Hazari Lal vs Delhi Administration on 15 February, 1980

Equivalent citations: 1980 AIR 873, 1980 SCR (2)1051

Author: Ranjit Singh Sarkaria

Bench: Ranjit Singh Sarkaria, O. Chinnappa Reddy

PETITIONER:
HAZARI LAL

Vs.

RESPONDENT:
DELHI ADMINISTRATION

DATE OF JUDGMENT15/02/1980

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
REDDY, O. CHINNAPPA (J)

CITATION:
1980 AIR 873 1980 SCR (2)1051
1980 SCC (2) 390

ACT:
Prevention of Corruption Act, 1947-Section 4(1)-Scope of-Accused charged with demanding and taking illegal gratification-Many prosecution witnesses turned hostile-Statements made by witnesses in the course of investigation-If could be used as substantive evidence-Evidence of police inspector-If needs corroboration.

Panch witnesses-Clerks-If could not be called independent witnesses.

HEADNOTE:
The accused (appellant) who was charged with offences under section 5(1) (d) of the Prevention of Corruption Act and section 161 of the Penal Code was convicted and sentenced by the Special Judge. The convictions and sentences were confirmed by the High Court.

The prosecution alleged that the scooter rickshaw of the complainant driven by his driver was one day involved in a traffic accident and the vehicle was taken to the police station by the accused who was a police constable. The

complainant obtained orders of the Magistrate for its release but the accused declined to release the vehicle unless he was paid a sum of Rs. 60. The complainant was not prepared to pay the sum demanded. He then went to an Inspector of the Anti-Corruption Department and lodged a complaint that the accused was demanding illegal gratification from him for the release of his scooter rickshaw which was ordered by the Magistrate to be released.

The prosecution further alleged that the Inspector called two panch witnesses and after noting down the numbers of six ten rupee currency notes given by the complainant, treated them with phenol phthalene powder and gave them to the complainant. It was arranged that the complainant should hand over the currency notes to the accused and should thereafter make a signal at which the Inspector and panch witnesses would enter the room. The complainant carried out the plan as arranged and gave the call on which the Inspector and panch witnesses entered the room of the accused. On seeing the Inspector, the accused removed the currency notes from his pocket and flung them across the wall into the adjoining room. The notes were collected and when compared with the numbers noted earlier, they tallied. The hands of the accused were then dipped in sodium bicarbonate solution which, colourless earlier, turned pink. Similarly the handkerchief in the right side pocket of the trousers of the accused was removed and also dipped in sodium bicarbonate solution. That too turned pink.

Before the trial court many of the witnesses turned hostile and one of the panch witnesses became mentally deranged.

In appeal it was contended before this Court that (1) the courts below had made free use of the statements made by the witnesses in the course of investigation as if they were substantive evidence and, if they were excluded, the rest of the evidence would not be sufficient to draw the presumption under
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section 4(1) of the Prevention of Corruption Act, (2) the fact that the Inspector was the very police officer who laid the trap, should be sufficient to insist on corroboration of his evidence.

Dismissing the appeal,

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HELD: 1(a) The courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. [1059E]

(b) Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a police officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witnesses in the manner provided by section 145 of the Evidence Act. Where

any part of such statement is so used any part thereof may also be used in the re-examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exception to this embargo on the use of statements made in the course of an investigation relates to the statements falling within the provisions of section 32(1) of the Evidence Act or permitted to be proved under s. 27 of the Evidence Act. [1059A-C]

(c) The contention of the prosecution that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of "proved" in section 3 of the Evidence Act has no substance. The definition of the term "proved" does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred. [1059G]

2(a) The evidence of the Inspector is entirely trustworthy and there is no need to seek any corroboration. [1059H]

(b) There is no rule of prudence which has crystalized into a rule of law, nor any rule of prudence which requires that the evidence of such police officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally in the facts and circumstances of another case the court may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule nor can there be any precedential guidance. [1060A-B].

