State Of Gujarat vs Raghunath Vamanrao Baxi on 16 April, 1985

Equivalent citations: AIR1985SC1092, 1985CRILJ1357, (1985)2GLR988, 1985(1)SCALE697, (1985)3SCC45, [1985]3SCR733, AIR 1985 SUPREME COURT 1092, 1985 CRIAPPR(SC) 213, 1985 (3) SCC 45, 1985 CURCRIJ 359, 1985 SCC(CRI) 304, 1985 (2) 26 GUJLR 988, 1985 ALLCRIR 213, 1985 (18) TAX LAW REV. 521, 1985 (26) GUJLR 988, (1985) SC CR R 227, (1985) 2 CRILC 224, (1985) 2 SCWR 63, (1985) ALLCRIR 313, (1985) ALLCRIC 218, (1985) 2 ALLCRILR 180

Bench: E.S. Venkataramiah, O. Chinnappa Reddy

JUDGMENT

1. The Respondent was an Income-tax Officer. He was tried and convicted by the Additional Special Judge, Ahmedabad of offence under Section 161, Indian Penal Code and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act. He was sentenced to undergo rigorous imprisonment for one year and to pay a line of Rs. 2,000 on each of the two counts. On appeal, the High Court of Gujarat acquitted the accused of both the offences. The State of Gujarat has preferred this appeal by special leave of this Court under Article 136 of the Constitution.

2. The case of the provocation briefly was as follows:

> One Shashi Kant Mansukh Lal Sheth (P.W. 2) was the Managing partner of a firm known as M/s. Hind Fertilizers, Bhavnagar. The assessments for the years 1968-69, 1969-70, 1970-71 and 1971-72 were pending before the accused-Income-tax Officer. Between June and October 1971, there were nine hearings of the case. On 3.5.72, Laxmikant Sheth (p.W. 7) the Income-tax practitioner who was representing the firm, received a notice directing the firm's representative to attend his office on 14.3.72 with the firm's books of account and to show cause why sums totalling Rs. 1,94,378 should not be added to their returns of income for the years ii question. The firm felt that the notice was not justified. As P.W. 7 would be busy on 14.3.72, it was decided that they would go to the income-tax office with their books of account on 13th itself. On 10.3.72, Shashi Kant Sheth (P.W. 2) contacted the income-tax officer on the telephone and the latter asked him to meet him at his residence at 2.00 P.M. Shashi Kant went to the house of accused at Bhavnagar that afternoon. He was told to come again on the evening of 13th. On the 3th, P.Ws 2 and 7 went to the office and submitted the reply to the show cause notice. The accused wanted them to meet him again on 14th. P.W. 7 said lie was busy on 14th. The accused then asked P.W. 2 to come alone. As previously agreed on 10th, Shashi Kant went to the house of the accused on the night of 13th when the accused told him that the clarification given by the firm was not satisfactory and that they would have to pay a sum of about Rs

12500 by way of tax unless a sum of Rs. 40,000 was given to him as a bribe. On P.W. 2 pleading his inability to pay such a large sum, it was settled that a sum of Rs. 12,500 should be paid, P.W. 2 wanted to consult his partner. He was told by the accused that he should bring (he amount to his house on the evening of 14 March, 1973. There after, Shashi Kant contacted Shri Judeja, Deputy Superintendent of police, CBI who was camping at Bhavnagar Shashi Kant complained to him about the demand of bribe of Rs. 12,500 by the accused. Shri Judeja then took the necessary step; for laying a trap. Two officers of the postal department Shri Parikh, Manager, Postal Store Depot, Ahmedabad (P.W. 3) who was staying in the guest house, and Shri Panchal, an officer of the Postal Department stationed at Bhavnagar itself were requested to serve as panch-witnesses. Shashi Kant was asked to bring currency notes of the value of Rs. 12,500. The notes were treated with phenol-phethelen powder. Shashi Kant put the notes in his pocket He was instructed to go to the house of the accused accompanied by Parikh and to tender the amount to the accused On the accused receiving the amount Shri Parikh was to come out of the house and signal the police party to come. A panchnama stating all these fact was duly prepared at the guest-house. Thereafter, as arranged, the raiding party proceeded towards the house of the accused. Shahsi Kant and Parikh, P.Ws 2 and 3, went inside. Shahsi Kant introduced Parikh to him as a member of his staff. They chatted generally for some time. The accused then mentioned about the amount to be paid to him whereupon Shashi Kant handed over the bundle of currency notes to him. The currency notes were received by the accused who carefully put them in a newspaper and folded the newspaper. Parikh then went out and signalled to the police party. Judeja, Dy. Supdt. of Police P.W. 9, the other panch-witness Panchal and the rest of the police party rushed inside. The notes were seized. The accused was asked to dip his fingers in a solution of bicarbonate. The solution turned pink. Thereafter, the panchnama was prepared. After the investigation was duly completed, the respondent was charge-sheeted for the two offences of which he was ultimately convicted.

