

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Crl. Appeal No.S-309-SB of 2003 (O&M)

Date of Decision: August 02, 2018

Surinder Pal

...Appellants

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ashit Malik, Advocate
for the appellant.

Mr.Pawan Sharda, Sr. Deputy Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 06.02.2003 passed by learned Special Judge, Amritsar, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months under Section 13(1) read with Section 13(2) of the Prevention of Corruption Act and further to undergo rigorous imprisonment for a period of one year and to pay fine of ₹1,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of one month under Section 7 of the Prevention of Corruption Act. Both the sentences were ordered to run

concurrently.

The brief facts of the prosecution case as noted down in the judgment passed by learned Special Judge, Amritsar, are as under:-

“14 kanals and 5 marlas of land comprised in Khasra No. 817/1 (6-13), 815(1-4), 816(6-8) in the revenue estate of Village Roranwala, Hadbast No.393 (per Jamabandi for the year (1990-91) was allotted by the Government of Punjab for raising residential houses for the harijans of the village. Amrik Singh, complainant, was the Sarpanch of the village in the year. He moved an application (Exhibit PB) before Tehsildar, Amritsar requesting demarcation of the land. The said Tehsildar endorsed the said application to Girdawar Halqa Attari/Patwari Halqa directing them to carry out the demarcation, and handed over the application back to the complainant to be presented before the patwari. Accused was the Halqa patwari at that time. Complainant presented the said application before the accused and also brought it to the knowledge of the Girdawar. Complainant, thereafter, approached the accused more than once and requested him to do the needful. One such visit was paid by the complainant to the accused on September 18, 1995. When requested to do the needful in the matter accused told the complainant that he would go to the Girdawar and produce the necessary record before him for the purpose of demarcation only if he was paid a sum of one thousand rupees (Rs.1000/-) as illegal gratification. Besides, the complainant would have to settle the matter with the Girdawar separately, told the accused. Complainant made entreaties in the name of penury of the hapless harijans but to no avail. The complainant, however, was not willing to pay bribe to the accused. He, accordingly, made a false promise to pay illegal gratification to the accused on the following day, i.e. on September 19, 1995.

2. On September 19, 1995 complainant, in the company of Mohinder Singh (PW) approached Deputy Superintendent Vigilance Bureau, Amritsar, Gurmej Singh (PW) and made his statement (Exhibit PE) before him. He also presented before the investigating officer one thousand rupees (Rs.1000/-) in the form of two currency notes in the denomination of five hundred rupees each. Investigating officer treated these currency notes with Phenolphthalein powder and (vide memo Exhibit PC) returned the same to the complainant with the direction to give these very currency notes to the accused on demand of illegal gratification by the latter.

3. Investigating Officer requisitioned a glass of water. Colour of water remained unchanged when Sodium Carbonate

added thereto but it turned pink when hands of the complainant, after bringing these in contact with Phenolphthalein smeared currency notes, were washed in it. The solution was destroyed. Investigating Officer and the complainant washed their hands well. A memo (Exhibit PO) was written in this respect.

4. The raid was then planned. Mohinder Singh (PW) was nominated as shadow witness. He was instructed to accompany the complainant to the workplace of accused Surinder Pal, overhear the conversation and oversee the transaction between the complainant and the accused and after demand and acceptance of the amount of illegal gratification by the accused to beckon the raiding party by putting his right hand over his head.

5. Pursuant to a request (Exhibit PR) made by the Investigating Officer a clerk of Zila Parisahd, Amritsar named Narinder Pal Singh joined the raiding party as an official witness.

6. On the statement (Exhibit PE) of the complainant Investigating Officer made endorsement (Exhibit PE/1) and it having been sent to the police Station a formal First Information Report (Exhibit PE/2) was recorded.

