

Banarsi Dass vs State Of Haryana on 5 April, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1589, 2010 (4) SCC 450, 2010 AIR SCW 2282, (2010) 3 MAD LJ(CRI) 132, (2010) 2 RECCRIR 553, (2010) 2 ALLCRIR 1344, (2010) 2 ALLCRILR 655, (2010) 2 DLT(CRL) 211, (2010) 2 RAJ LW 1395, (2010) 46 OCR 152, (2010) 2 UC 784, (2010) 2 CRIMES 351, (2010) 89 ALLINDCAS 65 (SC), (2010) 2 CHANDCRIC 181, (2010) 69 ALLCRIC 653, 2010 CALCRILR 2 1, (2010) 2 CURCRIR 117, (2010) 2 ORISSA LR 28, (2010) 3 GUJ LH 196, 2010 ALLMR(CRI) 1608, 2010 CRILR(SC&MP) 339, 2010 (2) SCC(CRI) 864, 2010 (3) SCALE 531, 2010 CRILR(SC MAH GUJ) 339, (2010) 3 SCALE 531, (2010) 1 CRILR(RAJ) 339, (2010) 1 ALD(CRL) 924

Author: Swatanter Kumar

Bench: Swatanter Kumar, Aftab Alam

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 630 OF 2003

Banarsi Dass

Appellant

Vs.

State of Haryana

Respondent

JUDGMENT

Swatanter Kumar, J.

1. The present appeal under Article 136 of the Constitution of India is directed against the final judgment and order of conviction dated 20.11.2002 passed by the learned Single Judge of the High Court of Punjab & Haryana at Chandigarh. Learned counsel appearing for the appellant has raised challenge to the impugned judgment, inter alia, but primarily on the following grounds:

(a) There is no evidence to prove demand and voluntary acceptance of the alleged bribe so as to attract the offence under Section 5(2) of the Prevention of Cor-

ruption Act, 1947 (For short, 'the Act'). Reliance has been placed by the judgment of this Court in the case of C.M. Girish Babu vs. CBI, Cochin, High Court of Kerala, [2009 (3) SCC 779].

(b) The High Court as well as the trial Court have passed an order of conviction despite the fact that there was serious contradiction between the statements of the prosecution witnesses. And in fact, there was no cogent and reliable evidence to support the charge against the appellant. Even the recovery has not been proved in accordance with law. These factors clearly justify the benefit of doubt in favour of the appellant and thus entitling the accused of judgment of acquittal.

(c) The punishment awarded to the appellant is unreason-

ably excessive. The appellant has faced the agony of trial and thereafter other proceedings arising therefrom for the last 20 years. In these circumstances, the appellant has even faced great hardship having lost his livelihood which adversely affected the future of his family members. While relying upon the judgment of this Court in the case of Aditya Nath Pandey v. State of U.P. [2000 (9) SCC 206], it is contended that the sentence undergone would suffice and meet the ends of justice. Of course, this argument has been advanced without prejudice to the above contentions.

2. On behalf of the State, it has been argued that the judgment of conviction and sentence is duly supported by the oral and documentary evidence produced by the prosecution. The prosecution has been able to bring home the charge against the accused. The ingredients of Section 5(2) of the Act as well as Section 161 of the Indian Penal Code (for short, 'the IPC') are duly satisfied. The appellant being a public servant has not to indulge in demanding bribe. Thus, no leniency is called for in favour of the accused. In order to examine the merit or otherwise the contentions raised, it is important for us to refer to the basic facts as emerged from the records, giving rise to the present appeal.