In the instant case the proved facts were that the complainant made a report to the Inspector, and currency notes whose numbers were noted and which were treated with phenol phthalene powder were handed over to the complainant. The complainant went into the accused's room and came out after a short while giving the agreed signal. When the Inspector rushed in, the accused threw the currency notes across the wall into the adjoining room. His hands and the handkerchief when dipped in sodium bicarbonate solution turned pink and lastly instead of giving a plausible explanation as to how the phenol phthalene powder came to his hands and the handkerchief in his pocket all that he could say was that he "knew nothing about it". From all these facts the only inference that follows is that currency notes were obtained by the accused from the complainant. It is not necessary that the passing of

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money should be proved by direct evidence, it may also be proved by circumstantial evidence. The events which followed in quick succession in the present case led to the only inference that the money was obtained by the accused from

the complainant.

3. Under section 114 of the Evidence Act the Court may presume the existence of any fact which is likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to this section is that the Court may presume that a person who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from the complainant who, a few minutes earlier, was shown to have been in possession of the notes. Once it is found that the accused had obtained the money from the complainant the presumption under section 4 (1) of the Prevention of Corruption Act is immediately attracted. The presumption is rebuttable, but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the courts below. [1061D-F]

Sita Ram v. The State of Rajasthan AIR 1975 SC 1432; Suraj Mal v. The State (Delhi Administration) AIR 1979 SC 1408 held inapplicable.

4. There is no force in the contention that persons holding clerical posts could not be called independent witnesses on the ground that they would be under fear of disciplinary action if they did not support the prosecution case. The respectability and verasity of a witness is not necessarily dependent upon his status in life and it cannot be said that clerks are less truthful and amenable than superior officers. [1060E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 211 of 1974.

Appeal by special leave from the Judgment and order dated 19-4-1974 of the Delhi High Court in Crl. A. No. 186/72.

Frank Anthony, S. K Dholakia and R. C. Bhatia for the Appellant.

H. S. Marwah and R. N. Sachthey for the Respondent. The Judgment of the Court was delivered by CHINNAPPA REDDY, J. The appellant Hazari Lal was convicted by the learned Special Judge, Delhi, of offences under section 5(2) read with section 5(1) (d) of the Prevention of Corruption Act, 1947, and Section 161 of the Indian Penal Code. On the first count he was sentenced to suffer rigorous imprisonment for a period of two years and to pay a fine of Rs. 500. On the second count

he was sentenced to suffer rigorous imprisonment for a period of two years. The two sentences were directed to run concurrently. The convictions and sentences were confirmed by the High Court of Delhi.

The case which the prosecution set out to prove before the Trial Judge was briefly as follows:

> The scooter rickshaw belonging to Sri Ram (P.W.3) and driven by his driver Ram Lubhaya (P.W. 6) was involved in an accident on July 12, 1969. The scooter rickshaw and a tonga which were involved in the accident were taken to the Police Station, Kashmere Gate by the accused, a Police constable attached to that station. P.W. 3 obtained orders from the Magistrate for the release of his vehicle and went to the Police Station to obtain delivery of the vehicle. The accused, who was present took him outside and told him that the vehicle would be given to him only if he paid a bribe of Rs. 60. P.W. 3 then went away. He went to the Anti Corruption Department and made statement to Inspector Paras Nath, P.W. 8. After recording the statement of P.W. 3, P.W. 8 sent for two persons Davinder Kumar (P.W. 4) and Kewal Krishan. The statement of P.W. 3 was read out to P.W. 3 in the presence of the two Panch witnesses Davinder Kumar and Kewal Krishan. P.W. 3 then produced six currency notes of the value of Rs. 10 each. The numbers of the notes were noted and they were treated with phenol phthelene powder.

