Ramesh Kumar Gupta vs State Of Madhya Pradesh on 12 July, 1995

Equivalent citations: 1995 AIR 2121, 1995 SCC (5) 320, AIR 1995 SUPREME COURT 2121, 1995 AIR SCW 3277, (1995) 6 JT 88 (SC), 1995 CRILR(SC MAH GUJ) 442, 1996 UP CRIR 137, 1995 CRIAPPR(SC) 337, 1995 (5) SCC 320, 1995 SCC(CRI) 909, (1995) 3 ALL WC 1754, 1995 CRILR(SC&MP) 442, 1995 (6) JT 88, (1995) 3 CURCRIR 74, (1995) 32 ALLCRIC 628, (1995) 2 ALLCRILR 762, (1995) JAB LJ 697, (1996) SC CR R 136, (1996) MAD LJ(CRI) 11, (1996) 1 RECCRIR 94, (1995) 3 CRIMES 263

Author: M.M. Punchhi

Bench: M.M. Punchhi

PETITIONER:
RAMESH KUMAR GUPTA

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT12/07/1995

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1995 AIR 2121 1995 SCC (5) 320
JT 1995 (6) 88 1995 SCALE (4)389

ACT:

HEADNOTE:

JUDGMENT:

THE 12TH DAY OF JULY, 1995 Present:

Hon'ble Mr.Justice M.M.Punchhi Hon'ble Mr.Justice K.Jayachandra Reddy Mr.S.K.Gambhir, Adv. for the Appellant Mr.U.N.Bachawat, Sr. Adv., Mr.Niraj Sharma Mr. Uma Nath Singh, Advs. with him for the Respondent.

J U D G M E N T The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO. 571 OF 1991 Ramesh Kumar Gupta V. State of Madhya Pradesh JUDGMENT K.JAYACHANDRA REDDY,J.

The sole appellant at the relevant time was employed as a Sub-Inspector of Police and was functioning as Officer-in- charge at Pulgaon police Station at Durg. He was tried for offences punishable under Sections 5(1) (d) read with 5(2) of the Prevention of Corruption Act ('Act for short) and also under Section 161 I.P.C. for obtaining illegal gratification of Rs.500/- from one Anandram, P.W.I. The trial court acquitted him of the charge under Section 161 I.P.C. and sentenced him to undergo one year's R.I. with a fine of Rs. 1,000/- and in default of payment of fine to further undergo three months' R.I. The appeal filed by the accused was dismissed by the High Court. Hence the present appeal.

The prosecution case is that P.W.I, the complainant went to the pulgaon police station on 12.11.1979 alongwith one Tejram, the Village Kotwar to lodge a report about disappearance of his wife. P.W.I narrated his complaint to the appellant who blamed him for beating his wife, who because of that beating must have run away. So saying he took P.W.I into custody and detained him in the police station. He however requested the appellant through the Kotwar to release him but the appellant demanded an illegal gratification of Rs. 1,000/- but later on agreed to accept Rs. 500/-. The complainant agreed to pay Rs. 500/- and was allowed to go on a promise that he would pay the amount. P.W.I borrowed the amount from his brother Johan, P.W.3 and Amirdas, P.W.4 for making the payment as promised. P.W.I was however, not willing to pay the amount and therefore complained to collector, Durg through Mohanlal and Kalyansingh. The Collector informed the police Inspector, Raipur to take necessary action against the appellant. P.W.I met the D.S.P., P.W.9 in the presence of Shri K.L.Agarwal, P.W.8, the Deputy Collector and one D.P.Gupta. In their presence, P.W.I gave a written complain. Phenolepatheline powder test was conducted in respect of five currency notes of Rs. 100/- denomination. A panchnama was prepared noting the numbers and the result of the test etc. After that the five currency notes were given to P.W.I instructing him to go to the house of the accused and hand him over all the notes on his demand and after that to give a signal. P.W.I accordingly left for the house of the appellant. A raiding party consisting of P.Ws. 8 and 9 and Shri D.P.Gupta, S.K.Upadhayaya, Inspector and a constable proceeded in a jeep alongwith Anandram. They stopped the jeep at a distance and Anandram got

down and proceeded on foot to the house of the accused. P.W.I knocked the door of the house of the accused and he was called in. The accused asked him if he had brought the amount and P.W.I took out the pocket containing five currency notes and tried to hand over the same to the accused. The accused, however, asked him to keep the money between the tape (niwar) and mattress of the cot on which he was sitting. Accordingly P.W.I kept the notes and gave a signal. Immediately the members of the trap party entered and disclosed their identity to the accused. They searched his person but not finding anything on his person they searched the room and recovered the five notes which were kept between the tape and the mattress of the cot. A seizure memo was prepared and the hands of the accused were washed with solution of sodium corborate and the same was collected in a bottle and sealed. The hands of P.W.I also were washed in that solution which was kept in a separate bottle and sealed. The same test was conducted in respect of the five currency notes. The necessary panchnama of search and seizure was made and after completion of the investigation and after obtaining the necessary sanction, the charge-sheet was laid.

