

PETITIONER:
KISHAN CHAND MANGAL

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT 14/10/1982

BENCH:
DESAI, D.A.
BENCH:
DESAI, D.A.
SEN, A.P. (J)

CITATION:
1982 AIR 1511 1983 SCR (1) 569
1982 SCC (3) 466 1982 SCALE (2) 879
CITATOR INFO :
D 1985 SC 79 (13)

ACT:

Evidence-Of persons belonging to office-wise, wealth-wise lower strata of society-Rejection on sole ground of humble origin-Not justified.

Evidence-Witnesses independent of police influence-Employees of nationalised banks and institutions receiving grants from government-Position of.

HEADNOTE:

The appellant, a Factory Inspector, visited the complainant's factory and demanded an illegal gratification of Rs. 150/- on the threat of entangling him in some legal proceedings. The complainant, who was not inclined to give the bribe, made a written complaint to the Deputy Superintendent of Police, Anti-Corruption Department (Dy SP) requesting for suitable action. A trap was arranged by smearing 15 currency notes of the denomination of Rs. 10/- each with phenolphthalein powder and, on the direction of the Dy SP, two motbirs were requested to accompany the raiding party and to watch what happens. The motbirs went along with the complainant to the residence of the appellant and witnessed the acceptance of the money given to him by the complainant, the subsequent search for the recovery of the currency notes from the appellant, the dipping of his hands in sodium carbonate solution and the consequent change in the colour of the hands into pink.

By the time the case came up for trial, the complainant was dead. In the absence of the evidence of the complainant, the trial Judge noted that the first demand of the bribe at the factory of the complainant had not been proved. He, however, held that the evidence of the two motbirs was reliable and was amply corroborated by the recovery of the currency notes as well as the presence of phenolphthalein powder on the hands of the appellant. The trial Judge convicted and sentenced the appellant under s. 161, I.P.C. and s. 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947.

The High Court which examined the evidence of the motbirs agreed with the findings recorded by the trial Court and dismissed the appeal filed by the appellant.

One of the contentions urged on behalf of the appellant was that once the complainant was not available to give evidence not only of the first demand but also on the payment of bribe pursuant to the demand, the evidence of the two motbirs had assumed considerable importance and it was unwise and dangerous to place implicit reliance on their testimony to convict the appellant

570

as (i) both the motbirs were petty clerks and (ii) by virtue of their service, they were likely to be under police influence.

Dismissing the appeal,

^

HELD: Truth is neither the monopoly nor the preserve of the affluent or of highly placed persons. In a country where renunciation is worshipped and the grandeur and wild display of wealth frowned upon, it would be the travesty of truth if persons coming from humble origin and belonging to office-wise, wealth-wise lower strata of society are to be disbelieved or rejected as unworthy of belief solely on the ground of their humble position in society. [577-F]

Khairati Lal v. The State, (1965) 1 Delhi Law Times, 362 overruled.

In the instant case it is factually not correct to say that both the motbirs are petty clerks: one was serving as a clerk in a nationalised bank and the other was a teacher in a middle school. The testimony of the motbirs which had been accepted as wholly reliable by the trial Judge and the High Court cannot be rejected on the sole ground that they are petty clerks. [577-E: 578-A-B]

It may be that officers of Anti-Corruption Department have jurisdiction to investigate lapses on the part of clerks in nationalised banks. It is not clear whether the motbir who was a teacher was a government employee or the school itself was a government school. It may be that the school was receiving grant but if all institutions which receive grant from government are styled as government departments and have to be treated as falling under the police influence then the net will have to be spread so wide as not to exclude anyone as independent of police influence. There is no justification in the submission that the two motbirs were persons not likely to be independent of police influence. [578-D-E]

Raghubir Singh v. State of Punjab, AIR 1976 S.C. 91, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 45 of 1980

From the Judgment and Order dated the 17th October, 1979 of the High Court of Rajasthan in S.B. Criminal Appeal No. 39 of 1977.

Frank Anthony and S.K. Jain, for the Appellant.

Badri Dass Sharma for the Respondent.