After the usual instructions were given to P.W. 3 and the panch witnesses, the raiding party proceeded towards Kashmere Gate. P.W. 3, P.W. 6 and Kewal Krishan went into the Police Station, while P.W. 8 and others stayed outside. The money was handed over to the accused who took it and put it inside the right hand pocket of his trousers. P.W. 6 and Kewal Krishan then came out and signalled to P.W. 8 whereupon P.W. 8 and the Panch witnesses went inside the Police Station. The accused was present inside. As soon as he saw the party led by P.W. 8 he took out the currency notes from the right side pocket of his trousers and threw them across the wall into the adjoining room. P.W. 8 instructed some of the police officers accompanying him to rush to the adjoining room and to keep a watch over the notes which must have fallen there. He then introduced himself to the accused and took him to the adjoining room. Some of the notes were lying on the table of the Duty Officer in that room while others had fallen on the ground near the chair of the Duty officer. The six notes were collected in the presence of the witnesses and their numbers were compared with the numbers noted before they proceeded on the raid. The numbers tallied. The accused was questioned by the Inspector and he denied that he had demanded any bribe and kept silent about the acceptance of the bribe. Both the hands of the accused were dipped in sodium carbonate solution and the solution which was previously colourless turned pink. The same test was repeated with the handkerchief which was taken out of the right hand side pocket of the accused and also with the trousers of the accused. Each test resulted in the bicarbonate solution turning pink. After completion of the investigation a charge-sheet was laid against the accused being for offences under s. 5(2) read with s. 5(1) (d) of the Prevention of Corruption Act and s. 161 of the Indian Penal Code.

All that has been mentioned in the previous paragraph was what the prosecution set out to prove before the Trial Court. But many of the witnesses turned volte face. P.W. 3 stated in his evidence

that on the first occasion when he went to the Police Station to obtain delivery of his scooter rickshaw it was not the accused that was present but one Hawaldar. It was the Hawaldar and not the accused that demanded the bribe of Rs. 60 from him. According to him at the time of the raid, when he, P.W. 6 and Kewal Krishan went inside the Police Station they found the accused there and asked him to take the sum of Rs. 60 and return the scooter rickshaw. P.W. 3 stretched his hand with the money towards the pocket of the accused's trousers but the accused said the money might be paid to the person for whom it was meant. He refused to receive the money and jerked P.W. 3's hand with his hand as a result of which the notes came to be flung across the wall into the neighbouring room. He told the Inspector that the notes had been flung across the wall and that the accused had neither demanded the amount from him nor accepted the money from him. On the other hand the accused had refused to take the money from him. The Inspector recovered the notes from the neighbouring room, placed them on the table and thereafter subjected the handkerchief and the pocket of the accused's trousers to the phenol phthelene test. The implication of this part of the evidence was that it was as a result of the handling of these articles by the Inspector that they came to have phenol phthelene powder and that was the reason why the solution turned pink. P.W.3 was treated as hostile and cross-examined by the prosecution with reference to the earlier statements made by him. P.W. 6 followed suit and he too was declared hostile and cross-examined by the prosecution with reference to his earlier statements.

Of the two panch witnesses Kewal Krishan was not examined as he had become mentally deranged before the trial of the case. Davinder Kumar was examined as P.W. 4. This witness supported the prosecution case in some particulars but in regard to other particulars he made statements contrary to his earlier statements. He was also treated as hostile and cross-examined by the prosecution. In substance his chief-examination was to the affect that P.W.3, P.W.6 and Kewal Krishan went inside the Police Station, while he stayed outside with the Inspector P.W. 8. P.W.3, P.W.6 and Kewal Krishan came out after sometime and stated that the accused had accepted the bribe. The raiding party then went inside. On seeing the Inspector the accused got suspicious and threw away the currency notes across the wall into the neighbouring room. In examination-in-chief he also stated that before they proceeded to the Police Station for the raid, statement of both P.W.3 and P.W.6 had been recorded. He stated that after the bribe was given P.W.3 also came out and signalled to P.W.8 that the bribe had been given. Another statement made by him in chief-examination was that he was unable to remember if the Inspector questioned the accused at the time of the raid. As these statements were contrary to his earlier statements he was cross-examined by the prosecution.