7. Investigating Officer then led the raiding party to the workplace of the accused. While other members of the raiding party scattered hither and thither Amrik Singh and Mohinder Singh (PWs) went inside accused's office. Accused was present in his office. Amrik Singh (PW) asked for the demarcation but the accused demanded the amount of illegal gratification. Amrik Singh (PW) handed over to the accused the phenolphthalein treated currency notes which were put by the latter in the left hand side pocket of his trousers. PW Mohinder Singh signalled the raiding party in the specified manner. Raiding party entered accused's office. Investigating Officer disclosed his identity before the accused. Officials of Vigilance Police caught the accused from his arms. Hands of the accused tested positive to the Phenolphthalein-Sodium Carbonate test. The solution was made into a vial (Exhibit P-3) which was sealed and was taken into possession (vide memo Exhibit PF). Two currency notes (Exhibits P-1 & P-2) in the denomination of five hundred rupees each were recovered from the left hand side pocket of the trousers worn by the accused. Numbers of the recovered currency notes tallied with the numbers recorded in a memo (Exhibit PC). These currency notes were taken into possession (vide memo Exhibit PG). Further search of the person of the accused yielded cash amounting to eight hundred fifty one rupees (Rs.851/-), one purse, one

driving licence, one identity card and a wrist watch. These articles were also taken into possession (vide memo Exhibit PH). Left hand side pocket of the pants of the accused also tested positive to the Phenolphthalein-Sodium Carbonate test. The solution so obtained was put into a phial (Exhibit P-4) which was sealed and alongwith pants of the accused (Exhibit P-5) was taken into possession (vide memo Exhibit PJ). Person of the complainant was searched (vide memo Exhibit PK) and nothing incriminating was found. Jamabandies (Exhibits PL & PL/1) and extract of Mutation Register (Exhibit PL/2) were taken into possession (vide memo Exhibit PN) alongwith the roznamcha (Exhibit PM). Site plan (Exhibit PP) of the place of recovery was prepared.”

8. Statements of witnesses were recorded. Service record of the accused was taken in possession. Report of Chemical Examiner (Exhibit PS) and sanction for prosecution of the accused as required under Section 19 of the Prevention of Corruption Act, 1988 were obtained. On completion of investigation and other attendant formalities a report under Section 173 of the Code of Criminal Procedure (Cr.P.C.) was prepared and presented before the Court.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 13(1) read with Section 13(2) and Section 7 of the Prevention of Corruption Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Amrik Singh, Naib Sadar Kanungo, who proved Ex.PA order of competent authority giving sanction for the prosecution of the accused. PW-2 Amrik Singh, complainant, PW-3 Mohinder Singh, shadow witness and PW-5 Narinder Pal Singh, official witness, deposed regarding prosecution version and gave same facts as stated above while giving brief facts of the case. PW-4 Head Constable Narinderjit Singh, is formal witness, who tendered into evidence his affidavit Ex.PW4/A. PW-6 DSP Gurmej Singh,

the present case. PW-7 Head Constable Surjit Singh mainly deposed regarding depositing case property with the FSL. PW-8 Satnam Singh mainly brought relevant revenue record. PW-9 Lakhwinderpal Singh (wrongly mentioned as Ravinderpal Singh) brought the service book of accused Ex.PR.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution. He denied the correctness of the evidence and pleaded himself as innocent and his false implication. He also tendered into evidence certified copy of judgment and decree dated 11.06.1994 passed by Subordinate Judge, Class-II, Amritsar and judgment and decree dated 14.06.1994.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant argued that shadow witness has not heard the conversation between the accused and the complainant. Secondly, he argued that prosecution has failed to prove its case beyond reasonable doubt and false case has been planted upon the accused-appellant. There is cutting on the application for demarcation and month has been changed from March to September. He further argued that this application does not bear any receipt number etc., which is Ex.PB. Learned counsel for appellant also contended that whole case is based on the demarcation and this evidence is created by the prosecution. Therefore, he argued that acceptance of bribe has not been proved and further, reasonable doubt exists in the prosecution version.

sentence.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by bringing cogent evidence on record. PWs have consistently deposed regarding prosecution version. No discrepancy has been pointed out by learned counsel for the appellant in the statements of the PWs. He further argued that there is nothing in the statements of PWs, which may make their statements unreliable. Learned State counsel next contended that complainant has duly proved demand and acceptance of bribe by the accused. At the time of flashing signal by shadow witness, the police party raided the place and recovery was effected. He also contended that official witness has no motive or enmity to falsely deposed against the accused-appellant. Learned State counsel, therefore, argued that there being no merit in the appeal, the same should be dismissed.

