State Of U.P vs Zakaullah on 12 December, 1997

Equivalent citations: AIR 1998 SUPREME COURT 1474, 1998 (1) SCC 557, 1998 AIR SCW 276, 1998 ALL. L. J. 290, (1997) 10 JT 54 (SC), 1998 CRILR(SC&MP) 137, 1998 (1) ADSC 116, 1998 UP CRIR 338, 1998 CRILR(SC MAH GUJ) 137, (1998) 1 ALLCRILR 175, (1998) 1 EASTCRIC 619, (1998) 22 ALLCRIR 390, (1998) 1 MADLW(CRI) 311, (1998) 1 RAJ LW 124, (1998) 1 SCJ 11, (1997) 7 SCALE 620, (1997) 10 SUPREME 522, (1998) MAD LJ(CRI) 157, (1998) 36 ALLCRIC 183, (1998) 1 CHANDCRIC 51, (1998) 1 CRIMES 58, 1998 SCC (CRI) 456, (1998) 2 CRIMES 338, (1998) 71 DLT 50, (1998) 44 DRJ 185, (1998) 1 CURCRIR 49, (1998) 1 RECCRIR 345, 1998 (1) ANDHLT(CRI) 179 SC, (1998) 1 ANDHLT(CRI) 179

Bench: M.K. Mukherjee, K.T. Thomas

PETITIONER:
STATE OF U.P.

Vs.

RESPONDENT:
ZAKAULLAH

DATE OF JUDGMENT: 12/12/1997

BENCH:
M.K. MUKHERJEE, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Thomas,).

This is a Government appeal assailing the acquittal of a government servant from graft charge. Respondent government servant was convicted by the trial count under Section 161 of the Indian Penal Code and also Section 5(2) of the Prevention of Corruption Act 1947 and was sentenced to

substantive terms of imprisonment and fine but he was acquitted by a single judge of the Allahabad High Court when he appealed against the conviction and sentence.

Respondent was working as Revenue Inspector (Wasil Baki Nawis) in a sub-Tehsil Nainital District. The nub of the case against him is that he received Rs. 400/- as bribe from PW5 Satpal for doing an official act and he was caught red- handed with the bribed amount by the anti-corruption officials. After obtaining sanction from the government, respondent was challaned. In his defence, he disputed the entire incident and contended that it was a concocted case against him.

More details about the case: a person by name Naubat was in occupation of a certain land situate in the sub- Tehsil Kaladhungi (Nainital district). Since the occupation was illegal proceedings have been afoot for evicting him. PW-5- Satpal Singh purchased the right of Naubat and approached the respondent for regularisation of occupancy. Initially, respondent demanded a sum of Rs.500/- by way of gratification but after some haggling the amount was settled at Rs.400/-, However, PW 5-Satpal Singh, before handing over the money, secretly met the officials of Anti-Corruption Bureau and they arranged a trap. In accordance with their scheme, currency notes amounting to rs.400/- were handed over to the respondent on 23.5.1981, but the bribe-taker was soon intercepted by the Anti-Corruption squad with the tainted cash. The currency notes were seized from him and phenolphthalein test conducted showed a positive result.

Apart from the evidence of the complainant, PW-5 (Satpal Singh) and PW-4 - Harendra Singh Sirohi (DSP of Anti-Corruption Bureau, Nainital), Prosecution examined two other witnesses who were present when the delinquent officer was caught red-handed. They are PW6-Lokesh Pal Singh and PW 7-Khem Singh (who was driver of the vehicle in which the Anti-corruption officials travelled). The Special Judge, who tried the case found the evidence of the aforesaid witnesses reliable, but learned single judge of the High Court took a contrary view.

Following are the reasons which learned singe judge advanced for interfering with the conviction and sentence; (1) PW-5 (Satpal Singh) had a motive to falsely implicate the respondent because papers have already been forwarded for eviction of Naubat from the illegal occupancy. (2) Evidence of PW5-Satpal Singh was not corroborated by independent witnesses. (3) There is material contradiction between the evidence of PW4 and PW6 regarding preparation of recovery-memo. (4) The solution (used for conducting phenolphthalein test) collected in a phial after washing the tainted fingers of the respondent was not sent to the Chemical Examiner.(5) Nobody over-head the demand made by the delinquent officer for bribe. (6) The fact that currency notes were recovered from left pocket of the respondent verges the story on improbability because it was not suggested anywhere that respondent was a left-handed person.

Complainants evidence was jettisoned on the mere ground that since he had a grouse against the delinquent public servant he might falsely have implicated the latter. Such a premise is fraught with the consequence that no bribe giver can get away from such stigma in any graft case. No doubt PW5 would have aggrieved by the conduct of the respondent. The very fact that he lodged a complaint with the Anti- Corruption Bureau is reflective of his grievance. Such a handicap in his evidence may require the court to scrutinise it with greater care, but it does not call for outright rejection of his

evidence at the threshold. A pedantic approach rejecting the evidence of a complainant simply on the premise that he was aggrieved against the bribe-taker, would only help corrupt officials getting insulated from legal consequences.