The Judgment of the Court was delivered by

DESAI, J. Appellant Kishan Chand Mangal was convicted by the learned Special Judge (A.C.D. Cases), Jaipur, Rajasthan, for

571

having committed offences under section 161, Indian Penal Code and section 5(1)(d) read with s. 5(2) of the Prevention of Corruption Act, 1947, and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.

200/-, in default to suffer further rigorous imprisonment for one month on each count with a further direction that both the sentences will run concurrently. After an unsuccessful appeal to the High Court of Rajasthan, he has preferred this appeal by special leave.

Appellant at the relevant time was serving as Factory Inspector, Ajmer and in that capacity he accompanied by his friend paid a visit on November 20, 1974, to the factory named 'Krishna Industries' whose proprietor was one Rajendra Dutt. Appellant said that his visit being after a lapse of one and a half year, the proprietor should pay him pocket money. Rajendra Dutt replied that his establishment was not covered by the Factories Act and showed disinclination to grease the palms of the appellant. However, appellant persisted in his demand and told Rajendra Dutt if he did not pay Rs. 150/- he was likely to be entangled in some legal proceedings. So saying appellant and his companion left. Rajendra Dutt was not inclined to give the bribe demanded from him and, therefore, on November 22, 1974, he contacted Dy. S.P., A.C.D., Ajmer, P.W. 7, Mahavir Prasad and gave a written complaint Ext. P-12 complaining about the demand of illegal gratification by the appellant requesting for taking suitable action in the matter. He also produced 15 currency notes each of the denomination of Rs.10/-. P.W. 7 Dy. S.P. Mahavir Prasad directed P.W. 3 Prahlad Narayan to bring two persons to witness the search and accordingly P.W. 1 Ram Babu and P.W. 2 Keshar Mal were requested to join the raiding party. 15 currency notes produced by the complainant were smeared with phenolphthalein powder and a memorandum of the same was prepared. The raiding party led by P.W. 7 Dy. S.P. Mahavir Prasad and including the complainant Rajendra Dutt, two motbirs P.W. 1 Ram Babu and P.W. 2 Keshar Mal, P.W. 3 Prahlad Narayan, a clerk in the Office of the Anti Corruption Department, started by a jeep driven by P.W. 6 Bajrang Singh to go to the residence of the appellant. Office and residence of the appellant are situated in the same building. Complainant Rajendra Dutt and the two motbirs Ram Babu and Keshar Mal proceeded ahead and entered into the room used as residential portion of the building. Ram Babu and Keshar Mal stopped in the verandah and the complainant Rajendra Dutt went inside. Appellant was seen sitting on a cot. On inquiry by complainant Rajendra Dutt appellant replied that he was not well

572

and that he was suffering from cold Appellant then inquired whether complainant Rajendra Dutt had brought the money and the complainant replied that he had brought the money and handed over marked currency notes 15 in number each of the demonination of Rs. 10/- which the appellant accepted and put the same under his pillow. Rajendra Dutt came out in the verandah and as instructed, gave the agreed signal whereupon Dy. S.P. Mahavir Prasad, the two motbirs and others entered the room. Mahavir Prasad introduced himself as Dy. S.P. ACD, and asked the appellant whether he had accepted Rs. 150/- as and by way of bribe from complainant Rajendra Dutt. Appellant denied having accepted any bribe or any money from Rajendra Dutt whereupon a search of his person was taken. When the search of the person of the accused was being taken motbirs Ram Babu and Keshar Mal pointed towards the pillow indicating that the bribe taken by the appellant was kept underneath the pillow. P.W. 6 Driver Bajrang Singh was asked to lift the currency notes and the numbers were tallied with the memorandum prepared earlier. Hands of the accused were dipped in the solution of sodium carbonate which turned pink. After the memorandum was completed recording all these

facts and after completing investigation sanction was obtained and the appellant was prosecuted for the aforementioned offences.

By the time the case came up for trial complainant Rajendra Dutt was dead and his evidence was not available. Prosecution examined the two motbirs Ram Babu and Keshar Mal, Dy. SP, ACD Mahavir Prasad, Clerk Prahlad Narayan, Driver Bajrang Singh and two others.

