

Suraj Mal vs State (Delhi Administration) on 13 February, 1979

Equivalent citations: AIR1979SC1408, 1979CRILJ1087, (1979)4SCC725, 1979(11)UJ916(SC), AIR 1979 SUPREME COURT 1408, (1979) CURLJ(CCR) 155, 1979 CRILR(SC&MP) 717, (1979) SCCRIR 313, 1979 (4) SCC 725

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Bench: A.D. Koshal, S. Murtaza Fazal Ali

JUDGMENT

S. Murtaza Fazal Ali, J.

1. This appeal by special leave is directed against the judgment of the Delhi High Court dated 11th February, 1974 upholding the conviction and the sentence imposed on the appellant. The appellant was convicted under Section 5(2) of the Prevention of Corruption Act and Section 161 IPC read with Section 34 and was sentenced to two years R.I. under each of the sections and a fine of Rs. 200/- in default two months R.I. The sentences were to run concurrently. The facts of the case have been detailed in the judgment of the High Court and that of the Social Judge and it is not necessary for us to repeat them over again. It appears that a FIR was registered at P.S. Panipat against Prem Nath Sharma and his companions under Section 363/366/342 and 376 IPC on the statement given by Meena Kumari aged about 19 years. The case was investigated by Devender Singh Section I. alongwith P I. Ram Narain and Suraj Mal who were attached to Police Station, Panipat. These three persons came to Delhi and are alleged to have met Prem Nath Sharma & demanded bribe of Rs. 2000/- for helping them in the case and trying to get them acquitted. It is stated that as the complainant expressed his inability to pay such a huge amount the deal was ultimately struck at Rs. 1000/- out of which Rs. 350/- was to be paid on the 1st September, 1969 and the rest after some time. According to the Prosecution case out of the sum of Rs. 350/-, Rs. 150/- was to be paid to Devender Singh and Rs. 100/- each to Ram Narain and Suraj Mal Appellant. After the final parleys regarding the payment of the bribe had been settled, the complainant Prem Nath Sharma contacted DSP. Katoch and informed him of the circumstances under which the bribe was demanded by the three accused persons. We might mention here that all the three accused persons viz. Devenders Singh, Ram Narain and the appellant, were tried by the Special Judge but Ram Narain was acquitted on the ground that there was no sufficient evidence against him and was given benefit of the doubt. The appellant and Devender Singh were sentenced by the Special Judge as indicated above. The High Court, however, acquitted Devender Singh on the ground that the sanction was not valid. It appears that the three accused persons had accepted bribe at House No. 16/1. Arya Samaj Road, New Delhi and the payment of bribe was witnessed by P.Ws 6, 8 and 9 i.e. Shiv Narain Gupta, Prem Nath Sharma and Sham Sunder. In the Court all these witnesses appear to have realised from the statements which they made in their examination in-chief and all of them stated that Ram Narain

refused to accept the bribe.

2. The defence of the appellant was that he was falsely implicated and nothing was recovered from him nor did he make any demand for bribe. The Special Judge on the basis of the evidence led before the Court held that the evidence was extremely shaky and unconvincing and was not sufficient to convict Ram Narain but nevertheless the trial court convicted the appellant on that very evidence. In upholding the conviction of the appellant the High Court completely overlooked the fact that the very evidence on which the conviction of the appellant was based had been rejected with respect to the same transaction and thus if one integral part of the story given by witnesses was not believable, then the entire case failed. In other words, the Position was that while P.Ws. 6,8 and 9 were disbelieved both in regard to the factum of payment of the bribe and the recovery of the money. Regarding Ram Narain, the very same witnesses were believed so far as the appellant was concerned. It is well-settled that where witnesses make two inconsistent statements in their evidence either at one state or at two stages, the testimony of such witnesses becomes unreliable and unworthy of credence and in the absence of special circumstances no conviction can be based on the evidence of such witnesses. For these reasons, therefore, when the Special Judge disbelieved the evidence of P Ws. 6 8 and 9 in regard to the complicity of Ram Narain, It was not open to him to have convicted the appellant on the same evidence with respect to the appellant, which suffered from same infirmities for which the said evidence was disbelieved regarding the complicity of Ram Narain. If the witnesses drew no distinction in the examination in chief regarding acceptance of bribe by Ram Narain and by the appellant and the witnesses were to be disbelieved with respect to one, they could not be believed with respect to the other. In other words, the evidence of witnesses against Ram Narain and the appellant was inseparable and indivisible. Moreover, there is an additional circumstance which throws a serious doubt on the complicity of the appellant Suraj Mai, Although, in his statement of page 71 of the paper-book, the complainant has clearly stated that all the three accused including the appellant had met him and demanded bribe of Rs. 2000/, the appellant having demanded Rs. 100/-, yet in the report which he lodged before Mr. Katoch, there is no mention of the fact that the appellant at any time demanded any bribe at all. Even the presence of the appellant at the time when the demand was made by Devender Singh has not been mentioned, in this document. This report, undoubtedly contains reference to a demand having been made by the Section H.O. Devender Singh on behalf of the appellant, but there is no statement in this report that any demand was made by Suraj Mal directly from the complainant. If, in fact, the appellant would have demanded bribe from the complainant just on the previous evening, it is not understandable why this fact was not mentioned in the report which the complainant submitted to the D.S P. Katoch and which is the F.I R. constituting the evidence. We have perused the statements of P.W. 6, 8 and 9 and we find that while in the examination in chief they have tried to implicate all the three accused persons equally without any distinction in their cross examination, they have tried to save Ram Narain and made out a different story so far as Ram Narain is concerned and have even gone to the extent of stating that he did not demand any money and that he refused to accept the money which was offered to him. In this state of the evidence, we feel that the High Court was not right in convicting the appellant. Mr. Lalit appearing for the State vehemently submitted that whatever be the nature of the evidence in the case, it is an established fact that money had been recovered from the bushirt of the appellant and that by itself is sufficient for the conviction of the accused. In our opinion, mere recovery of money divorced from the circumstances under which it is

paid is not sufficient to convict the accused when the substantive evidence in the case is not reliable. Moreover, the appellant in his statement under Section 342 has denied the recovery of the money and has stated that he had been falsely implicated. The High Court was wrong in holding that the appellant had admitted either the payment of money or recovery of the same as this fact is specifically denied by the appellant in his statement Under Section 342 Cr. PC Thus mere recovery by itself cannot prove the charge of the prosecution against the appellant, in the absence of any evidence to prove payment of bribe or to show that the appellant voluntarily accepted the money. For these reasons, therefore, we are satisfied that the prosecution has not been able to prove the case against the appellant beyond reasonable doubt. We, therefore, allow the appeal set aside the conviction and sentences passed against the appellant. The appellant will now be discharged from his bail bonds.