3. The appellant was newly posted as patwari in Village Piruwala. One Pritam Kaur had agricultural land at Village Piruwala. Her daughter, namely, Sat Pal Kaur was informed during 1986 that Khasra Girdawaris of Pritam Kaur's land had been recorded in the name of Jit Singh and others as tenants by the previous Patwari. Smt. Sat Pal Kaur took up the matter with those tenants who admitted that the Khasra Girdawaris has been wrongly recorded by the Ex-Patwari in their favour. She also obtained no-objection on the application moved by her mother which was submitted to the Tehsildar Chachhrauli. The application was moved for the purposes of incorporating the necessary changes at the time of the next Khasra Girdawaris in the coming season. Smt. Sat Pal Kaur contacted the village Patwari (appellant herein) in the Kharif season for recording Khasra Girdawaris in favour of her mother during the period of October, 1986. It is further the case of the prosecution that the appellant demanded illegal gratification of Rs. 900/- (rupees nine hundred) but that deal was struck at Rs. 400/- (rupees four hundred) for making the requisite changes, in the presence of Gurmej Singh, a taxi driver, whose taxi had been engaged by Sat Pal Kaur while visiting the appellant. Sat Pal Kaur contacted Shri Hari Singh, Deputy Superintendent of Police, Jagadhri at Bilaspur where Shri S.K. Joshi, Sub-Divisional Executive Magistrate, Jagadhri, was also present. She reported the matter. Her statement was recorded. She also produced four currency notes of the denomination of Rs. 100/- each and the same were signed both by Hari Singh, DSP and S.K. Joshi, Sub-divisional

Executive Magistrate. They went to Patwari of Chachhrauli. They were told by the officers that on demand she should hand over the money and once money was accepted she should inform the Police Station and the trap was accordingly planned. Sat Pal Kaur accompanied by Gurmej Singh left for Patwar-khana which was about one km. from the Police Station, Chachhrauli. She took Rs. 400/- duly signed by the said officers to pay as gratification to the Patwari. The money was given to the appellant and accordingly Gurmej Singh reported the matter to Shri Hari Singh, DSP and Shri S.K. Joshi at the Police Station. They rushed to the spot in a jeep that was parked at some distance from Patwar-khana. On actual search of the appellant, four currency notes duly signed by the officers were recovered from the front left pocket of the shirt. Recovery memo for the same was prepared. The tenants had raised no objection and that application was also found on the table of the appellant in Patwar-khana which was taken into possession. After conclusion of the trap, the appellant was arrested and a case was registered with the Police Station Chachhrauli. After completion of the investigation, a challan regarding commission of offence under Section 161 of the IPC and under Section 5(2) of the Act was filed before the Court of competent jurisdiction. The Court framed charges on both these offences and the appellant was put to trial.

4. The prosecution in support of its case examined Tara Chand Pawar (PW-1), Smt. Sat Pal Kaur (PW-2), Rajiv Sharma (PW-3), Gurmej Singh (PW-4), Daya Singh (PW-5), Subhash Chander Patwari (PW-6), Shiv Dayal Reader (PW-7), Prem Bihari Lal (PW-8), Ram Chander, ASI(PW-9), Shri S.K. Joshi (PW-10) and Shri Hari Ram, DSP (PW-11) and closed its evidence. When the appellant was examined under Section 313 of Criminal Procedure Code, 1973 (for short 'the Cr.P.C.'), he denied the allegations leveled against him and claimed to be innocent.

5. The special Judge, Ambala, by order dated 30.01.1988 convicted and sentenced the appellant under Section 161 of the IPC to undergo rigorous imprisonment for three years and under Section 5(2) of the Act to undergo rigorous imprisonment for four years and to pay a fine of Rs.1,000/-. Feeling aggrieved by this order, the appellant filed Criminal Appeal No. 83-SB of 1988 in the High Court of Punjab & Haryana at Chandigarh. The High Court by order dated 20.11.2002 dismissed the appeal holding that the appellant was rightly convicted.

