

Gian Singh vs State Of Punjab on 5 March, 1974

Equivalent citations: AIR1974SC1024, 1974CRILJ789, (1974)4SCC305, 1974(6)UJ754(SC), AIR 1974 SUPREME COURT 1024, 1974 4 SCC 305 1974 SCC(CRI) 406, 1974 SCC(CRI) 406

Bench: H.R. Khanna, V.R. Krishna Iyer

JUDGMENT

Krishna Iyer, J.

1. This appeal, filed by special leave, may be disposed of by a short judgment because after having heard counsel for the appellant, Shri Rus, at some length, we are satisfied that no serious question of law arises and a re-application of the evidence to do which we were invited is not permissible in the absence of manifest injustice or perverse understanding of the materials on record by the courts below.

2. The accused, an Assistant Sub-Inspector attached to Police Station, Raman is charged with an offence under Section 5(1)(d) of the Prevention of Corruption Act. According to the prosecution, one Duta Singh had complained against Hakum Singh and others to the accused on May 24, 1968 since he was then the Station House officer of P.S. Raman within whose limits the offence is said to have taken place. While the accused recorded the report, he did not arrest the accused although they were available in the village. On the same day Smt. Dhan Kaur, the mother of Buta Singh, complained to Chand Singh, P.W. 2, the Sarpanch of the village that the police officer was not taking steps to arrest the accused in the case where her son had been attacked. P.W. 2 thereupon went to the accused's house and the latter told him that for getting the accused in the case arrested bribe had to be paid. Promising to see him later send some one else, P.W. 2 returned to his liquor vending shop. He told P.W. 3, Jwala Singh, and P.W. 1, Santokh Singh, about the demand of the accused for money and requested them to meet the accused and settle the payment at a moderate sum P.Ws. 3 and 4 proceeded to the accused's place, and although initially he asked for Rs. 150/-, he reduced it to Rs. 100/-. The two mediators, P.Ws 3 and 4, informed P.W. 2 accordingly, This information was conveyed by P.W. 2 to Buta Singh and his mother. Dhan Kaur, the mother, then gave ten currency notes of Rs. 10/- each to be made over to the accused as 'speed money' in the matter of effecting the arrest. P.W. 2 came back to the liquor shop with the money and told P.Ws. 3 and 4 that it was vicious for the accused to be asking for bribe like this and he should be trapped 'his time.... They decided that P.W. 3, who is a friend of the accused, should meet and take the accused to the village where the arrest was to be effected (Bangi Ruldu) and P.W. 2 and 4 proceeded to Bhatinda in jeep to meet the Deputy Superintendent of police, P.W. 9. P.W. 2 related the story to P.W. 9 in a complaint and produced the ten rupee notes intended to be passed on to accused as bribe. P.W. 9 took the necessary follow up action. He noted the numbers of the said notes and returned them to P.W. 2

directing him and P.W. 4 to proceed to the village and arrange to hand over the notes to the accused if he demanded bribe P.W. 9 himself agreed to reach the Rest House, Kot Dhakhtu, and wait there for information about the passing of the money.

