

G.V. Nanjundiah vs State (Delhi Administration) on 12 August, 1987

Equivalent citations: AIR1987SC2402, 1988(36)BLJR26, 1988CRILJ152, 1987(3)CRIMES217(SC), JT1987(3)SC313, 1987(2)SCALE363, 1987SUPP(1)SCC266, 1987(3)SLJ244(SC), AIR 1987 SUPREME COURT 2402, 1987 (4) JT 313, 1987 (3) SERVLJ 244 SC, 1987 (23) TAX LAW REV. 1, 1987 (3) IJR (SC) 589, 1987 CALCRILR 189, (1987) SC CR R 303, (1987) 2 SUPREME 345, (1987) ALLCRIC 450, (1987) 3 CRIMES 217, (1987) 33 DLT 96

Bench: M.M. Dutt, Ranganath Misra

JUDGMENT

1. This appeal by special leave is directed against the judgment of the Delhi High Court affirming the order of conviction and sentence of the appellant passed by the Special Judge, Delhi. The appellant was convicted by the learned Special Judge under Section 161 I.P.C. and Section 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 and sentenced to undergo a simple imprisonment for six months and pay a fine of Rs. 1,000/- for The offence punishable under Section 5(2) of the Prevention of Corruption Act. He was also sentenced to undergo a simple imprisonment for six months and to pay a fine of Rs. 500/- for the offence punishable under Section 161 I.P.C. Both the substantive sentences were directed to run concurrently.

2. It was a trap case and the trap was laid at the instance of one R.S. Sharma, contractor. In July, 1972, R.S. Sharma, contractor, got a building contract for the construction of Lower Income Group Houses (Group I) in Kalkaji Colony, New Delhi. In February 1973, he got another contract for the construction of Lower Income Group Houses (Group II). Both the contracts were under the Housing Division of the Delhi Development Authority. He had also to execute some additional works. The prosecution case, as unfolded by Mr. Sharma, the contractor, was that the appellant, Shri Nanjundian, Executive Engineer of the Housing Division, was not making payment to the contractor of Rupees one lakh deducted by way of security from his running bills. It was alleged that there was delay in payment to him for additional items of works executed by him and for that the appellant was also responsible. The case of the contractor was that he asked Shri Nanjundiah on three/four occasions to release the security amount and to sanction the amount due on account of extra items of works done by him. He submitted the copy of the guarantee bond along with his application on October 17, 1973 personally to the appellant, but the appellant did not get the amount of security released in his favour. The contractor alleged that he had met the accused Nanjundiah on October 30, 1973 in his office in the DDA building at Ring Road accompanied by his son U.S. Sharma. It was alleged that the appellant asked for an illegal gratification of Rs. 5,000/- from the contractor for getting his work done. Ultimately, it was settled that the contractor would pay a sum of Rs. 2,500/- to the appellant at his house at 7.00 p.m. on that day and the balance of Rs. 2,500/- was to be paid later after the refund to the contractor of the security amount of Rupees one lakh and payment to

him on account of extra items.

3. It was the case of the contractor that from the office of the appellant he went to the Syndicate Bank and encashed a cheque for Rs. 2,500/- consisting of twenty five currency notes of rupees one hundred each. He also got a certificate from the Manager of the Bank as to the encashment of the cheque mentioning particularly the numbers of the currency notes issued to him. With the said amount of: Rs. 2,500/-, the contractor and his son went to the Central Bureau of Investigation and met the Superintendent of Police. They filed a complaint to the Superintendent of Police, who referred the matter to the Deputy Superintendent of Police, C.B.I. After going through the contents of the complaint, the Deputy Superintendent of Police called two independent witnesses Shri R.L. Verma and Shri R.N. Khanna. A memorandum was prepared by the Deputy Superintendent of Police wherein the numbers of the currency notes were noted. The currency notes were treated with phenolphthalein powder. The plan, as recorded in the said memorandum, was that the currency notes would be given to the appellant on demand in the presence of Verma. Thereafter, the contractor would give a signal by coughing loudly.

4. According to the prosecution, there was some amendment about the modus operandi. It was decided that in order to justify the entrance of P.W. 3 R.L. Verma, sweets and fruits were to be purchased in Greater Kailash and they were to be taken upstairs to the house of the appellant by the contractor's son, U.S. Sharma and by P.W. 3, who would act as a shadow witness.