6. To establish the charge against the appellant-accused, the prosecution in relation to the demand and receipt of the illegal gratification, had examined mainly four witnesses; Sat Pal Kaur (PW-2), Gurmej Singh (PW-4), S.K. Joshi (PW-10) and Hari Singh (PW-11). Out of these material witnesses, PW-2 and PW-4 both were declared hostile and were cross-examined by the public prosecutor. Leave to that effect was granted by the Court. PW-2 had stated in her examination-in-chief that she apprehended that appellant wanted illegal gratification and for that reason he was not recording the change in Khasra Girdawaris in favour of her mother. PW-2 further stated that she had learnt from co-villagers that Rs.300-400/- as reward was to be given for such a job. She had contacted the police thereafter. She was confronted with her statement EX.PB recorded under Section 161 of the IPC wherein she had stated that Banarsi Dass had demanded illegal gratification of Rs. 400/- from her in the presence of Gumrej Singh. She also stated that she had signed the memos but she did not read them as she was quite puzzled. In the cross-examination, she also stated that "earlier to the day of the raid, Banarsi Dass has demanded Rs. 900/-. It is correct that accused Banarsi Dass had apologized to me and I have accepted his apology". She further volunteered, "it is my humble

request to the Court that the Court should also accept the apology of the accused who has got small children to maintain". Thereafter, she proceeded to state that she had paid a sum of Rs. 400/- to the accused for recording girdwari of the current crop in favour of the mother. In her cross-examination, it has also been stated that when she placed Rs. 400/- on his table, the accused had already recorded girdawari in favour of Jit Singh and others and the same had been verified by the Kanungo. She (PW-2) had an altercation with the accused as to why he had recorded Girdwari in favour of Jit Singh and others. Then she placed Rs. 400/- on the table wherefrom the same was picked up by the police. Gumrej Singh (PW-4), the other witness who was also declared hostile and who was subjected to cross-examination by the prosecution, stated that the appellant had not accepted or demanded any money from Sat Pal Kaur in his presence. He denied that he had made any statement to the police (Ex.PW-3/A). His statement under Section 161 of the IPC was completely denied by him. According to him, he had taken Sat Pal Kaur to Chachhrauli but he remained sitting in the car, 100 yards away from Patwar-khana and he did not know the accused as he hailed from Chachhrauli.

7. Witnesses PW-10 and PW-11 are the Senior Officers of the Administration and the Police. The complainant complained to them about the appellant demanding bribe from her for correcting the Khasra Girdawaris in the name of the mother of PW-2. A trap was planned. In furtherance to which PW-2 had gone to the Patwar-khana and gave Rs. 400/- (the signed notes of Rs.100/- each) upon which the Gurmej Singh was supposed to have informed the police, about the acceptance of money by the appellant. Thereafter, the police came to the spot and recovered the money from the front left pocket of the appellant's shirt. The search of the appellant was conducted by the police and money was recovered (Ex.P1 to Ex.P4) for which memo Ex.PD. was prepared. The tainted notes, shirt and even the money otherwise recovered from the pocket of the appellant were taken into custody vide these exhibits.

8. It is apparent that PW-10 and PW-11 were not present in the Patwar-khana when the money was demanded and accepted by the appellant. The prosecution primarily relied on the two witnesses PW-2 and PW-4 respectively who were declared hostile. Certainly the prosecution can rely upon the statements of these witnesses and list their depositions made before the Court by having those statements corroborated or contradicted, as the case may be, by their earlier statements recorded under Section 161 of the I.P.C. At this stage, the finding recorded by the High Court can usefully be referred to:

"PW-2 Smt. Sat Pal Kaur has clearly stated that accused has informed her that Girdawari of her mother's land had been recorded in the name of Jit Singh and others as tenants. She had contacted Jit Singh and others and obtained no objection from them. The said application Ex.PA was forwarded by her through her servant to the Tehsildar. She had contacted Banarsi Dass and requested him to change the said girdawari in her mother's name, who told her that he will do so at the time of recording of khasra girdawari in the next season. She apprehended that he wanted illegal gratification and for that reason, he was not recording the change of girdawari in the name of her mother. She contacted the Police and informed them about the matter. She had visited Patwar-khana, where Banarsi Dass was present and placed