3. On the above basis, in the afternoon of May 25, P.W. 3 took a jeep, met the accused and assured him that the money would be paid at the village Bangi Buldu and took him along in the jeep to that village. There were two constables, P.Ws. 5 and 6. also with them. Leaving the accused and the constables at Dharamshala, P W 3 went to meet PW 2 at the former's residence. He apprised P.W. 2 of the fact that the accused had come to the Dharamshala whereupon the money was made over to P W 3 with instructions to give it to the accused if demanded. PW. 3 left for the Dharamshala with the implicating notes and P.Ws. 2 and 4 shadowed him at a distance and posted themselves at two places in the vicinity of the Dharamshala to avoid being seen, but to be within reach. PW 3 met the accused, signaled to him that he had brought the money and, after the persons present were disposed of, the accused asked the two constables to fetch his meals from P.W. 3's residence. When the constable's back was turned on the accused, he was left alone with P W 3. He asked for the money which was promptly passed on by PW.3. The accused received the notes and put them in the left pocket of his pants. The narration runs on to state that the accused desired some hot drinks and, at the instance of P.W. 3, handed over a ten rupees note out of the bribe money. Meanwhile, the constables had returned and P.W. 3 paid Rs. 10/- (the note given to him by the accused) to P W 7 asking him to buy a bottle of liquor for the accused. Since it was the middle of May and summer heat, the accused removed his pants and kept them under the pillow on the cot where he lay in the Dharamshala thinly dressed in banyan and underwear. Information having been conveyed by P.W. 2 to P.W. 9 the Deputy Superintendent of Police, the latter accompanied by the Inspector of police and constables came from the Rest House, where they were waiting, to the Dhuram-hala. P.W. 9 confronted the accused and demanded of him where his pants had been kept P W 3 pointed towards the pillow on the cot and P.W. 9 lifted the pillow, took out the pants beneath it and recovered nine currency notes of Rs. 10/- each from the left pocket therein. On further information furnished by P.W. 3, P.W. 7 was called in and he produced the tenth ten rupee made over to him to buy liquor. The numbers of the ten notes tallied with those which had been noted down in the complaint. Thereupon the accused was arrested, investigation undertaken, sanction obtained and prosecution launched.

4. The prosecution witnesses substantially established the case put forward and disproved the defence version It may be mentioned here that the accused virtually admitted that the precise notes which had been mentioned in the memorandum attached to the complaint had been recovered from the pocket of his pants from under the pillow His exculpatory plea was that after sunset he had removed his pants, left them on the cot and gone to case himself in a lonely place, and P.W. 3 must have put these notes into the pocket of his pants when he was thus away. The Trial Court disbelieved this story and convicted the accused, sentencing him to rigorous imprisonment for two years and fine of Rs. 500/- The High Court re-assessed the evidence, in appeal, to reach the same conclusion and also affirmed the sentence.

5. It is well established that in the special jurisdiction under Article 136, this Court will not ordinarily re-weigh the evidence or re-examine loopholes and lacunae unless satisfied that there has

been some perversity, gross misreading, or manifest injustice. In the present case, P.W. 2 is a responsible person being Sarpanch of the village. He has spoken to a substantial part of the prosecution case and has been believed by both the courts. P.W. 3 has reinforced in good measure the testimony of P.W. 2. Minor criticisms, such as that P.W. 3 has been a witness on other occasions on the side of the prosecution, or that he had been prosecuted in a security case in the year 1949, have been urged before us for discrediting P.W. 3. Some such circumstances were sought to be put out to persuade us to disbelieve P.W. 2 also. We are far from satisfied that there is good ground to dismiss their testimony as incredible. P.W. 4 has been disbelieved by the courts below, and if we may say so, rightly. But P.Ws. 5 and 6, the two police constables have disproved the explanation of the accused under sec 342, Cr.P.C., and as D.W. 1. We use no reason to disbelieve the evidence of these two constables, and if their testimony is true, the defence version has been disproved. Counsel for the appellant commented on the non-examination of Buta Singh and his mother, Dhan Kaur, and feebly suggested that the evidence of the prosecution witnesses was discrepant. He also pleaded that police witnesses in trap cases are suspect, that persons who have been prosecution witnesses more than once are stock witnesses, and that a plausible explanation had been put forward by the accused, the cumulative effect of these factors being that the accused is entitled to acquittal. In a recent case to which one of us was party *Om Parkash v. State of Delhi* Criminal Appeal No. 143 of 1970, Judgment dated January 25, 1974, this Court has held that police officials cannot be discredited in a trap case merely because they are police officials, nor can other witnesses be rejected because on some other occasion they have been witnesses for the prosecution in the past. Basically the court has to view the evidence in the light of the probabilities and the intrinsic credibility of those who testify. The serious hurdle in the way of the appellant here is that the court which has seen the witnesses, and the appellate court which has reviewed the matter over again, have found no good reason to discard the prosecution version. We are, therefore, satisfied that the appellant has failed in this endeavour to prove that the charge leveled against him has not been satisfactorily made out. We dismiss the appeal, and if the accused is on bail, he will surrender in consequence.