5. The raiding party, according to the prosecution, reached the house of the appellant in Greater Kailash in two cars but the appellant was not at home at 7.00 p.m. and the party had to wait on the road near about the house of the appellant. It was at 8.00 p.m. that the appellant came back home. The contractor and his son went upstairs to the drawing-room of the appellant and, thereafter the contractor's son, as per the previous arrangement, came down and went to the car in which R.L. Verma was waiting. The contractor's son took the cartons of fruits and P.W. 3 R.L. Verma the basket of fruits and they went to the drawing-room of the appellant on the first floor. The police party and Shri Khanna accompanied them, but they did not go to the first floor. They were waiting in the staircase. The sweets and fruits were kept on the floor of the drawing-room and, thereafter, the appellant was alleged to have accepted Rs. 2,500/- from the contractor. It was alleged that the appellant took the currency notes amounting to Rs. 2,500/- in his left hand and then with the right hand put them in the front pocket of his bush-shirt. The contractor's son went out and the contractor coughed loudly whereupon Shri Chander Bhan, Deputy Superintendent of Police, rushed into the drawing-room of the appellant followed by the other members of the raiding party.

6. Further, the prosecution case was that the money was recovered from the pocket of the accused. The hands of the accused were separately dipped into the solutions of sodium carbonate which turned pink. Similarly, the pocket of the bush-shirt was also dipped into such solution and it also turned pink. The appellant was arrested and put up for trial before the learned Special Judge on a charge of accepting illegal gratification.

7. The prosecution examined sixteen witnesses including the contractor and his son, Shri R.L. Verma, Shri R.N. Khanna and the Deputy Superintendent of Police. The learned Special Judge after

considering the prosecution evidence and also the statement of the appellant under Section 313 Cr.P.C., convicted and sentenced the appellant as already stated above. On an appeal by the appellant, the High Court affirmed the order of conviction and sentence. Hence this appeal by special leave

8. The contractor, Shri R.S. Sharma, at whose instance the trap was laid by the Deputy Superintendent of Police, CBI, against the appellant, made the specific allegation that it was the appellant who was delaying refund of the security amount and payment of his bills in regard to the extra works done by him, in consequence of which he had been suffering financial difficulties in carrying on the execution of the work. Accordingly, he met the appellant at his office at 1.00 p.m. on October 30, 1973 and requested him to expedite refund of the security amount and payment of his bills on account of the extra works. At that time the appellant was alleged to have demanded a bribe for expediting refund of the security amount and the payment in respect of extra works. In order to prove the said allegation that the appellant was deliberately withholding the refund of the security amount and payment of the bills of the contractor for extra works, the prosecution examined one P.D. Sehgal, the Accountant, directly working under the appellant. It appears that Shri P.D. Sehgal supported the allegation of the contractor. It follows from his evidence that it was the appellant who had instructed him to withhold papers relating to the refund to the contractor of his security amount and payment to him for the extra works.

9. In this connection, we may refer to the statement of the appellant under Section 313 Cr.P.C. It was stated by him that he made payments to the contractors for extra items, even before sanction of the higher authorities was obtained. He asserted that he had been fair to the contractor and denied the allegation of withholding payments for extra items. He also stated that the release of security amount had never been delayed by him at any stage. According to him, Shri P.D. Sehgal, the Accountant, was in league with the contractor. He pointed out that Shri Sehgal was constructing his own house in Janak Puri where the contractor was also residing, and submitted that perhaps Shri Sehgal was taking some help from the contractor and was under some obligation to him. As the Accountant was attending office only in the afternoon, the appellant had taken exception to it and cautioned him to attend office regularly which, perhaps, was not to his liking. Shri P.D. Sehgal admitted in his cross-examination that he was building his house in Janak Puri during April to December, 1973 and the contractor also lived at Janak Puri. He further admitted that on a number of occasions he was asked by the appellant to come to office punctually and even his explanation in writing was obtained by the appellant. P.W. 13 Shri J.K. Jain, Junior Engineer, stated in his evidence that the delay in submitting the statements of extra items to the Superintending Engineer was not at all the fault of the Executive Engineer, that is, the appellant. Further, his evidence is that the appellant made payment to the contractor within the limits of his power as Executive Engineer, such limit being to the extent of Rs. 25,000/-. He said that in all the appellant had made payment to the contractor of a sum of Rs. 1,84,000/- on account of the extra works. It is his evidence that the appellant had always insisted on better quality of work from the contractor and he made more supervision than the earlier Executive Engineer, Shri H.D. Sharma.