Paras Nath, (P.W.8) spoke to the complaint made to him by P.W.3., the action that he took, the raid etc. Regarding the actual raid he stated that P.W.3, P.W.6 and Kewal Krishan first went inside the Police Station. After sometime, P.W.6 and Kewal Krishan came out and signalled that P.W.3 had passed the bribe money and that P.W.3 and the accused were in the room. When he went in, the accused took out the notes from the right side pocket of his trousers and threw them across the wall into the adjoining room. He then spoke to the test made by him etc. On this evidence both the learned Sessions Judge and the High Court found the accused guilty of the two offences with which he was charged. Shri Frank Anthony, learned counsel for the appellant submitted that the Courts below had made free use of the statements made by the witnesses in the course of the investigation as if such statements were substantive evidence. If those statements were excluded from

consideration there would be no evidence of any demand or acceptance of bribe by the accused. All that the prosecution would be left with would be the evidence of the Inspector and P.W.4 to the effect that the accused took out the currency notes from the right side pocket of his trousers and flung them across the wall into the adjoining room. That evidence according to the learned counsel would not be sufficient, even if accepted, to draw the presumption under s. 4(1) of the Prevention of Corruption Act. Reliance was placed upon the decision of this Court in Sita Ram v. The State of Rajasthan,(1) and Suraj Mal v. The State (Delhi Administration (2).

The learned counsel was right in his submission about the free use made by the Courts below of statements of witnesses recorded during the course of investigation. Section 162 of the Code of Criminal Procedure imposes a bar on the use of any statement made by any person to a Police Officer in the course of investigation at any enquiry or trial in respect of any offence under investigation at the time when such statement was made, except for the purpose of contradicting the witness in the manner provided by s.145 of the Indian Evidence Act. Where any part of such statement is so used any part thereof may also be used in the re- examination of the witness for the limited purpose of explaining any matter referred to in his cross-examination. The only other exceptions to this embargo on the use of statements made in the course of an investigation, relates to the statements falling within the provisions of s. 32(1) of the Indian Evidence Act or permitted to be proved under s. 27 of the Indian Evidence Act. S.145 of the Evidence Act provides that a witness may be cross-examined as to previous statements made by him in writing and reduced into writing and relevant to matters in question, without such writing being shown to him or being proved but, that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him. The Courts below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation. Shri H. S. Marwah, learned counsel for the Delhi Administration amazed us by advancing the argument that the earlier statements with which witnesses were confronted for the purpose of contradiction could be taken into consideration by the Court in view of the definition of "proved" in section 3 of the Evidence Act which is, "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man, ought, in the circumstances of the particular case to act upon the supposition that it exists." We need say no more on the submission of Shri Marwah except that the definition of proved does not enable a Court to take into consideration matters, including statements, whose use is statutorily barred.

After excluding irrelevant material we are left with the evidence of P.W.8 and that of P.W.4 whose evidence corroborates that of P.W.8 in several material particulars. We, however, wish to say that the evidence of P.W.8 is entirely trustworthy and there is no need to seek any corroboration. We are not prepared to accept the submission of Shri Frank Anthony that the fact that he is the very Police Officer who laid the trap should be sufficient for us to insist upon corroboration. We do wish to say that there is no rule of prudence which has crystallized into a rule of law, nor indeed any rule of prudence, which requires that the evidence of such officers should be treated on the same footing as evidence of accomplices and there should be insistence on corroboration. In the facts and circumstances of a particular case a Court may be disinclined to act upon the evidence of such an officer without corroboration, but, equally, in the facts and circumstances of another case the Court

may unhesitatingly accept the evidence of such an officer. It is all a matter of appreciation of evidence and on such matters there can be no hard and fast rule, nor can there be any precedential guidance. We are forced to say this because of late we have come across several judgments of Courts of Session and sometimes even of High Courts where reference is made to decisions of this Court on matters of appreciation of evidence and decisions of pure question of fact. While on this subject of appreciation of evidence we may also refer to an argument of Shri Frank Anthony based on the observations of a learned single judge in Kharaiti Lal v. The State,(1) that persons holding clerical posts and the like should not be called as panch witnesses, as such witnesses could not really be called independent witnesses as they would always be under fear of disciplinary action if they did not support the prosecution case. We do not think we can accept the submission of Shri Frank Anthony. The respectability and the veracity of a witness is not necessarily dependent upon his status in life and we are not prepared to say that Clerks are less truthful and more amenable than their superior officers.

