

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1094-SB of 2011

DATE OF DECISION: DECEMBER 1, 2015

SATNAM SINGH PATWARI

...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. P.S.HUNDAL, SR. ADVOCATE
WITH MR. DINESH TREHAN, ADVOCATE
FOR THE APPELLANT.

MR. R.S.RANDHAWA, ADDL.A.G., PUNJAB.

M. JEYAPPAUL, J.

1. Accused Satnam Singh, Patwari has challenged the judgement of conviction and sentenced passed by the trial Court vide which he was convicted under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the Act') and sentenced to undergo R.I. for 3 years and to pay a fine of ₹5000/- and in default of payment of fine, to undergo further R.I. for 3 months for each of the offences.

2. PW2 Mehal Singh has deposed that his father obtained a decree from the Court of law for division of the land in his name into two parts between PW2 Mehal Singh and his younger brother Santokh Singh. Santokh Singh had died leaving behind his minor children. After his death, PW2 cultivated the land of his brother as well. Thereafter, he planned to transfer and get the mutation sanctioned in the name of children of his

brother in respect of his share. On 31.8.2005, PW2 met accused Satnam Singh, Halqa Patwari who informed PW2 that he would charge ₹14,000/- for 14 killas of land. Thereafter, the amount was settled at ₹10,000/-. Accused Satnam Singh informed PW2 that he would visit his house on 2.9.2005 for collecting the money. He also instructed PW2 to keep the money ready so that PW2 would get the mutation sanctioned. PW2 returned to his village and consulted PW2 Satnam Singh son of Niranjan Singh. PW3 advised PW2 not to give bribe but to report the matter to the Vigilance Bureau, Patiala. On 2.9.2005, PW2 and PW3 proceeded to the office of Vigilance Bureau, Patiala with ₹10,000/-. PW2 produced the said amount to PW8 DSP Banarsi Dass, Vigilance Bureau, Patiala. The statement suffered by PW2 was recorded by PW8. PW8 organized demonstration of Phenolphthalein test. PW6 Bikar Singh, official witness, was also associated for laying the trap. PW8 handed over the tainted currency notes treated with Phenolphthalein powder. As instructed by PW8, PW2 and PW3 reached the house of PW2. Accused Satnam Singh arrived at the house of PW2 at 9.09 a.m. Accused Satnam Singh demanded ₹10,000/- as bribe from him. PW2 handed him over the tainted currency notes and the accused accepted the same and put in his left side pocket of the shirt. PW3 gave pre-arranged signal to the trap team headed by PW8. PW8 prepared the sodium carbonate solution and asked the accused to dip his hands in it. On his so doing, the solution turned light pink in colour. The left side pocket of the accused also was dipped into the solution and the colour of the solution turned light pink. The tainted currency notes were handed over by the accused to PW8. PW8 also arrested the accused. PW3 Satnam Singh who

was deputed as a shadow witness spoke about the demand of bribe by the accused at the house of PW2 and the acceptance of the same. He also deposed that the tainted currency notes were recovered from the possession of the accused. PW6 Bikar Singh also spoke about the recovery of the tainted currency notes from the accused.

3. In the statement under Section 313 Cr.P.C., the accused submitted that he never demanded or accepted any illegal gratification from PW2 Mehal Singh. He submitted that Mehal Singh in connivance with Satnam Singh falsely implicated him. The Will allegedly executed by Santokh Singh was fabricated one. No raid was conducted by the Vigilance Bureau. Neither Mehal Singh nor Satnam Singh met him at any point of time.

4. On the side of the defence, one Mela Singh who figured as an attesting witness to the Will Ex.P19 allegedly recovered from the accused was examined as DW1. He deposed that he did not know why his thumb impression was obtained on a blank paper. The defence also examined DW2 Nishan Singh to speak about the alleged enmity between the accused and PW3 Satnam Singh who was employed as a shadow witness by PW8.