10. The learned special Judge in considering the question of sentence found that the service record of the appellant showed that he was an officer of integrity which was unquestioned throughout his

career. The learned special Judge came to the findings that the appellant did not designedly delay the submission of extra items statement for sanction to the Superintending Engineer. He also made payments of extra items nearly up to the limit of his power, that is, Rs. 25,000/- and also made payment up to October, 1973 of more than Rs. 1,84,000/-. The learned Judge found that P.D. Sehgal was not a reliable witness and his statement that the appellant wanted him to withhold giving information to the appellant of the sanction given by the appellant on October 19, 1973 for the corrections to be made in the draft bond and for the filing of the actual bond by the contractor for getting back his security amount of Rupees one lakh upon furnishing the bank guarantee, could not be relied upon.

11. As to the contractor, the learned Special Judge found that the contractor appeared to be a clever person who could as well have tried to implicate the appellant in a false case to get rid of his strict supervision and clear insistence on good quality work in respect of construction of LIC quarters. Further, the learned special Judge observed that it was abundantly clear that the appellant was more strict than Shri H.D. Sharma, the former Executive Engineer, in requiring conformity to standards and good materials under the contract. The contractor, the learned Special Judge held, was unable to carry on even with Shri H.D. Sharma and had threatened to get the entire site-staff transferred if he was not allowed to work in his own way. The threat is recorded in the complaint Ex. P.W. 12/A.

12. In spite of all this, the learned Special Judge convicted the appellant relying upon the testimony of Shri R.L. Verma, Shri R.N. Khanna and the Deputy Superintendent of Police. The High Court has also confirmed the said findings of the learned Special Judge except that the High Court could not agree with that the contractor could as well have tried to implicate the appellant in a false case to get rid of his strict supervision and clear insistence on good quality work in respect of construction of LIG quarters. This disagreement of the High Court was founded on a certificate given by the appellant to the contractor. Further, the High Court observed that if the work was really substandard or otherwise not good, the contractor would not have been paid Rs. 1,12,223/- on October 17, 1973 or allowed to complete work to the tune of Rs. 26,08,453/-.

13. The certificate is dated August 1, 1973. In the certificate it was stated, inter alia, by the appellant that the contractors are carrying on the work satisfactorily. Further, it is stated as follows:

They have got their own transport arrangement and they have also got imported labour and their financial position is quite sound. Their organising capacity is also quite good and they can easily handle big construction job,

14. It may be that at one stage such a certificate was given by the appellant. But, that does not negative the said finding of the learned Special Judge. It is also quite immaterial that the appellant had made payments to the contractor on account of the works done by him and allowed him to complete his work to the tune of Rs. 26,08,463/-. The fact remains that the appellant had been frequently making supervision of the work of the contractor and insisting on conformity to the standards and supplying good materials. What the learned Special Judge had meant to say was that the contractor did not like such strict supervision by the appellant and for the purpose of getting rid of such strict supervision, he could as well have tried to implicate the appellant in a false case. It was

not the case of the appellant that the contractor had not done any work and, as such, he was not entitled to any payment, There can be no doubt that the contractor had executed the works, but under the strict supervision of the appellant and, accordingly, the appellant had to sanction his bills for the works done by him. In our opinion, the High Court was not justified in overruling the said finding of the learned Special Judge.

15. It is now manifestly clear that the allegation of the contractor that the appellant had withheld the refund of the security money and payment to him on account of the extra works, is false. P.D. Sehgal, the dealing Accountant, came to support the false allegation of the contractor. The learned Special Judge has rightly observed that the evidence of the contractor and of P.D. Sehgal could not be relied upon.

