

## State Of Delhi vs Shri Ram Lohia on 9 December, 1959

**Equivalent citations: AIR1960SC490, AIR 1960 SUPREME COURT 490**

**Bench: S.J. Imam, J.L. Kapur, K.N. Wanchoo**

### JUDGMENT

Imam, J.

1. This appeal is by special leave by the State of Delhi against the judgment of the Punjab High Court acquitting the respondent of an offence punishable under Section 5 of the Indian Official Secrets Act (hereinafter referred to as the Act) alleged to have committed by him.
2. The respondent was convicted by the trial court and sentenced to a fine of Rs. 1,000 in default to suffer rigorous imprisonment for six months. His appeal against conviction and sentence was dismissed by the Additional Sessions Judge of Delhi. The High Court in its revisional jurisdiction set aside the conviction and sentence.
3. The ground upon which the High Court set aside the conviction was that the only evidence upon which the respondent could be convicted was that of R.C. Aggarwal, P. W. 10, who was to be looked upon as an accomplice. His evidence accordingly required corroboration in material particulars connecting or tending to connect the respondent with the crime. As there was no such corroboration it was impossible to convict the respondent on the sole testimony of Aggarwal.
4. In the petition for special leave a ground was taken to the effect that the High Court erred in law in regarding Aggarwal as an accomplice as the High Court had failed to notice that on the words of Section 5(2) of the Act the offence punishable under Section 5(4) was complete the moment the respondent received the secret documents in question and Aggarwal was not committing any offence under the Act when he received the document from the latter who had directed him to make copies thereof.
5. In this appeal we do not propose to construe the provisions of Section 5(2) of the Act as the appeal can be disposed of otherwise.
6. The witness Aggarwal was looked upon as an accomplice by the High Court. We express no opinion in this respect. Even on the assumption that the High Court erred in treating the evidence of Aggarwal as that of an accomplice, the respondent cannot be convicted unless Aggarwal is found to be a truthful witness.
7. Shortly stated, the prosecution case was that the respondent, who was one of the two proprietors

of a firm, somehow obtained a secret file of the Government containing office noting relating to illegal import of certain goods and the penalties which it was proposed to award to the offenders. This file was copied out by Aggarwal, employed as a typist in the respondent's firm, sometime towards the end of November, 1950. The office of the firm was searched on February 5, 1951, and two copies of the documents typed were recovered and seized. The prosecution case further was that the respondent was interested in the secret file in question as there were at the time proceedings pending against his firm for illegal import of certain goods.

8. It is manifest that unless the evidence of Aggarwal is believed there can be no conviction or the respondent as the other evidence of a circumstantial nature is insufficient. In his examination-in-chief Aggarwal stated that towards the end of November, 1950, he had seen the file O. G. L. II (Ext. P. B.) in the office of the respondent's firm. The respondent gave the file to him to type a copy of it and to finish the work to the exclusion of all other work. He began typing but could not finish the work that day and placed the typed portions of the file Ext. P. B. on the respondent's table in the office. Next day he told the respondent that he could not follow some portion of the file. The respondent read out from the file and comparison was made. He then made the necessary correction and additions in his own hand in the copies already typed. Thereafter, he handed over to the respondent the file Ext. P. B. and the typed copies of it. If this evidence of Aggarwal can be believed an offence punishable under Section 5(4) of the Act would appear to have been proved against the respondent.

9. The cross-examination of Aggarwal, however, reveals him to be a thoroughly unreliable witness. Aggarwal was cross-examined both before and after the framing of the charge under Section 5(4) of the Act. In the cross-examination before the charge was framed the witness stated:

"In this premises merchants, including those from Bombay as well as persons connected with Bombay Hardware Traders Association used to come. I was permitted by my employers to do their type work of small nature. One day before this incident of typing out, a person from Bomay approached me with a file but I do not know which that file was asking me to make certain copies from it. I told that man that it was a big job and that I would not do it unless I am asked by Shri Ram Lohia my employer as I had much other work to do. Since I did not read that file, I cannot say whether it is Exhibit P. B. or not. I think Shri Ram Lohia accused was not in the office on that day as that man with the file left office immediately. I do not remember if that man came again next day with the file but I remember that he did come on the next day. At that time Shri Ram Lohia was present in the office. That man from Bombay went to the table of Shri Ram Lohia accused. After this Shri Ram Lohia accused gave me instructions to make the typed copies as I have said in my examination-in-chief. I cannot say whether Shri Ram Lohia accused gave me the instructions for typing out immediately after that Bombay man had seen him at his table or after some time. On the next day that Bombay man was still in the office when I made the corrections. As far as I remember it was not that Bombay man but. Shri Ram Lohia accused who compared the original with me with the copies, if I am not mistaken".

This statement of Aggarwal suggests that a Bombay man brought a file which he wanted copied and thus weakens the statement of Aggarwal that the respondent handled the file and gave it to him to type copies, of it. Regarding the comparison of the typed copies with the original file his statement shows that he is not prepared to say boldly that it was the respondent who had done the comparison. According to his recollection he thinks it was the respondent if he was not mistaken. It is patent that this cross-examination establishes Aggarwal to be an unreliable witness.