5. The trial Court having relied upon the evidence of PW2 Mehal Singh, PW3 Satnam Singh, PW6 Bikar Singh and PW8 DSP Banarsi Dass, arrived at a conclusion that the prosecution established beyond reasonable doubt the charges under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act.

6. PW2 Mehal Singh is a farmer. He has deposed naturally that he cultivated the land of his brother Santokh Singh after his demise. As his

children had grown-up, he having planned to mutate the share of his brother in the name of his children, approached accused Satnam Singh, Halqa Patwari on 31.8.2005 to get the mutation sanctioned.

7. PW3 Satnam Singh is a villager of PW2. No wonder, PW2 who had agreed to pay a sum of ₹10,000/- as bribe to the accused to get the mutation sanctioned consulted PW3 Satnam Singh who advised him to approach the Vigilance Bureau, Patiala. The evidence of PW2 would establish that the accused had informed PW2 that he would come down to his house on 2.9.2005 to collect the money demanded by him. PW3 being the villager of PW2 had agreed to be a shadow witness. They have categorically deposed that when they were present at the house of PW2 after PW2 lodged a first information report with PW8 and observed the Phenolphthalein test demonstration at the office of PW8, the accused arrived at the house of PW2 and demanded bribe of ₹10,000/- and PW2 paid the bribe amount of ₹10,000/- to him.

8. The evidence of PW2, PW3, PW6 and PW8 would go to establish that tainted currency notes of ₹10,000/- were recovered from the left side pocket of the shirt of the accused. They have also stated that the hands and the left side pocket of the shirt of the accused were dipped in the sodium carbonate solution prepared by PW8 and the same turned pink in colour.

9. PW3 was not a stranger to PW2. He being the villager of PW2 had given advice to PW2. The association of PW3 in the trap exercise undertaken by PW8 does not throw any doubt on the case of the prosecution. A rigorous cross-examination done by the defence did not

yield any result expected by the defence. There was no motive alleged against PW2 and PW3 for laying trap against the accused. There was no reason for PW6, an official witness, to speak against the accused who was not connected to him.

10. It is a well settled proposition of law that not only the demand of bribe, but also acceptance thereof shall be established by the prosecution without any pale of doubt. A presumption can be drawn only when the demand and acceptance were established by the prosecution. The evidence of PW2, PW3, PW6 and PW8 completely establishes the charges framed against the accused.

11. Learned senior counsel appearing for the appellant referring to the Will Ex.MO-18 submits that it was a fabricated document for the purpose of strengthening the case of the prosecution. He pointed out that the Will allegedly executed by Santokh Singh, the brother of PW2, did not bear the date of execution. Learned counsel appearing for the State contended that the Will Ex.MO-18 is an irrelevant document to decide the issue arisen in this case.

12. I am of the considered view that the Will Ex.MO-18 allegedly executed by Santokh Singh has no relevance to this case. This is not a civil case where the execution of the Will was challenged by the parties concerned. At any rate, it is found that PW8 has allegedly recovered the Will Ex.MO-18 from the custody of the accused. On a careful perusal of the evidence of PW2, I find that he had not spoken much about the execution of the Will Ex.MO-18 by his brother, though it was exhibited through him. It is true that the date of execution of the Will was not mentioned in the Will

exhibited by the prosecution. Any fabricated document would look impeccable as fabrication is well planned and executed. The parties to the fabrication would not commit even a minor mistake in the course of fabrication. In other words, a fabricated document would look smarter than the original piece of document. Therefore, I do not propose to buy the argument that Ex.MO-18 was fabricated by PW2 and PW3. Further, there was no necessity for the prosecution to project such a document as other evidence would automatically establish its charges against the accused.