Evidence of three defence witnesses (DW 1 to DW 3) helped the respondent to make out that termination of the illegal occupancy was imminent because on 20.5.1981 itself respondent had sent up the proposal to the Tehsildar for taking eviction proceedings in respect of Naubat's occupancy. Assuming that the version given by DW 1 to DW3 was correct, even so there was no bar for PW5 to approach the respondent for regularising the occupancy. It was PW5's version that when the amount was paid, respondent himself was ready to prepare the application necessary for regularisation of the occupation. Occasion for demanding the bribe was the necessity of PW5 to move for averting the eviction threat. So there is no merit in the contention that PW5 lodged the complaint only because of the eviction proceedings initiated earlier.

Learned single judge concluded that evidence of P W 5 was not supported by independent corroboration. In so concluding he termed the two panch witnesses (Pw6 and PW7) as "pocket witnesses." PW7 is described as pocket-witness because he drove the vehicle of the DSP of Anti-Corruption Bureau and PW6 was so termed because he had appeared as a witness in one or two other cases charge-sheeted by the police. Learned single judge commented about PW6 that "he can easily be tutored to depose anything at the behest of the police."

It is evidence that PW6 was examined as a witness in a case at Moradabad in which he himself was the complainant against a doctor who demanded bribe from him. He also admitted that he was a witness in two other cases though he was not yet examined in those cases. Would such antecedents render him a non-independent witness? Similarly, the mere fact that PW7 was the driver of the vehicle in which the officials went to the place, resulted in his losing the status as "Independent witness".

The necessity for "independent witness" in cases involving police raid or police search is incorporated in the statute not for the purpose of helping the indicted person to bypass the evidence of those panch witnesses who have had some acquaintance with the police or officers conducting the search at some time or the other Acquaintance with the police by itself would not destroy a man s independent outlook. In a society where police involvement is a regular phenomenon many people would get acquainted with the police. But as long as they are not dependent on the police for their living or liberty or for any other matter, it cannot be said that those are not independent persons. Of the police in order to carry out official duties, have sought the help of any other person he would not forfeit his independent character by giving help to police action. The requirement to have independent witness to corroborate the evidence of the police is to be viewed from a realistic angle. Every citizen of India must be presumed to be an independent person until it is proved that hew was a dependent of the police or other officials for any purpose whatsoever.(Hazari Lal vs. Delhi Administration :

1980 (2) SCR 1053).

The most important evidence is that of PW-4 - Harendra Singh Sirohi, the Superintendent of Police who arranged the trap. We must mind the fact that he had no interest against the respondent. But the verve shown by him to bring his trap to a success is no ground to think that he had any animosity against the delinquent officer. He made arrangements to smear the phenolphtalein powder on the currency notes in order to satisfy himself that the public servant had in fact received the bribe and not that currency notes were just thrust into the pocket of an unwilling officer. Such a test in conducted for his conscientious satisfaction that he was proceeding against a real bribe taker and that an officer with integrity is not harassed unnecessarily.

The evidence of such a witness as PW4 can be acted on even without the help of any corroboration (vide Prakash Chand vs. State (Delhi Administration): 1979 (2) SCR 330; hazari Lal vs. Delhi Administration: 1980 (2) SCR 1053).

The reasoning of the High Court that reliability of the trap was impaired as the solution collected in the phial was not sent to chemical Examiner is too puerile for acceptance. We have not come across any case where a trap was conducted by the police in which the phenolphtalein solution was sent to the Chemical Examiner. We know that the said solution is always used not because there is any such direction by the statutory public servant would have really handled the bribed money. There is no material discrepancy in the evidence regarding preparation of recovery-memo and the minor contradiction mentioned by the learned single judge is not worth considering.

The two remaining reasons i.e nobody over-heard the demand made by there respondent for bribe and that the amount was found not in the right pocket but only in the left pocket,. are flippant grounds which should never have merited consideration. It is disquieting that the learned single judge has chosen to advance such untenable reasoning to find fault with the evidence of PW5 which was supported by witnesses like PW4-DSP.

We have no doubt that the High Court has misdirected itself by such patently wrong and tenuous considerations and it resulted in the unmerited acquittal of accused against whom the prosecution succeeded in making out a fool-proof case under Section 161 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act 1947.

We, therefore, allow the State appeal and set aside the impugned judgment and restore the conviction passed by the trial court. However, due to this distance of time-between the date of commission of the offence and now - we are not inclined to impose a sentence of rigorous imprisonment for more than one year and a fine. Accordingly we sentence the respondent to undergo rigorous imprisonment for one year each under the two counts and a fine of Rs.5,000/-each (total Rupees ten

thousand) in default of payment of which he would undergo imprisonment for a further period of one year. The substantive sentences shall run concurrently. The appeal is thus allowed.