Rs. 400/- on his table. In the meantime, police party came and seized that money. She was declared a hostile witness. In cross-examination, she admitted her statement made under Section 161 IPC. She also admitted that Gurmej Singh was not present when Banarsi Dass accused had made a demand of illegal gratification of Rs. 400/-. She admitted that it is correct that Banarsi Dass accused has apologized from her and she had accepted his apology. She further volunteered that it is her humble request to the Court that the Court should also accept the apology of the accused. The police party was sitting in the Thana. So, when the recovery was made by the police from the appellant-accused, somebody must have informed the police about the handing of the bribe and Gurmej Singh was the only person. Shri S.K. Joshi, Sub-Divisional Magistrate, Kalka has appeared as PW10. He has searched Smt. Satpal Kaur and her driver. Gurmej Singh visited the Police Station in the afternoon and complained that Shri Banarsi Dass Patwari Halqa has demanded Rs. 900/- for the correction of Khasra girdawari. Shri Hari Singh recorded the statement of Sat Pal Kaur and made search of her person and after the search, Rs.400/-, which were signed by him and Shri Hari Singh, were given to her. The DSP had prepared memo Ex-PC which was signed by him. He along with DSP, Smt. Sat Pal Kaur and Gurmej Singh went to Police Station Chachrauli and then went to Patwar-khana. Gurmej Singh was directed to come to the Police Station in case the accused accepted the money. After receiving message, they raided Patwar-khana. Accused was found sitting in the Patwar-khana and his person was searched by the DSP in his presence and currency notes Ex.P1 to Ex.P4 were recovered from the front pocket of the shirt, which the accused was wearing. These were taken into possession vide memo Ex.PD. Hari Singh also supported the same. So, if merely shadow witness had turned hostile, accused-appellant cannot be acquitted. Mr. S.K.Joshi (PW-10) can also be considered as a witness of recovery as currency notes handed over to Smt. Sat Pal Kaur after being signed by PW-10 and PW-11 vide memo Ex.PC was recovered by DSP (PW-11) vide memo Ex.PD in the presence of Sat Pal Kaur PW-2 and Shri S.K. Joshi, PW-10".

9. The above findings recorded by the High Court show that the Court relied upon the statements of PW-10 and PW-11. It is further noticed that recovery of currency notes Ex. P-1 to P-4 from the shirt pocket of the accused, examined in light of Ex. PC and PD, there was sufficient evidence to record the finding of guilt against the accused. The Court remained uninfluenced by the fact that the shadow witness had turned hostile, as it was the opinion of the Court that recovery witnesses fully satisfied the requisite ingredients. We must notice that the High Court has fallen in error in so far as it has drawn the inference of demand and receipt of the illegal gratification from the fact that the money was recovered from the accused.

10. It is a settled canon of criminal jurisprudence that the conviction of an accused cannot be founded on the basis of inference. The offence should be proved against the accused beyond reasonable doubt either by direct evidence or even by circumstantial evidence if each link of the chain of events is established pointing towards the guilt of the accused. The prosecution has to lead cogent evidence in that regard. So far as it satisfies the essentials of a complete chain duly supported

by appropriate evidence. Applying these tests to the facts of the present case, P-10 and P-11 were neither the eye- witnesses to the demand nor to the acceptance of money by the accused from Smt. Sat Pal Kaur (PW-2). It is unfortunate but true that both PW-2 and PW-4 made statements before the Court which were quite different from the one made by them before the police during the investigation under Section 161 of the IPC. Gurmej Singh (PW-4) completely denied the incident and refused to acknowledge that the sum of Rs. 900/- only was demanded by the accused from PW-2 in his presence and that the money was accepted in the Patwar-khana by the accused. PW-2 obviously has not stated the complete truth before the Court. Though after being declared hostile in her cross-examination she has supported some part of the prosecution case, but she has virtually denied the essential ingredients to bring home the guilt of the accused either under Section 5 (2) of the Act or under Section 161 of the IPC. She seems to have forgiven the accused for making such a demand and made such a statement before the Court that the Court should also ignore the offence. We are not and should not even be taken to have suggested that PW-10 and PW-11 have not made correct statement before the Court or that the Court has disbelieved any part of their statement. But, fact of the matter remains that their statement with regard to demand and acceptance is based on hearsay i.e. what was told to them together by PW-2 and even by PW-4 at that stage. The money was certainly recovered from the pocket of the accused vide memo Ex. P-D. We, therefore, do not accept the contention on behalf of the accused that the amount was not recovered and the recovery is improper in law. Ex. P-D has duly been attested by witnesses. Thus, it cannot be said that the recovery from the pocket of the accused is unsustainable in law and is of no consequence.