Statement of the accused was recorded under s. 313 of the Code of Criminal Procedure and he offered himself as a witness in his defence. In his evidence he stated that on the date of occurrence around 4.30 p.m. when he was sitting in his cot complainant Rajendra Dutt came and took a seat in the chair placed nearby. Appellant enquired why he had come and whether he had brought any written complaint against Clerk Mr. Singhal. According to him, the complainant replied that action be taken against Singhal by recording his statement whereupon the appellant said that if the complainant has any grievance he should come with a written complaint. Appellant further stated that thereafter he went to the bath room for spitting cough and he came out and sat on the cot. Complainant Rajendra Dutt enquired whether he can drink water from a jug which was lying there. Thereafter Rajendra Dutt went

573

out of the room and soon thereafter 8 persons including Rajendra Dutt entered the room. He stated that two of the members of the raiding party caught his hands and when he tried to get himself released from the grip of those persons the grip tightened. One of the members of the raiding party then told him that he was Dy. SP, ACD, Ajmer and called upon him to produce Rs. 150/- he had taken from Rajendra Dutt. Appellant stated that he immediately told the Dy. SP that he had not accepted any money from Rajendra Dutt whereupon the Dy. SP came near him and put his hand in the pocket of the garment put on by the appellant. Appellant objected to any search being taken and insisted on keeping two respectable persons present. He further stated that Dy. SP quarrelled with him and then he sent a telephone message to S.P, Ajmer that a Factory Inspector has quarrelled with him and he should be provided with extra police help. Thereafter his hands were dipped in a solution but the colour of the solution did not change and remained white. Appellant then told the Dy. SP that Rajendra Dutt had come to complain against one Singhal, a Clerk and in support of this he produced Ext. D-2 marked collectively in respect of five letters. At this stage the Dy. SP according to the appellant asked Rajendra Dutt why he had given a false signal whereupon the complainant Rajendra Dutt informed the Dy SP that the bribe money was lying under the pillow whereupon the Dy SP removed the pillow and collected the currency notes. He further stated that he has been involved in this false case at the instance of K.C. Sogani, Factory Manager of Krishna Mills, Beawar. This was broadly the defence of the appellant as collected from his evidence.

The learned special Judge noted the fact that the complainant Rajendra Dutt was not available and, therefore, the first demand at the Factory of Rajendra Dutt on November 20, 1974, has not been proved. The learned Judge, however, held that the evidence of two motbirs Ram Babu and Keshar Mal was reliable and was amply corroborated by the recovery of currency notes as well as the presence of phenolphthalein powder on the hands of the accused. The learned Judge rejected the defence version that the currency notes were planted when the appellant had gone into the bath room. The

learned Judge accordingly convicted and sentenced the appellant as mentioned hereinbefore.

The appellant having unsuccessfully appealed to the Rajasthan High Court, has filed this appeal by special leave.

574

Mr. Frank Anthony, learned counsel for the appellant contended that there are certain features of this case which would convincingly show that the prosecution case cannot be accepted. He enumerated the circumstances as: (i) absence of name of the appellant in the F.I.R. Ext. P-12; (ii) absence of evidence of demand as on November 20, 1974; (iii) absence of any prior arrangement where and when the complainant was to meet the appellant and, therefore, the trap could not be successfully arranged which might permit an inference that the whole story of acceptance of bribe money is concocted; (iv) further two motbirs P.W. 1 Ram Babu and P.W. 2 Keshar Mal were petty clerks specially selected by P.W. 3 Prahlad Narayan; (v) in their evidence they have tried to improve upon the prosecution version which shows their unconcealed interest in the success of the trap which would render them partisan witnesses; (vi) there are certain omissions in the evidence of the prosecution witnesses which may indicate that the defence version of planting the currency notes when the appellant had gone to bath room is probabilised; (vii) that no inference be drawn from the fact that when hands of the appellant were dipped in the sodium carbonate solution it turned pink because admittedly when hands of the accused were caught by the members of the raiding party one or the other of them may have transmitted phenolphthalein powder to the hands of the appellant.