13. It was further submitted by learned senior counsel appearing for the appellant that Santokh Singh, brother of PW2, was just 35 years old at the time when he died in the motor accident. Therefore, there would have been no necessity for Santokh Singh to execute any Will at the age of 35. Learned counsel appearing for the State brought to my notice the testimony of PW3 to the effect that Santokh Singh was not keeping good health during those days as he was an addict. Santokh Singh might not have expected his early death in an accident. But as he was not keeping good health due to his excessive addiction, he would have naturally thought of executing a Will. At any rate, as submitted by learned State counsel, I am of the considered view that the Will projected by the prosecution is totally irrelevant to the issue involved in the present case.

14. Learned senior counsel appearing for the appellant further submitted referring to the evidence of PW2 Mehal Singh that he had not specifically deposed as to why he approached the accused and why the accused demanded ₹14,000/- which was later on reduced to ₹10,000/-.

15.

Learned State counsel contended referring thoroughly to the

evidence of PW2 that PW2 has deposed that the bribe amount was demanded by accused only for getting the mutation sanctioned in the name of the children of Santokh Singh, brother of PW2.

16. I thoroughly scanned the evidence of PW2. It is a well settled principle of law that a part of sentence in the evidence of a witness cannot be dissected so as to draw a meaning flowed therefrom. The entire evidence will have to be perused to arrive at the meaning attempted to be conveyed by the witness concerned.

17. PW2 has come out with a version that he thought of transferring the property of his brother under his cultivation to the name of children of his brother as they have grown-up. Therefore, he approached the accused who having fully understood the requirement of PW2 demanded ₹14,000/- for 14 killas and chose to reduce it to ₹10,000/- in the aftermath of the bargaining of PW2 and told him to keep the money ready so that he would get the mutation sanctioned. The above evidence of PW2 categorically conveys the purpose for which PW2 approached the accused and the job for which accused demanded bribe. Therefore, I find that there is no merit in the above submission made by learned senior counsel appearing for the appellant.

18. Learned senior counsel appearing for the appellant further submitted, referring to the evidence of DW2 that PW3 Satnam Singh, shadow witness and the accused were not on good terms and therefore, PW3 was associated by PW2 to book a false case as against the accused.

19. *Per contra*, learned State counsel submitted that PW3 Satnam Singh being the villager of PW2 had advised him to lodge a complaint

before the Vigilance Bureau, Patiala.

20. In my considered view, PW3 Santam Singh is a natural witness to the case. If at all PW3 had approached a stranger to the village, such a conduct of PW2 may give rise to some doubt. The evidence of DW2 does not inspire confidence. Further, the animosity alleged against PW3 Satnam Singh was not established.

21. It was brought to the notice of this Court by learned senior counsel appearing for the appellant that the accused met PW3 on 1.9.2005 and not on 31.8.2005, whereas PW3 deposed that he met PW2 on 31.8.2005 itself.

22. It is true that PW2 during the course of cross-examination deposed that he met PW3 on 1.9.2005 and not on 31.8.2005. On a careful perusal of the chief-examination, it is found that he had dropped a hint that immediately after the accused demanded bribe, he returned to his village and sought advice from PW3 after sharing the episode with him. Therefore, it is quite probable that PW2 would have shared the information to PW3 on 31.8.2005 itself. Even otherwise, such a minor discrepancy in the evidence of PW2 and PW3 as regards the date of sharing of information does not go to the root of the case.

23. Learned senior counsel appearing for the appellant submitted that no question was put to the accused under Section 313 Cr.P.C. that the accused demanded an illegal gratification on 31.8.2005 and therefore, the evidence adduced on the side of the prosecution through PW2 and PW3 that a demand of bribe was made by the accused on 31.5.2005 cannot be accepted.