16. We may now consider the question whether the appellant had made a demand for a bribe of Rs. 5,000/-. According to the contractor, he accompanied by his son, U.S. Sharma, met the appellant at his office in the DDA Building at Ring Road at 1-00 p.m. on October 30, 1973. It is not in dispute that on that day, that is, on October 30, 1973, the Prime Minister was to visit the site where the construction work was going on. In his statement under Section 313 Cr.P.C., the appellant denied that on that day the contractor and his son had met him in his office and requested him for the release of the security amount and sanctioning payment of amounts due on account of the extra items of work done. Thereafter, it was stated by him as follows:

The Prime Minister was scheduled to visit the works at site that day and I was busy at site up to 2 O'clock. I did not attend office before 2-00 p.m.. It was only at 1-30 p.m. that a firm message was received that P.M. would not come to site that day and we returned from the site.

17. Thus, according to the appellant, he was at the site up to 2-00 p.m. on account of the proposed visit of the Prime Minister. The contractor also in his evidence admitted it as correct that on October 30, 1973 the Prime Minister of India was scheduled to visit the site. He also admitted that on that day almost all the officers were there at the site. He, however, stated that he had left the site that day at about 11-00 a.m..

18. The High Court was not able to place reliance upon the statement of the appellant that he was at the site up to 2-00 p.m.. As, according to the contractor, he had left the site at about 11-00 a.m., the High Court assumed that the firm message cancelling the visit of the Prime Minister had been received before 11-00 a.m. It has been observed by the High Court that the appellant could have examined any one of the officers in support of his claim that he had left the site after 1-30 p.m., but, he had failed to do so. It may be pointed out that there is also no evidence corroborating the evidence of the contractor that he had left the site at 11-00 a.m.. Without any such evidence and having regard to the fact that the learned Special Judge, who had seen the demeanour of the contractor, was disinclined to place any reliance upon the testimony of the contractor, the High Court was not justified in not giving any importance to the statement of the appellant. In our opinion also, it is difficult to accept the evidence of the contractor that he came back from the site at 11-00 a.m. and saw the appellant at his office in the DDA Building at 1-00 p.m. when the appellant

had demanded the bribe from the contractor. The contractor was very much aware that the appellant was not standing in the way of releasing his security amount and other amounts for extra works and, accordingly, it was not necessary for him to see the appellant at his office. In the circumstances, we are not inclined to accept the case of the contractor that he accompanied by his son had met the appellant at his office at 1-00 p.m. on October 30, 1973. The learned Special Judge has also not placed any reliance on the testimony of the contractor's son. We also do not see any reason to place reliance upon his evidence in this regard.

19. As has been noticed earlier, the learned Special Judge and also the High Court have placed much reliance upon the evidence of R.L. Verma and R N. Khanna and the Deputy Superintendent of Police as to the acceptance of the bribe by the appellant and recovery of the bribe amount from him. R.L. Verma and R.N. Khanna have been stated to be two independent witnesses. So far as R.N. Khanna is concerned, he categorically admitted in his cross-examination that he had earlier joined three or four such raids for traps organised by the CBI. Khanna and Verma work in the same office and there is substance in the contention made on behalf of the appellant that both of them are very much known to the police. It was the Deputy Superintendent of Police who had called them from their office for the purpose of being trap witnesses. We do not think that in the circumstances either of them can be called an independent witness.

20. The circumstances under which bribe was alleged to have been given to the appellant appear to be very much unnatural. It may be recalled that the contractor had withdrawn a sum of Rs. 2,500/- from the Bank and get a certificate in that regard from the Bank Manager. Normally, no person would behave in that manner.

21. As per the allegation of the contractor and the other members of the raiding party, the contractor purchased a basket of fruits and also some cartons of sweets so as to justify the entrance of Verma into the house of the appellant. It was arranged that Verma would also be a witness to the handing-over of the bribe money to the appellant. This is also a very unusual and unnatural feature in the prosecution story. It is common sense that a person would not accept bribe in the presence of a stranger. One significant fact that may be pointed out here is that although it is alleged that the appellant had agreed to be present in his house at 7-00 p.m. for the purpose of taking bribe, he was absent and came back at 8-00 p.m..