Complainant Rajendra Dutt on whose complaint a trap was arranged was dead by the time the case came up for trial and his evidence was not available to the prosecution. However, the complaint Ext. P-12 filed by him was admitted in evidence because P.W. 7 Mahavir Prasad, the Dy SP who recorded the same gave evidence about the same. The averments in the complaint even in the background of these facts would not provide substantive evidence and the only use to which it can be put is that a complaint of this nature was filed which tends to explain the subsequent actions taken by the Dy SP.

High Court has examined the evidence of two motbirs P.W. 1 Ram Babu and P.W. 2 Keshar Mal, and also the evidence of P.W. 7 Mahavir Prasad and agreed with the findings recorded by the trial court. We need not examine the evidence afresh but limit our examination to specific contentions raised by Mr. Anthony.

The first contention is that the name of the appellant Kishan Chand Mangal is not to be found in Ext. P-12. That is true, but

575

what is stated in Ext. P-12 is that a Factory Inspector accompanied by his friend visited the factory of the appellant and demanded a bribe. Now, the appellant in his evidence as DW 1 has stated that complainant Rajendra Dutt did come to his house on November 22, 1974, around 4.30 p.m. Appellant further proceeds to say that Rajendra Dutt had some grievance against a clerk Singhal and appellant insisted upon giving a written complaint at the time of the visit of Rajendra Dutt. If Rajendra Dutt as is now contended wanted to falsely implicate the accused there is no reason why he would not mention the name of the appellant in Ext. P-12. On the contrary the absence of the name of the appellant in Ext. P-12 would indicate that probably the

appellant had visited the factory of Rajendra Dutt after a long time and that is what transpires from Ext. P-12 that the visit of the appellant was after a year and half. It is reasonable to infer that Rajendra Dutt did not know the name of the appellant but knew him by the designation of his office as Factory Inspector. Therefore, the absence of name of Kishan Chand Mangal in Ext. P-12 is hardly of any significance.

It was next contended that once Rajendra Dutt is not available for evidence there is no evidence as to the demand of bribe on November 20, 1974, and it is not open to the Court to spell out the demand from the contents of Ext. P-12. It is undoubtedly true that Rajendra Dutt was dead before the commencement of trial. It is equally true that the F.I.R. lodged by him on November 22, 1974, cannot be used as substantive evidence nor the contents of the report can be said to furnish testimony against the appellant. Such an F.I.R. would not be covered by any of the clauses of ss. 32 and 33 of the Evidence Act and would not be admissible as substantive evidence. The question still remains whether there is any evidence of demand of bribe on November 20, 1974, in this case. A fact may be proved either by direct testimony or by circumstantial evidence. If appellant did not visit the Factory of Rajendra Dutt on November 20, 1974, and made no overtures demanding the bribe, on what rational hypothesis can one explain the visit of Rajendra Dutt to the office of Dy. SP, ACD on November 22, 1974, his producing currency notes worth Rs. 150; a superior officer like the Dy SP, ACD, making all arrangements for the trap and the raiding party going to the house of the accused on November 22, 1974. The visit of Rajendra Dutt soon followed by the raiding party at the house of the accused on November 22, 1974, is admitted. Coupled with this, the fact that Keshar Mal, P.W. 2 in his evidence stated that after Rajendra Dutt entered the room in which appellant was sitting, Rajendra Dutt on

576
entering the room asked the appellant, 'Hallo, how do you do'. He further stated that the appellant replied, 'I am sick and suffering from cold'. He deposed that thereafter the appellant asked, 'Have you brought the money', whereupon complainant Rajendra Dutt replied, 'Yes, I have brought the money'. He further stated that thereafter Rajendra Dutt took out the amount of currency notes from his diary and gave the same to the appellant who took the amount and kept it under the pillow on the cot. If there was no prior demand the subsequent events remain unexplained as also the demand as deposed to by P.W. 2 Keshar Mal. But Mr. Anthony urged that this part of the evidence of Keshar Mal cannot be accepted because he has not stated this fact in his statement recorded in the course of investigation. Simultaneously it was pointed out that the other motbir Ram Babu is totally silent in his evidence about this conversation between the appellant and the complainant. Undoubtedly, the omission in the police statement of Keshar Mal and non-mentioning all these facts by the co-motbir would raise some doubt in the mind of the court about this conversation but as pointed out earlier there are tell-tale circumstances which do indicate that there must have been a demand and, therefore, these circumstances as herein before set out will render support to the statement of Keshar Mal that the demand at the time of visit of Rajendra Dutt must be pursuant to earlier demand by the appellant. Therefore, it is not proper to say that there is no evidence of the demand of bribe as on November 20, 1974.

