. Thus, the acceptance of the bribe money by the appellant is also established.

27. The recovery of the tainted currency notes from the possession of the appellant is also established from the statements of PW-4 complainant-Nachhattar Singh, PW-5 Piara Singh, the shadow witness, PW-6 Avninder Pal Singh, the witness of trap and PW-7 DSP Mehal Singh, the Investigating Officer. All these witnesses have consistently deposed that on the search of the appellant, the tainted currency notes were recovered from the pocket of his shirt.

28. Thus, from the aforesaid evidence, it is established that the accused-appellant had demanded and accepted a bribe of Rs.300/- from the complainant for the reinstallation of the electric meter at his house. The said tainted currency notes were recovered from the possession of the appellant. Once the aforesaid ingredients are established, the statutory presumption under Section 20 of the Act comes into action to draw the presumption that said acceptance was as a motive or reward for doing the official act i.e. as an illegal gratification. To support this view, reference can be made to cases

Madhukar Bhaskarrao Joshi versus State of Maharashtra 2000

(4) RCR (Criminal) 705 SC and T. Shankar Prasad versus State of

Andhra Pradesh, 2004 Criminal Law Journal 884.

29. Consequently, I do not find any legal infirmity in the conviction of the appellant recorded by the learned trial Court.

30. However, I found substance in the contentions raised by the learned counsel for the appellant for reduction of sentence. The bribe amount in this case is Rs.300/-. The present case was registered on 11.10.2001. The case has been decided by the learned trial Court on 1.7.2004. In the impugned judgment, the age of the appellant is mentioned as 53 years. Thus, at present, the age of the appellant would be more than 64 years. There is no material on record to show that the appellant is a previous convict or involved in any other criminal activity. So, the appellant deserves the leniency in the matter of sentence. Consequently, the order on the quantum of sentence requires to be modified.

31. Thus, keeping in view my aforesaid discussion, the conviction of the appellant as recorded by the learned trial Court for the offences punishable under Sections 7 and 13(2) of the Act is hereby maintained and affirmed. However, the order on the quantum of sentence is hereby modified and the appellant is sentenced as under:

“U/s 7 of the Prevention of Corruption Act, 1988	To undergo R.I. for six months and to pay a fine of Rs.2,000/-. In default of payment of fine to further undergo RI for one month.
U/s 13(2) of the Prevention of Corruption Act, 1988	To undergo R.I. For one year and to pay a fine of Rs.2,000/-. In default of

payment of fine to further undergo RI for one month.

The aforesaid sentences shall run concurrently.

32. With the aforesaid modification in the quantum of sentence, the present appeal has no merits and the same is hereby dismissed.

September 09, 2015
ps

(DARSHAN SINGH)
JUDGE