24. I thoroughly perused the statement of accused under Section 313 Cr.P.C. recorded by the trial Court. It is an undisputed fact that no question was put to the accused as regards the evidence of PW2 and PW3 that the accused originally demanded bribe from PW2 on 31.8.2005. But the question is whether the accused was completely apprised of the entire evidence of the witnesses concerned and whether the accused had answered to the questionnaire having understood the import of evidence adduced by the prosecution. The second question put to the accused was whether the accused had gone through the evidence recorded in the case and understood the same. A positive answer had emanated from the accused. That apart, when the accused was asked to say his version about the case, he having fully gone through the evidence and understood the same stated that neither Mehal Singh nor Satnam Singh met him at any point of time on 31.8.2005. In other words, the accused has come to know that the witnesses had deposed against him that PW2 Mehal Singh met him on 31.8.2005. Even otherwise, the demand and acceptance on 2.9.2005 has been well established beyond reasonable doubt by the prosecution. Therefore, failure to put a specific question as regards the episode that took place on 31.8.2005 to the accused under Section 313 Cr.P.C. does not tilt the case of the prosecution.

25. It was contended by learned senior counsel appearing for the appellant that the prosecution should have examined the author of the sanction for prosecution. The accused had lost the opportunity to test the subjective satisfaction arrived at by the Sanctioning Authority before according sanction for the prosecution.

26. The sanction order Ex.PN accorded by the Sanctioning Authority was spoken to by PW7 Iqbal Kaur, Junior Assistant attached to the office of Deputy Commissioner, Patiala. The sanction order was put to challenge by the defence through PW7. The order of sanction reflects that the Deputy Commissioner accorded sanction only after his subjective satisfaction on a thorough perusal of the materials produced before him. When the subjective satisfaction is reflected in the sanction order, it can be exhibited through an official attached to the office of the Sanctioning Authority.

27. Learned senior counsel appearing for the appellant cited a decision of this Court in **Jarnail Singh vs. State of Haryana, 1991(1) RCR (Criminal) 351**, which reads as follows:-

*“5. Shadow witness Sukhwinder Singh was not produced in the witness box. Only witness of the alleged demand for illegal gratification is complainant Baldev Sharma (PW6). In similar circumstances, it was observed by this Court that in a case like this, to bring home the guilt to the accused, it has to be established by the prosecution that the accused had demanded the bribe from the complainant and had accepted the same in pursuance of the demand. To prove these allegations merely the statement of the complainant or the trap witnesses cannot be relied upon without independent corroboration. It has been held by the Supreme Court in **Dharshan Lal vs. Delhi Administration, 1974, CLR 601**, “that trap witnesses in a case under Section 5(2) of the Prevention of Corruption Act, being*

*concerned in success of the trap, the Court should require independent corroboration of their statements before convicting the accused. “The same view is expressed in **Prem Kumar v. State of Pb., 1976 CLR 366** and **Jagjit Singh v. State of Punjab, 1980 CLR 93**. It has been held in these cases that no implicit reliance can be placed on the testimony of trap witnesses in the absence of independent witnesses and on that account they spring from tainted source. Need for seeking independent corroboration of the testimony of the complainant and shadow witness was also emphasized in **Dalip Singh v. State of Punjab, 1988(1) Recent Criminal Reports, 123**. It has repeatedly been laid down by the final court that the giver of the bribe is normally to be treated as accomplice and before recording the conviction of the delinquent government servant, independent corroboration of evidence of the accomplice, i.e., the complainant and the shadow witness is normally sought for if not as a matter of law, then at least as a matter of prudence.”*

28. Learned senior counsel also cited a decision of this Court in **Amrik Singh vs. State of Punjab, 2005(4) RCR(Criminal) 310**, wherein it has been observed as follows:-

*“22. In **Sat Paul v. Delhi Administration, 1076 SCC (Cri.) 160**, it was held that trap witnesses are interested witnesses concerned with the success of the trap and qualitatively their testimony is inferior to that on an ordinary interested witness. Besides, it was observed that corroboration of such interested*

witness from independent source is essential where witnesses have poor moral fibre with bad antecedents and have motive to remove the accused from their way. Corroboration of another trap witness, who was a police official was held not to be sufficient.”