From the evidence of P.W.8 and that of P.W.4 we may take the following facts as established: P.W.3 made a report to P.W.8. He produced six currency notes of the denomination of ten rupees whose numbers were noted and which were treated with phenol phthelene powder. Thereafter the notes were handed over to P.W.3. P.W.3, P.W.6 and Kewal Krishan went inside the Police Station. After sometime P.W.6 and Kewal Krishan came out and gave a signal. P.W.8 then went inside the Police Station. On seeing him the accused who was inside the Police Station with P.W.3 took out some currency notes from the right side pocket of his trousers and threw them across the partition wall into the adjoining room. The notes which were so thrown out by the accused, were found to be the same notes which had been treated with phenol phthelene and handed over to P.W.3 before the raid. The handkerchief which was taken out of the right side pocket of the trouser of the accused as well as the right side pocket itself were subjected to a test which showed that they too had come into contact with phenol phthelene powder. It may be noted that the circumstance that the handkerchief (Ex.P-4) recovered from the right side pocket of the pant on the person of the accused was subjected to the colour test which indicated the presence of phenol phthelene powder on that handkerchief was put to the appellant in his examination under section 313, Criminal Procedure Code. Instead of giving any explanation as to how this phenol phthelene powder came on the handkerchief lying in his pocket, the appellant replied. "I know nothing about it." From these facts the irresistible inference must follow, in the absence of any explanation from the accused, that currency notes were obtained by the accused from P.W.3. It is not necessary that the passing of money should be proved by direct evidence. It may also be proved by circumstantial evidence. The events which followed in quick succession in the present case lead to the only inference that the money was obtained by the accused from P.W.3. Under s.114 of the Evidence Act the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to facts of the particular case. One of the illustrations to s.114 of the Evidence Act is that the Court may presume that a person who is in possession of the stolen goods soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. So too, in the facts and circumstances of the present case the Court may presume that the accused who took out the currency notes from his pocket and flung them across the wall had obtained them from P.W.3, who a few minutes earlier was shown to have been in possession of the notes. Once we arrive at the

finding that the accused had obtained the money from P.W.3, the presumption under s.4(1) of the Prevention of Corruption Act is immediately attracted. The presumption is of course rebuttable but in the present case there is no material to rebut the presumption. The accused was, therefore, rightly convicted by the Courts below.

We will now refer to the two decisions of this Court on which Shri Frank Anthony relied. In Sita Ram v. The State of Rajasthan, (supra) the evidence of the complainant was rejected and it was held that there was no evidence to establish that the accused had received any gratification from any person. On that finding the presumption under s.4(1) of the Prevention of Corruption Act was not drawn. The question whether the rest of the evidence was sufficient to establish that the accused had obtained the money from the complainant was not considered. All that was taken as established was the recovery of certain money from the person of the accused and it was held that mere recovery of money was not enough to entitle the drawing of the presumption under s.4(1) of the Prevention of Corruption Act. The Court did not consider the further question whether recovery of the money alongwith other circumstances could establish that the accused had obtained gratification from any person. In the present case we have found that the circumstances established by the prosecution entitled the Court to hold that the accused received the gratification from P.W.3. In Suraj Mal v. The State (Delhi Administration) (supra) also it was said mere recovery of money divorced from the circumstances under which it was paid was not sufficient when the substantive evidence in the case was not reliable to prove payment of bribe or to show that the accused voluntarily accepted the money. There can be no quarrel with that proposition but where the recovery of the money coupled with other circumstances leads to the conclusion that the accused received gratification from some person the Court would certainly be entitled to draw the presumption under s.4(1) of the Prevention of Corruption Act. In our view both the decisions are of no avail to the appellant and as already observed by us conclusions of fact must be drawn on the facts of each case and not on the facts of other cases. In other words there can be no precedents on questions of facts. The appeal is, therefore, dismissed.

P.B.R. Appeal dismissed.