11. To constitute an offence under Section 161 of the IPC it is necessary for the prosecution to prove that there was demand of money and the same was voluntarily accepted by the accused. Similarly, in terms of Section 5 (1) (d) of the Act, the demand and acceptance of the money for doing a favour in discharge of its official duties is sine qua non to the conviction of the accused. In the case of *M.K. Harshan v. State of Kerala* [1996 (11) SCC 720], this Court in somewhat similar circumstances, where the tainted money was kept in the drawer of the accused who denied the same and said that it was put in the drawer without his knowledge, held as under :

".....It is in this context the courts have cautioned that as a rule of prudence, some corroboration is necessary. In all such type of cases of bribery, two aspects are important. Firstly, there must be a demand and secondly there must be acceptance in the sense that the accused has obtained the illegal gratification. Mere demand by itself is not sufficient to establish the offence. Therefore, the other aspect, namely, acceptance is very important and when the accused has come forward with a plea that the currency notes were put in the drawer without his knowledge, then there must be clinching evidence to show that it was with the tacit approval of the accused that the money had been put in the drawer as an illegal gratification. Unfortunately, on this aspect in the present case we have no other evidence except that of PW-1. Since PW-1's evidence suffers from infirmities, we sought to find some corroboration but in vain. There is no other witness or any other circumstance which supports the evidence of PW-1 that this tainted money as a bribe was put in the drawer, as directed by the accused. Unless we are satisfied on this aspect, it is difficult to hold that the accused tacitly accepted the illegal gratification or obtained the same within the

meaning of Section 5(1)(d) of the Act, particularly when the version of the accused appears to be probable".

12. Reliance on behalf of the appellant was placed upon the judgment of this Court in the case of C.M. Girish Babu (supra) where in the facts of the case the Court took the view that mere recovery of money from the accused by itself is not enough in absence of substantive evidence for demand and acceptance. The Court held that there was no voluntary acceptance of the money knowing it to be a bribe and giving advantage to the accused of the evidence on record, the Court in para 18 and 20 of the judgment held as under :

"18. In Suraj Mal v. State (Delhi Admn.) [1979 (4) SCC 725] this Court took the view that (at SCC p. 727, para 2) mere recovery of tainted 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. The mere recovery by itself cannot prove the charge of the prosecution against the accused, in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money knowing it to be bribe.

20. A three-Judge Bench in M. Narsinga Rao v. State of A.P.[2001 (1) SCC 691: SCC (Cri) 258] while dealing with the contention that it is not enough that some currency notes were handed over to the public servant to make it acceptance of gratification and prosecution has a further duty to prove that what was paid amounted to gratification, observed: (SCC p. 700, para 24) "24. ... we think it is not necessary to deal with the matter in detail because in a recent decision rendered by us the said aspect has been dealt with at length. (Vide Madhukar Bhaskarrao Joshi v. State of Maharashtra [2000 (8) SCC 571]). The following statement made by us in the said decision would be the answer to the aforesaid contention raised by the learned counsel: (Madhukar case, SCC p. 577, para 12) `12. The premise to be established on the facts for drawing the presumption is that there was payment or acceptance of gratification. Once the said premise is established the inference to be drawn is that the said gratification was accepted "as motive or reward"

for doing or forbearing to do any official act. So the word "gratification" need not be stretched to mean reward because reward is the outcome of the presumption which the court has to draw on the factual premise that there was payment of gratification. This will again be fortified by looking at the collocation of two expressions adjacent to each other like "gratification or any valuable thing". If acceptance of any valuable thing can help to draw the presumption that it was accepted as motive or reward for doing or forbearing to do an official act, the word "gratification" must be treated in the context to mean any payment for giving satisfaction to the public servant who received it."