10. The cross-examination of Aggarwal after the charge was framed discloses even more clearly how unreliable he is. He stated:

"My statement was recorded in connection with this case by Gurdas Mal Inspector five or seven times. My first statement most probably, was recorded in August, 1951 by Gurdasmal Inspector. As I did not remember at that time I did not mention the name of Shri Ram accused in connection with the file Ext. P. B. In my statement I had stated that I did not remember who gave the file to me for type. About 10/15 days after, my statement for second time was recorded. As I remembered that it was Hari Chand Kalra who had given the file to me, I mentioned so in my statement which I made before the police for the second time. Gurdasmal P. W. 1 told me that it could not be Hari Chand Kalra who gave me the file, it may have been either Tara Chand or Sri Ram. He gave me a hint to recollect, that Saxena, my colleague in the office, had given an indication that it was Sri Ram who had given the file to me for typing, I met Mr. Sexena and he also confirmed it and then I recollected that it was Sri Ram, in fact. I made a statement about Sri Ram having given me the file in October, 1951. On 1st of October, 1951 Sri Ram notified that my services were terminated and I should look for another job. Sri Ram might have had some grievances against me. I was a favourite of Tara Chand accused and Tara Chand and Sri Ram accused were not on good terms and therefore Sri Ram had some grievances against me. Tara Chand wanted to keep me in service but Sri Ram would not agree and therefore, the difference arose between Tara Chand and Sri Ram about the termination of my services. Even after my services were terminated Tara Chand told me that he would still try to retain me. Mr. Gurdasmal, P. W. 1 took me to a Magistrate during investigation who recorded my statement. A general threat was given to me by Gurdasmal that if I did not make a statement before Magistrate during investigation, I will be challaned. On the first day when a Bombay man had asked me to type a file which he had, I do not remember if there was anything written, on the cover but the colour was similar to that of the file Exhibit P. B. .... ..

I saw once that typed copies of the file Exhibit P. B. which I had made out were lying in a drawer of a table adjoining mine. That table was that of a typist who had left the services. I have seen Dev Raj Gupta and Kishan Chand P. Ws. in Court now. Perhaps it was Dev Raj Gupta who had brought the file for typing".

In this cross-examination Aggarwal has given a completely different story as to who in fact gave him the file to copy. He makes out a completely different story to what he had said in

examination-in-chief. The effect of his statement is to throw considerable doubt as to what part the respondent really took in the handing over of the file Ext. P. B. to him for copying.

11. The Magistrate and the Additional Sessions Judge held that Aggarwal's various statements in cross-examination were false and were of the opinion that he had been won over by the respondent. In their opinion what Aggarwal had said in examination-in-chief was true.

12. It was urged before us on behalf of the appellant that as the two courts of fact had believed Aggarwal's testimony in examination-in-chief and, the High Court had not disbelieved him the respondent was rightly convicted. His acquittal by the High Court was based on the wrong assumption that Aggarwal was an accomplice whose testimony required corroboration.

13. The Additional Sessions Judge observed in his judgment with reference to Aggarwal as follows:

"He no doubt in his further cross-examination made certain damaging statements which would throw doubt on his previous statement but as the statement was made long after the first statement and at a time when Tara Chand accused had been discharged it seems to me that this witness was won over & he has intentionally prevaricated under the influence of the accused whose ex-employee he was. This inference finds support from the fact that in his statement under Section 164, Criminal Procedure Code made on 20th October, 1951, he stated that he was still in the employment of Messrs. Iron and Hardware (India) Company, while has now asserted in Court that he had been already dismissed by Sri Ram accused because of Sri Ram's differences with Tara Chand accused". It is clear therefore that the learned Judge relied on some statement of Aggarwal recorded under Section 164 of Criminal Procedure Code. The statement under Section 164 referred to was not specifically put to Aggarwal even to contradict him. Statements recorded under Section 164 of the Code are not substantive evidence in a case and cannot be made use of except to corroborate or contradict the witness. An admission by a witness that a statement of his was recorded under Section 164 of the Code and that what he had stated there was true would not make the entire statement admissible much less that any part of it could be used as substantive evidence in the case. The Additional Sessions Judge therefore erred in law in using the statement of Aggarwal under Section 164 to come to the conclusion that he had been won over. If that statement is excluded from consideration it is a matter of pure guess that Aggarwal had been won over after his examination-in-chief was over.

14. As the Additional Sessions Judge has erred in law, we are bound to consider the evidence of Aggarwal and arrive at our own conclusion whether he is a reliable witness on whose evidence the respondent can be convicted. The various statements made by Aggarwal in cross-examination before and after the framing of the charge clearly demonstrate him to be an utterly untrustworthy witness. We are satisfied that it would be highly dangerous to act upon his evidence. Without his evidence the other evidence in the case does not establish that the respondent has committed the offence with which he was charged.

15. The appeal is accordingly dismissed.