

Bhulan Lal vs The State on 27 July, 1954

Equivalent citations: AIR1954ALL783

JUDGMENT

Randhir Singh, J.

1. This is an application in revision on behalf of one Bhullan Lal who was convicted under Section 161, Penal Code, and sentenced to one year's rigorous imprisonment and a fine of Rs. 200/- by a Special Magistrate, First Class, Anti-Corruption, U. P.

2. The applicant has, since the filing of this application for revision died, but as the sentence involved a fine of Rs. 200/- also, the application for revision has been pressed on behalf of the legal representatives of Bhullan Lal.

3. The case against Bhullan Lal was that he was a supervisor in the Defence Savings Branch. One Bhajan Teli, had a deposit of about Rs. 18/- in the Defence Savings Fund which amount he wanted to withdraw and with this end in view, he went to the Defence Savings Office with an application for withdrawal. He was, however, told that according to the records of the Defence Savings Office, the depositor was entered as dead and that payment could not be made to him. He then approached the supervisor, namely Bhullan Lal, who promised to get the money repaid to him if he paid him a sum of Rs. 5/-.

Bhajan Teli then came away when he met one Thakur Singh and another person, Zamin All on the road. He told them his difficulty as also the fact that a sum of Rs. 5/- was being asked as illegal gratification by the supervisor. Thakur Singh then took Bhajan to the District Information Officer and was ultimately directed to go to the Additional District Magistrate who arranged for the laying of a trap. Sri Ghiasuddin a Magistrate of First Class and Sri B. N. Rai were deputed by the Additional District Magistrate to go and lay the trap.

A five rupee note was marked and made over to Bhajan Teli who was to deliver this to Bhullan Lal. The party then proceeded towards the Defence Savings Office. The two Magistrates, however, stopped in the hospital in front of the office while Bhajan and his companion Thakur Singh proceeded towards the office of Bhullan Lal. Bhullan Lal was seen coming out of the verandah and going to a 'pan' shop. While he was returning from the 'pan' shop Bhajan Teli passed the five rupee note to the accused, Bhullan Lal on his demand, and this was noticed by Thakur Singh who stood at a distance of a few steps.

Thakur Singh then went to the hospital and informed the Magistrates who were waiting. The Magistrates then came up and searched Bhullan Lal. A coat belonging to the accused was found hanging on a chair and from the pocket of this coat a marked five rupee currency note was

recovered. Some money amounting to Rs. 3/- and odd was also recovered from the shirt pocket of the accused. The articles recovered were then sealed and the accused was taken into custody. The accused was ultimately sent up for trial.

4. The defence of the applicant was that he had been implicated on account of enmity with one Mohammad Hanif who was sitting in the same office with him and bore him illwill. The note, according to the version given by the applicant, must have been planted by some of his enemies in his coat pocket while it was hanging on the chair.

5. The prosecution has examined Sri Ghiasuddin Magistrate, First Class, Thakur Singh, Bhajan and some other witnesses to prove that the applicant had accepted Rs. 5/- as illegal gratification. The learned Magistrate who tried the case believed the evidence for the prosecution and convicted the applicant. The applicant then went up in appeal to the Sessions Judge who concurred with the view taken by the trial Court and maintained the conviction and sentence of the applicant. He then came up in revision to this Court.

6. Section 431 Cr. P. C., provides that an appeal shall not abate if it involves a sentence of fine even on the death of the appellant and the same principle has been made applicable in some of the reported cases, to an application for revision. We need not express any opinion as to whether an application for revision should not be heard on the death of the applicant as the principles governing an application for revision are somewhat different as compared to the provisions in respect of appeals. In any case if a sentence of fine is involved, the question of conviction and sentence will have to be gone into even on the death of an applicant in revision as the fine is recoverable from the assets of the deceased in the hands of the legal representatives.

7. Learned counsel for the applicant, Sri S. C. Das, has placed all the relevant facts before us as also the relevant evidence. Neither of the two Magistrates who were members of the raiding party actually saw the payment of the money by Bhajan to the applicant. All that they did was to go to the office of the applicant after they had received information that a five rupee currency note had been paid to Bhullan Lal. The search was made by Sri Ghiasuddin in the presence of Sri Rai and the five rupee currency note was recovered not from the person of the applicant but from the pocket of his coat which was hanging on a chair.

The learned Magistrate who tried this case as also the learned Sessions Judge have remarked in their judgments that the possibility of the currency note having been planted in the pocket of the applicant cannot be ruled out altogether. Evidently as the coat was not on the person of the applicant at the time of the search it was not impossible for anybody to have put the currency note into the pocket of the coat without the applicant knowing anything about it.

The only evidence, therefore, on which the applicant has been convicted is the testimony of the two witnesses, Bhajan and Thakur Singh. Bhajan was considerably annoyed, as appears from the circumstances of this case, at the refusal of the applicant to arrange for the payment of the money due to him. Although he may not be an accomplice he cannot be said to be a wholly disinterested witness in the circumstances of this case.

The only other witness was Thakur Singh. In his statement he claims to be a member of the Revolutionary socialist Party but there is nothing on the record to show as to what his status in life was. His companion, Zamin Ali, whom he called his 'Comrade' was an ex-convict in two cases of (embezzlement and theft although Thakur Singh in his statement deposed that his companion Zamin Ali had not been convicted of theft or embezzlement but had been convicted for political dacoity, a statement which has been belied by the statement of Zamin Ali himself. It would be difficult to place implicit reliance on the statement of Thakur Singh alone in recording a conviction of the applicant for a serious offence under Section 161, Penal Code, especially when Bhullan Lal had put in a service of thirty years and was due to retire at the time when the occurrence is said to have taken place.

The matter cannot be said to be altogether free from reasonable doubt and the benefit of this doubt should go to the applicant. Taking, therefore into consideration all the evidence and the circumstances of this case, we find that the offence was not proved against the applicant beyond all reasonable doubt and the applicant should get the benefit of this doubt.

8. We accordingly allow the revision and set aside the conviction and sentence of the applicant.

The applicant is already dead and the only effect of the setting aside of the conviction and sentence would be that the fine if paid shall be refunded.