13. In fact, the above principle is no way derivative but is a reiteration of the principle enunciated by this Court in Suraj Mal case (supra), where the Court had held that mere recovery by itself cannot prove the charge of prosecution against the accused in the absence of any evidence to prove payment of bribe or to show that the accused voluntarily accepted the money. Reference can also be made to

the judgment of this Court in *Sita Ram v. State of Rajasthan* [1975 (2) SCC 227], where similar view was taken.

14. The case of *C.M. Girish Babu* (supra) was registered under the Prevention of Corruption Act, 1988, Section 7 of which is in pari materia with Section 5 of the Prevention of Corruption Act, 1947. Section 20 of the 1988 Act raises a rebuttable presumption where the public servant accepts gratification other than legal remuneration, which presumption is absent in the 1947 Act. Despite this, the Court followed the principle that mere recovery of tainted money divorced from the circumstances under which it is paid would not be sufficient to convict the accused despite presumption and, in fact, acquitted the accused in that case.

15. In light of the above principles enunciated by the Court now we may examine the evidence on record with specific emphasis to the demand and acceptance of illegal gratification for changing Khasra Girdawaris in the name of mother of Smt. Sat Pal Kaur (PW-2). Besides, the part of her statement which we have aforementioned, she also stated that she had never made the statement Ex. PW-3/A before the police. Even on the memos which have been signed by her she stated that she had signed them without reading the same. She was educated up to 4th Class only. In her cross-examination she does support a few facts of the prosecution but on the material circumstance/fact she has completely taken a somersault while making a statement before the Court. Gurmej Singh, besides disowning his statement under Section 161 of the IPC in its entirety, stated that he was not present either when the bribe was demanded or when the same was accepted. The accused, when was put to incriminating evidence against him in terms of Section 313 of the Cr.P.C., did admit that PW-2 (complainant) had come to the office of Patwar-khana with the police but stated that no other persons had accompanied them. PW-2 insisted on changing the Khasra Girdawaris and after she got annoyed, she got him falsely implicated. Money alleged to have been recovered from him, in fact, was lying on the table without his knowledge or demand. PW-2 has also stated in her statement that she kept the money on the table after some altercation with the accused. In these circumstances, it is difficult for the Court to hold that the prosecution has established the offence against the accused, that he accepted the money voluntarily as illegal gratification. The effect of the statement of PW-2 and PW-4 has a substantial adverse effect on the case of the prosecution. There are other witnesses examined by the prosecution which are formal witnesses and in the absence of support of PW-2 and PW-4, the prosecution has not been able to establish the charge (demand and acceptance of illegal gratification by the accused), thus entitling him to some benefit on the technical ground of two witnesses i.e. PW-2 and PW-4, turning hostile.

16. In light of the statement of two hostile witnesses PW-2 and PW-4, the demand and the acceptance of illegal gratification alleged to have been received by the accused for favouring PW-2 by recording the Khasra Girdawaris in the name of her mother cannot be said to have been proved by the prosecution in accordance with law. We make it clear that it is only for the two witnesses having turned hostile and they having denied their statement made under Section 161 of the I.P.C. despite confrontation, that the accused may be entitled to acquittal on technical ground. But, in no way we express the opinion that the statement of witnesses including official witnesses PW-10 and PW-11, are not accepted by the Court. Similarly, we have no reason to disbelieve the recovery of Ex. P-1 to P-4 vide Ex. P-D.

17. In the light of this we are of the considered view that the judgment of the High Court convicting the accused for the offences with which the accused was charged cannot be sustained in law.

18. For the reasons aforerecorded and particularly in view of the fact that two witnesses turned hostile, giving the benefit of doubt on technical ground to the accused, we hereby set aside the judgement of the High Court and acquit the accused of both the charges i.e. under Section 161 of the IPC and under Section 5 (2) of the Act. The appeal is accordingly allowed leaving the parties to bear their own costs. Bail bonds, if any, furnished by the appellant be released.

.....J. [AFTAB ALAM]J. [SWATANTER KUMAR] New Delhi April 5, 2010.