It was next contended that if a bribe is demanded and agreed to be paid and if the complainant was contemplating not to pay the bribe but was thinking of initiating action against the officer demanding the bribe, obviously for the success of the trap to be arranged the time and place of meeting would be arranged and if it be so it would be mentioned in the F.I.R. It was said that the very absence of it would show that there was neither a demand of bribe nor any action was contemplated on November 20, 1974, as is now sought to be made out and, therefore, the court should not accept any evidence with regard to the trap. In view of the admission of the appellant in his evidence that Rajendra Dutt followed by a raiding party came to his house also used as residence-cum-office around 4.30 p.m. on November 22, 1974, omission to mention about the time and place of future meeting in the F.I.R. Ext. P-12 loses all significance. It is equally possible that on the very day when the appellant visited the factory of Rajendra Dutt and demanded bribe, Rajendra Dutt may

577

not have immediately planned to rush to the Anti Corruption Department. He had declined to give the bribe. In his view his factory was not covered by the Factories Act. These are the averments in Ext. P-12. They are not being relied upon as substantive evidence but are used to explain the conduct of Rajendra Dutt which has evidentiary value. If Rajendra Dutt did not negotiate giving the bribe and did not agree to give the bribe though the appellant persisted in the demand and threatened to involve him in court cases the question of any arrangement for any time and place for giving the bribe does not arise and obviously it could not have found its place in the F.I.R. Such things find mention in a F.I.R. only when the victim agrees to grease the palms of the officer. Absence in such a situation of such averments in Ext. P-12 in this case is both natural and obvious.

The next contention is that once Rajendra Dutt is not available to give evidence not only of the first demand but also the payment of bribe pursuant to the demand, the evidence of two motbirs assumes considerable importance. It was urged that both the motbirs are some petty clerks and it would be both unwise and dangerous to place implicit reliance on their testimony to convict the Government servant. Factually it is not correct to say that both the motbirs are petty clerks. Ram Babu was serving as a clerk in the Central Bank of India and Keshar Mal was serving as a teacher in Middle School at the relevant time. It is unfortunate that thirty five years after independence and in this age of common man, there is still not the eclipse of the high brow. Sanctity of word made dependent upon the office held or wealth acquired is a nauseating phenomenon. Truth is neither the monopoly nor the preserve of the affluent or of highly placed persons. In a country where renunciation is worshipped and the grandeur and wild display of wealth frowned upon, it would be the travesty of truth if persons coming from humble origin and belonging to officewise, wealthwise lower strata of society are to be disbelieved or rejected as unworthy of belief solely on the ground of their humble position in society. The converse unfortunately appears to be true. The submission was sought to be buttressed by reference to *Khairati Lal v. The State*(1). A learned single judge of the High Court rejected the testimony in that case of P.W. 2 Brij Nandan and P.W. 3 Krishan Kumar observing that they are petty clerks and cannot be styled as independent witnesses. We have moved far away in seventeen years and this

578

approach does not commend to us. We say no more. Therefore, without further discussing this aspect, we are utterly disinclined to reject the testimony of the two motbirs accepted as wholly reliable by the learned Special Judge and the High Court on the sole ground that they are petty clerks as if that by itself is sufficient to reject their testimony. That is a wholly irrelevant consideration.