The prosecution mainly relied on the evidence of P.W.1, P.W.3 and other witnesses who participated in the trap. When examined under Section 313 Cr.P.C. the accused pleaded not guilty. He stated that the case was foisted against him by two political leaders whom he did not allow into the investigation of a criminal case. Therefore they had a grudge against him and got him falsely implicated. The learned trial Judge relying on the evidence of P.Ws. 1,2,7,8 and 9 convicted the accused under Section 161 I.P.C., as stated above. The trial court, however, acquitted him of the other charge holding that Section 4 of the Act is not attracted and therefore an offence under Sections 5(1) (d) read with 5(2) is not made out. The said conviction and the sentence were confirmed by the High Court.

In this appeal, Shri S.K.Gambhir, learned counsel for the appellant, contended that the tainted money was not recovered from the person of the accused and P.W.1 did not say in his evidence that he informed the raiding party that he kept the money under the mattress at the instance of the accused and therefore seizure of the money by the raiding party is suspicious and there is every likelihood of the tainted money being planted under the mattress when the accused was not actually on the spot. His further submission is that there is no corroboration to the evidence of P.W.I regarding the demand and acceptance and since P.W.I is in the nature of an accomplice, his evidence cannot be acted upon to convict the accused without independent corroboration on material particulars.

P.W.I in his deposition has given all the above mentioned details. He further deposed that after putting the money under the mattress, as asked by the accused, he came out of the room and gave the necessary signal. The raiding party came to him and asked him wether he had given the money and he told them that he had given the money and the accused made him to put the money below the cot. He denied the suggestion that he demanded the accused to give water and when the accused went

inside for bringing the water, he kept the money below the cot. P.W.7, Rajkamal deposed that on that day he came to Nazul office, Durg and coming to know from P.W.I that he was being harrassed by the accused and that he was demanding bribe, he took him to the collector. P.W.8, the Deputy collector, Durg who was present during the trap proceedings has given all the details and also about the contents of the panchnama before the trap and also of the one after the trap. He further deposed that when P.W.I came out lof the house of the accused, they went inside the house of the accused. They disclosed their identity and asked the accused as to where the notes were kept. When the accused denied they searched his person but could not find the notes. Then they searched the room. At that juncture they asked P.W.I where the notes were kept. P.W.I immediately told them that the notes were kept below the cot between the tape and the mattress and pointed out the spot. He also deposed that the hands of the accused were also got washed with Sodium Corborate solution and same was filled in a bottle which became light pink colour.

The evidence of these witnesses including that of P.Ws. 8 and 9 have been believed by both the courts below. The learned counsel, however, submitted before us that the fact that the notes were found not on the person of the accused but somewhere else would show that the accused had no knowledge of the accused. P.W.I categorically stated that the accused asked him to keep the notes between the tape and the mattress of the cot and after that he left the room and gave the signal. It must also be remembered that the notes were wrapped in a paper. Unless the accused has touched them after P.W.I left the room his hands would not have got tained and the phenolepatheline powder test regarding the washing of the hands of the accused gave positive result itself shows that the accused must have handled them at some stage and therefore his bare denial that he had no knowledge whatsoever is without any substance. The fact that P.W.I went and collected Rs. 500/- for payment is proved by his brother P.W.3 as well as by P.W.4. If it was a question of false implication, P.W.I could not have gone about borrowing the money in that manner. It is only after the harrassment and demand by the accused P.W.I was compelled to somehow borrow the amount and the rest of the story is corroborated by the evidence of P.Ws. 7,8 and 9.

Learned counsel, however, strenously contended that there is no corroboration to the evidence of P.W.I regarding the demand and acceptance. We see no force in this submission. The demand and acceptance. We see no force in this submission. The corroboration need not be direct. It can be by way of circumstantial evidence also. Taking into account all the surrounding circumstances, we find sufficient corroboration to the evidence of P.W.I regarding the demand and payment of the bribe. In a recent case, M.O.Shamshudhin and ors. v. State of Kerala, 1995 (3) JT 367, this Court held as under:

"Now coming to the nature of corroborating evidence that is required, it is well-settled that the corroborating evidence can be even by way of circumstantial evidence. No general rule can be laid down with respect to quantum of evidence

> corroborating the testimony of a trap witness which again would depend upon its own facts and circumstances like the nature of the crime, the character of trap witness etc. and other general requirements necessary to sustain the conviction in that case. The court should weigh the evidence and then see whether corroboration is necessary. Therefore as a rule of law it cannot be laid down that the evidence of every complainant in a bribery case should be corroborated in all material particulars and otherwise it cannot be acted upon. Whether corroboration is necessary and if so to what extent and what should be its nature depends upon the facts and circumstances of each case."

Applying the above ratio to the facts of this case we hold that both the courts have rightly held that the prosecution has proved its case beyond all reasonable doubt.

Now coming to the question of sentence, it is a very old case and the occurrence itself is said to have taken place in the year 1979. All these years the accused has undergone the agony of criminal proceedings. He has lost his job and we are told that he has a large family to support. In similar circumstances, in B.G.Goswami v. Delhi Administration, (1974) 3 SCC 85, the sentence of imprisonment was reduced to the period already undergone. From the records, it appears that the appellant was in jail for some time. Accordingly while confirming the conviction we reduce the sentence of imprisonment to the period already undergone. The sentence of fine with default clause is however, maintained. Subject to the above modification of sentence, the appeal is dismissed.