3. The defence of the accused was that the prosecution case was false. Shashi Kant came to his house with a stranger on the night of 14.3.72. He was surprised at his visit, but for the sake of courtsey, lie asked him to sit down and asked him the purpose of his visit. Instead of replying him, Shashi Kant and the stranger started talking about politics to him. He told him that he was a public servant and he was not interested in politics. He also told them that he wanted to go to bed. He went to the toilet for a few minutes and when he returned, Shahsi Kant and the stranger stood up and went away after shaking hands with him. A few moments later they returned with the police party. They must have planted the notes in the newspaper which was lying on the table when he had gone to the toilet.

4. It is seen from the facts narrated above that meeting of Shashi Kant and Parikh with the accused on the night of 14.3.72 at 8.00 P.M. is not disputed. It is also not disputed that Shashi Kant and Parikh talked to the a accused for quite considerable time, nearly 40 minutes. It is further not disputed that within a few moments after Shashi Kant and Parikh left the accused, Judeja, Panchal and rest of police party entered the house of the accused and currency notes of the value of Rs. 12, 500 were seized from in a fold of a newspaper laying on the table. The accused was present all the

time and there was no protest by him. That the fingers of the accused were also dipped in some solution is not disputed. The only question is whether the amount of Rs. 12,500 was received by the accused as a bribe or whether the amount was planted by Shashi Kant and Parikh during the brief visit of the accused to the toilet. The learned Sessions Judge accepted the evidence of Shashi Kant, Parikh and Judeja and convicted the accused as aforesaid. The High Court, however, took are markably curious view of the evidence and acquitted the accused. The High Court narrated several circumstances, one after an other, why the prosecution case should not be accepted. We have considered every one of the circumstances and we find that there is not a single satisfactory circumstance reasonably justifying the acquittal. On the other hand we find that everyone of the circumstances is overstated and fanciful.

5. The most important circumstance which seems to have weighed heavily with the High Court, almost to the point of obsession, was that Parikh and Panchal were not independent witnesses as they were both government servants and as they had some previous acquaint nice with Inspector Sharma who was assisting Judeja in the investigation. The High Court was of the view that some other respectable residents of Bhavnagar should have been called as panch witnesses to be associated with the raid. We are afraid the High Court has entirely misdirected itself" in appreciating the evidence. In their approach to the evidence, the High Court has done injustice to the witnesses and this has resulted in a grave miscarriage of justice. In appreciating oral evidence, the question in each case is whether the witness is a truthful witness and whether there is anything to doubt his veracity in any particular matter about which he deposes. Where the witness is found to be untruthful on material facts that is an end of the matter. Where the witness is found to be partly truthful or to spring from tainted sources, the Court may take the precaution of seeking some corroboration, adequate and reasonable to meet the demands of the situation, but a court is not entitled to reject the evidence of a witness merely because they are government servants, who, in the course of their duties or even otherwise, might have come into contact with investigating officers and who might have been requested to assist the investigating agencies. If their association with the investigating agencies is unusual, frequent of designed, there may be occasion to view their evidence with suspicion. But merely because they are called in to associate themselves with the investigation as they happened to be available or it is convenient to call them, it is no ground to view their evidence with suspicion. Even in eases where officers who, in the course of their duties, generally assist the investigating agencies, there is no need to view their evidence with suspicion as an invariable rule. For example, in rural areas, investigating officers would ordinarily think of calling in the village officers, such as the Headman, the Patel or Patwari to act as punch witnesses, as they are expected to be respectable persons of the locality. It does not mean that their evidence should be viewed with suspicion because they are government servants or because they are generally associated with investigating agencies whenever there is a crime in the village For that matter it would be wrong to reject the evidence of police officer either on the mere ground that they are interested in the success of the prosecution. The court may be justified in looking with suspicion upon the evidence of officers who have been demonstrated to have displayed excess of zeal in the conduct and success of the prosecution. But to reject the evidence of all official witnesses as the High Court has done in the present case, is going far too far. We think that it is extremely unfair to a witness to reject his evidence by merely giving him a label.