After hearing learned counsel for the appellant as well as learned State counsel and after going through the record, firstly, I find that Ex.PB is the application given by Amrik Singh, Sarpanch to Tehsildar for demarcation. There is cutting on the month, as earlier it looks to be March and now date is 5.9.95. This cutting on the date will not create reasonable doubt as the order of the Tehsildar, Amritsar dated 5.9.95 is on the application itself wherein he has passed the order that as per letter, demarcation be conducted on the spot by Girdawar Halqa or Patwari Halqa. Further, on seeing this application, it is also clear that revenue stamp, which has been affixed on this application, is bearing the date 5.9.95, which means that, in no way, it can be held that this document has been created later on.

Otherwise also, there is no reason or ground for creating this document.

The prosecution is not getting any benefit by doing this. Even if it is taken that this letter had already been typed or typed with wrong date, then, it is of no consequence because stamp was affixed on 05.09.1995 and it was presented before Tehsildar on 05.09.1995 and then, he passed the order on that application. The argument that the letter was not having any diary number, does not create any doubt in the prosecution version and this argument, has no merit.

There is nothing on the record to show that this evidence has been created by the prosecution. Furthermore, there is no evidence on record to show that accused has been falsely implicated in this case. The complainant is Sarpanch of the village and land is also a public land and is not a personal property of the complainant. There is also nothing as to why complainant will depose falsely against the accused.

Further, I find that complainant has appeared in this case as PW-2 and has consistently deposed regarding prosecution version. He stated that he met Patwari on 18.09.1995, who demanded a sum of ₹1000/- for demarcating the land and he also told him to talk and meet to Kanungo separately. The demand of bribe has been duly proved by PW-2 Amrik Singh, complainant. This witness consistently deposed regarding prosecution version. This witness has been examined at length but no material contradictions or improvements have been pointed out in his statement. There is also nothing to disbelieve the statement of this witness. PW-3 Mohinder Singh, who is shadow witness, also deposed as per prosecution version. He stated that he and Sarpanch gave application to the Tehsildar, which was marked to Patwari. They met the Patwari, who told them to serve him also. He demanded a sum of ₹1000/-. This witness

further deposed that they talked to vigilance department. The vigilance officials told him to give signal by waving hand over his head after the accused receives money. He specifically stated in chief-examination that when, at the time of raid, he went to the accused, accused again told him to serve him. Amrik Singh gave him two currency notes of ₹500/- each and accused put those notes in left pocket of his pant. The shadow witness has also proved the demand and acceptance of the bribe money like complainant. Again, recovery witness and the Investigating Officer have also deposed as per prosecution version consistently.

The perusal of the record shows that PWs have consistently deposed regarding prosecution version. No material contradictions or improvements have been pointed in the statements of PWs. There is nothing to disbelieve their statements.

In view of the above discussion, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 06.02.2003 passed by learned Special Judge, Amritsar, is correct, as per law and does not require any interference from this Court.

As regarding the alternative prayer for reducing the sentence, I find that accused-appellant has already suffered long protracted criminal trial for 23 years. Keeping in view the facts and circumstances of the present case, the sentence imposed upon the appellant is reduced and he is directed to undergo rigorous imprisonment for a period of one year under Section 13(1) read with Section 13(2) of the Prevention of Corruption Act instead of two years. However, other sentence, sentence of fine and in

default thereof, shall remain the same.

Accordingly, present criminal appeal stands dismissed with above-said modification in the sentence.

Since appellant Surinder Pal is on bail, his bail bonds stand annulled and he is directed to surrender himself before the jail authorities immediately for completing remainder of sentence, failing which the concerned authority shall proceed against him in accordance with law.

August 02, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No