29. In **Jarnail Singh** referred to above, it is found that a shadow witness was not examined by the prosecution. Therefore, this Court in **Jarnail Singh** had to search for corroboration for the interested testimony of the complainant who initiated the trap case. Further, it is observed by the Court in **Jarnail Singh** that as a matter of prudence, independent corroboration may be sought to support the evidence of complainant and shadow witness.

30. In **Amrik Singh** it has been pointed out that where the witnesses have poor moral fibre coupled with bad antecedents and some motive to unsettle the accused, corroboration to the testimony of the trap witness may be required.

31. The above decisions, in my considered view, would not apply to the case in hand where the complainant and the shadow witness had no bad antecedents. They also did not have any motive to fabricate a case against the Patwari of the village. Therefore, in my view, if the evidence of the complainant and the shadow witness is found to be trustworthy and credible, the question of seeking corroboration from independent source does not arise for consideration.

32. Citing the decision of the Hon'ble Supreme Court in **B.Jayaraj vs. State of Andhra Pradesh, 2014 (13) SCC 55**, learned senior counsel for

the appellant submitted that mere recovery of the tainted currency notes from the possession of the accused without any semblance of demand of bribe would not bring home the charge under Section 7 of the Act.

33. I find that the above case will have no application to the facts of this case, as it has been thoroughly established by the prosecution that in the instant case, there was not only demand of bribe by the accused, but also acceptance of bribe by him. The recovery of tainted money was the sequence of the bribe demanded and accepted by the accused in the instant case.

34. Learned senior counsel appearing for the appellant referred to the decision of this Court in Ashok Kumar vs. State of Punjab, CRA-S-1510-SB of 2006, decided on 3.7.2015, wherein it has been held as follows:-

“31. In the present case one more important feature that should have been taken note of by the Court. Hands of complainant PW-6 were not got washed in the solution of Sodium Carbonate after the recovery of the currency notes from the accused. Failure on this front was sufficient to create doubts as to the act and conduct of the Investigating Officer. Had he got the hands of complainant washed in the solution of sodium carbonate, had he sent the contents of the hand wash to the chemical examiner for scientific test and had a report of chemical examiner being favoured to the prosecution case, it would have been certainly proved that complainant had actually given the said currency go the accused on the spot

immediately before the recovery of the same from the possession of the accused. In the absence of the same there cannot be any reliable evidence on record to show that the complainant had actually given the said currency to the accused on the spot. The conduct of shadow witness was also under shadow in view of his relationship with the complainant and his divergence in the statement on other material aspects of the case clearly made it a case of illegal trapping with all evil design to secure some illegal goal.”

35. In the aforesaid case, it is found that the complainant never disclosed the factum of demand of illegal gratification of the accused on 23.1.2003, nor the payment of bribe to the accused on his demand on 24.1.2003. Under such circumstances, this Court made the above observation that the complainant who had not disclosed the material aspect of demand and acceptance, at least, the test of his hands with sodium carbonate solution would have proved that he had actually handed over the currency notes. The above observation would not apply to the facts of this case where demand and acceptance of bribe was thoroughly established by the prosecution.

36. In the above facts and circumstance, I find that the trial Court has rightly convicted the accused under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. But considering the fact that the accused had faced the ordeal of trial for more than 10 long years, the sentence of 2 years imposed for the offence under Section

Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of

Corruption Act is reduced to the period of 1 year R.I. for each of the offences. The fine imposed and the default sentence imposed therein by the trial Court are maintained. Both the sentences shall run concurrently.

37. With the above modification in the matter of sentence, the appeal stands dismissed.

38. The accused-appellant is on bail. His bail bond stand cancelled. He shall surrender within 15 days from the date of this judgement before the Chief Judicial Magistrate, Patiala, who shall send him to jail to undergo the remaining part of the sentence. If he fails to surrender, the learned Chief Judicial Magistrate, Patiala shall take coercive steps to secure his presence and send him to jail to undergo the remaining part of the sentence.

December 1, 2015
Gulati

(M. JEYAPPAUL)
JUDGE