6. There were two panch witnesses Parikh and Panchal of whom Parikh has been examined as PW. 3 while Panchal has not been examined. We have been taken through the whole of the deposition of Parikh and we find nothing whatever to doubt his veracity. Nothing was suggested to him as to why he should give false evidence to implicate the accused. All that was elicited from him was that he had worked as departmental inquiry officer and also to defend delinquents in such inquiries in his department. He had become acquainted with Inspector Sharma fifteen days before March 14, 1972 as he was defending a delinquent at Bhavnagar in a case in which Shri Sharma was the prosecuting officer. Shri Panchal, who was Assistant Superintendent of Post Offices, Bhavnagar was the Inquiry Officer in that case. This is stated to be the "close association" of the two panch witnesses with the investigating agency in this case. It is impossible to subscribe to this view. When Judeja, Deputy Superintendent of Police asked Inspector Sharma to get two independent panch witnesses, Parikh was readily available in the guest house and he had known Panchal as the Inquiry Officer in a departmental inquiry in the Postal Department. Both of them being Government Servants belonging to a different department, if Inspector Sharma thought that they could be called as independent punch witnesses, we are unable to impute any motives to the investigating agency or to cast aspersions on the witnesses Parikh and Panchal. We do not have any doubt in accepting the evidence of Parikh as that of an independent witness. Having examined his evidence in detail, we find his evidence to be truthful. His evidence substantiates the evidence of PW-2 about the acceptance of the bribe by the accused and his keeping the money in a folded newspaper. If we accept the evidence of PWs 2 and 4, the prosecution case that the money was given as a bribe must be accepted and the defence version that the money was planted must be rejected.

7. The other circumstances upon which the High Court relied are very trivial and it is unnecessary to burden this judgment with a seriatim discussion of those ciscumstances. For example, one of the circumstances was that if the accused had arranged that PW-2 should come to him on the evening of 14th with the bribe, he would have been waiting in his house to receive him with the doors of the house open so that the bribe-giver may walk in straight and he was not likely to have kept the doors closed and wait for the bribe-giver to knock at the door. We consider it needless even to comment upon this circumstance. Another circumstance upon which the High Court relied was that the accused was not likely to have talked with PWs 2 and 3 for as long as 40 minutes if he was accepting a bribe. He would have merely received the money and sent them away. The very fact that he was talking to them for nearly 40 minutes indicated that no bribe was given or taken. On the other hand, we consider that this is a strong circumstance against the accused. The accused knew that PW-2 was an assessee who had a pending case before him. If the assessee paid him a visit after 8.00 PM at his residence, one would expect the accused to immediately suspect the reason for the visit and to turn him away at once or at least within a few minutes after his coining to his house. Instead of that, he takes them inside the house, talks to them for nearly 40 minutes. I his conduct of the accused is clearly against his; innocence. Some question was raised that the solution which according to the investigating officer and the punch witness turned pink when the accused was asked to clip his lingers in it, had become yellowish when the chemical examiner examined the Solution. Nothing really turns on tins m view of the evidence of PWs 2, 4 and that of the investigating officer PW-9.

8. A point was sought to be made in this Court of the failure of the prosecution to examine Inspector Sharma as a witness. All that Inspector Sharma did in the case was to assist Judeja, Deputy

Superintendent of Police and to fetch the two panch witnesses when he was asked to do so. He could ot by any means be called a material witness. As some comment was made during the course of the trial about the failure of the prosecution to examine Inspector Sharma, the prosecution offered him for cross-examination and kept Inspector Sharma ready in court. The counsel for the accused stated that since the witness had already been dropped by the prosecution, he did not want to examine him unless the court directed him to do so. After the failure of the counsel of the accused to take advantage of the offer made by the prosecution, we do not think that it is open to the accused to comment upon the so-called failure of the prosecution to examine Inspector upon Sharma as witness. Now can we draw any adverse inference against the prosecution. On this question, the High Court took the same view as we do.

9. From the evidence of PWs 2, 3 and 9, we do not have the slightest doubt that a sum of Rs. 12,500 was paid to and received by the accused as a bribe. The learned Sessions Judge was clearly right in convicting the accused and the High Court was wrong in acquitting the accused. We do not think that this is a case where two view were reasonably possible. The only possible view was that the accused was guilty and we hold him guilty of both the offences under Section 161 IPC and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947. The learned Counsel for the accused argued that in view of the long time that has elapsed since the commission of the offence and in view of the circumstance that the accused has also retired from service, we may take a lenient view and not sentence the accused to any term of imprisonment. But under Section 5(2) of the Prevention of Corruption Act, 1947, the minimum sentence that can be imposed is imprisonment for one year and the maximum sentence is seven years. However, the court, for any special reasons to be recorded in writing, may impose a sentence of imprisonment of less than one year. We are unable to find any special circumstance in this case justifying our taking a lenient view. Corruption has become so rampant in the country and the offence in this particular case cannot be considered trivial at all. This is not a case of a petty clerk or a peon accepting a small amount as a bribe for doing some little favour. We cannot possibly take a lenient view of the conduct of an income tax officer, who accepts a large amount as a bribe for causing loss to public revenue. We think tint the sentences imposed by the learned Session Judge were the right sentences to be imposed on the accused. The judgment of the High Court is set aside and that of the learned Special Judge is restored. The accused will surrender to his bail.