22. Be that as it may, the next part of the prosecution story seems to be queer. It is the prosecution case that after the appellant had come back at 8-00 p.m. the contractor and his son went to the house and met the appellant in his drawing-room in the first floor of his house. Thereafter, the contractor's son came down and went to the car. Then Verma and the contractor's son took the fruits and sweets to the drawing-room of the appellant. According to the evidence of contractor's son, it took about ten minutes and during these ten minutes the contractor and the appellant were sitting in the appellant's drawingroom. It is difficult to believe that the payment of the bribe money could be deferred for ten minutes till the arrival of fruits and sweets. It is also difficult to believe that the appellant would accept bribe in the presence of Verma, who had carried the fruits to the drawing-room of the appellant. In his statement under Section 313 Cr.P.C., the appellant stated as follows:

In fact, when they came to my house around 8-00 p.m. there was a bell and my son opened the door and came back and informed me that two persons had come to see me. In fact, I had just returned from an outing along with my wife and was taking bath. I came to the drawing-room after a couple of minutes and found Shri R.S. Sharma and U.S. Sharma, standing near the door. I asked them what was the matter and immediately both R.S. Sharma and U.S. Sharma rushing towards me tried to foist the money on me. Even as I was trying to resist with both my hands, the police raiding party entered the room and tried to overpower me in spite of my strong protest. My wife was inside. She also came out on hearing a noise in the drawing-room and she was also shouted down by the police party.

The above allegation of the appellant was not accepted either by the learned Special Judge or by the High Court.

23. The prosecution case was that the amount was recovered by the Deputy Superintendent of Police from the pocket of the bush-shirt of the appellant. The fingers of the appellant and the pocket of the bush-shirt when dipped into the sodium carbonate solutions, the same turned pink. When questioned about that, the appellant gave his explanation as follows:

D.S.P. touched my ringers with his fingers and dipped them along with his own ringers in the solutions. Similarly the pocket of the bush-shirt was dipped by him along with his own fingers in the solution.

24. The above allegation and the explanation of the appellant have not been accepted by the learned Special Judge and the High Court in view of the evidence of Verma, Khanna and the Deputy Superintendent of Police. In the context of what has been stated above and having to the unusual and unnatural behaviour of the contractor, it casts a great doubt on the prosecution story of handing-over of the bribe money to the appellant by the contractor and recovery of the same from his pocket by the Deputy superintendent of Police. It was alleged by the contractor that the money was received by the appellant with his left hand and then he transferred it to his right hand and, thereafter, put the same into the pocket of his bush-shirt. This is also an unusual circumstance and particularly when the allegation came from the mouth of the contractor on whom no reliance could be placed by the learned Special Judge. It is very much doubtful whether the contractor had even met the appellant at his office on October 30, 1973, when the appellant was alleged to have asked for a bribe of Rs. 5,000/-

25. Therefore, the very foundation of the prosecution case is shaken to a great extent. The question as to the handing-over of any bribe and recovery of the same from the accused should be considered along with other material circumstances one of which is the question whether any demand was at all made by the appellant for the bribe. When it is found that no such demand was made by the accused and the prosecution has given a false story in that regard, the Court will view the allegation of payment of the bribe to and recovery of the same from the accused with suspicion.

26. In the instant case, the foundation of the prosecution case of the demand made by the appellant for bribe has, as observed already, been shaken to a great extent. In any event, it casts a grave doubt on the subsequent event that was alleged to have taken place in the matter of giving of bribe to the appellant and recovery of the bribe money from him coupled with the unusual behaviour of the contractor in purchasing sweets and fruits for the appellant on the plea that it would justify the presence of Verma at the time of giving of bribe to the appellant.

27. In our opinion, therefore, the prosecution has not been able to prove the guilt of the appellant beyond all doubts. The appellant was found by the learned Special Judge to be honest and his service record shows that he was an officer of integrity through his career. The learned Special Judge seems to have accepted the statement of the appellant that he has no immovable or movable property. His wife and children have no Bank account nor have they any property in their names. His insurance is also not more than Rs. 30,000/- and his Bank balance is less than Rs. 1,000/-. For the defence of the case he had borrowed Rs. 6,000/- from his GPF Account. He has a wife and three minor children to support and there is no other source of income for the subsistence of the family. The above statement of the appellant has been recorded by the learned Special Judge in considering the sentence to be imposed on the appellant.

28. After a careful consideration of the evidence adduced on behalf of the prosecution, the statement of the appellant under Section 311 Cr.P.C. and the submissions made on behalf of the parties, we are of the view that the prosecution has failed to prove the guilt of the appellant.

29. For the reasons aforesaid, the appeal is allowed. The order of conviction and sentence as passed by the learned Special Judge and as affirmed by the High Court, is set aside. The appellant is acquitted of all the charges and is set at liberty. The bail bond is discharged.