As a second string to the bow it was urged that Ram Babu was serving at the relevant time as a Clerk in the Central Bank of India and Keshar Mal was a teacher in the middle school at Ajmer and both of them were, therefore, by virtue of their service, likely to be under the police influence. It is difficult to appreciate this contention. Undoubtedly Ram Babu was a Clerk in a nationalised bank and it may be that officers of Anti Corruption Department may have jurisdiction to investigate lapses on the part of clerks in nationalised banks. It is not clear whether Keshar Mal who was serving in a Middle School was a Government employee or the school itself was a Government School. It may be that the school may be receiving grant but if all institutions which receive grant from Government and are, therefore, styled as Government Departments, and have to be treated under the police influence then the net will have to be spread so wide not to exclude any one as independent of police influence. We find no justification in the submission that the two motbirs were persons not likely to be independent of police influence. Both of them have been accepted as independent witnesses and they do satisfy the test of witnesses independent of police influence. Reference in this connection was made to *Raghubir Singh v. State of Punjab*(1), wherein this Court adversely commented upon selecting one Makhan, a sweeper in the whole time employment of police, as a witness in a trap case observing that the Anti Corruption Department should insist on observing the safeguard of selecting independent persons as witnesses as scrupulously as possible for the protection of the public servants against whom a trap may have to be laid. Makhan, a sweeper in the whole time employment of police can obviously not be said to be independent of police influence but how does he compare with a clerk in a nationalised bank and a teacher in a middle school? It, therefore, cannot be said that the two motbirs could not be styled as independent witnesses. In passing it was submitted that Rajendra Dutt and Ram Babu must have intimately known each other because Rajendra Dutt had an account in the same branch in which Ram Babu was working as

579

clerk. If a Bank Clerk is supposed to be intimately connected with each account holder in the bank, banking service would receive encomiums from the society. But it is difficult to accept the submission that on this account Ram Babu could not be said to be independent witness and let it be recalled that by the time Ram Babu came to give evidence Rajendra Dutt was already dead.

The next contention is that even if Ram Babu and Keshar Mal are independent witnesses there are certain inherent infirmities in their evidence which would render their evidence untrustworthy of belief. Before we examine this submission in detail let it be reiterated that the learned special judge who tried the case and had seen both these witnesses giving evidence has observed that P.W. 1 Ram Babu and P.W. 2 Keshar Mal are independent witnesses and there is nothing in their testimony which may induce any distrust about the facts stated by them and their evidence was relied

upon. The learned judge of the High Court observed that both the witnesses are independent witnesses and there is no reason why their evidence should not be relied upon.

It is now time to briefly refer to some of the omissions and contradictions brought to our notice with a view to persuading us to reject the testimony of both these witnesses. It was pointed out that according to Ram Babu both he and Keshar Mal told the Dy SP that the currency notes were under the pillow while according to Keshar Mal it was Ram Babu who pointed out that the currency notes were under the pillow. We find no contradiction in this statement because if plural used by Ram Babu was to be relied upon as a contradiction, cross-examination ought to have been directed on this point. It is necessary to point out that the cross-examination of both the witnesses is scrappy, jumpy and not pursuant to any set theory of defence. It is worthwhile to note that there is not the slightest challenge to the statement of both these witnesses that while waiting in the lobby outside the room both of them saw Rajendra Dutt giving marked currency notes to the appellant and appellant accepting the same and keeping them underneath the pillow. It was also urged that both the witnesses in their respective statements in the course of investigation have not referred that they pointed out that the currency notes were kept under the pillow. A further omission was pointed out that while Mahavir Prasad has stated that accused started quarrelling with him which necessitated summoning additional police help, both the witnesses while referring to the

580

quarrel picked up by the appellant so as to support the evidence of Mahavir Prasad have failed to refer to this aspect in their statements in the course investigation. These are omissions of trivial details and have hardly any bearing on the main part of the prosecution case. Along with this the earlier omission in the statement of Keshar Mal already discussed was reiterated. In our opinion the so-called inner variations between the evidence of these two witnesses and omissions of trivial details would not cause any dent in the testimony of these two witnesses. Mr. Anthony after referring to *Darshan Lal v. Delhi Administration*(1), urged that if Mahavir Prasad took search of the appellant for recovering the bribe it would show that neither Ram Babu nor Keshar Mal had seen appellant keeping marked currency notes under the pillow. Such an inference cannot be drawn. Ordinarily the police officer would start searching the person of appellant and while he was doing that act, he was told where the currency notes were kept by the appellant. Therefore, no such inference is permissible.

It was lastly urged that the court should not be influenced by the fact that when the hands of the appellant were dipped in a solution of sodium carbonate it turned pink which would affirmatively show the presence of phenolphthalein powder on the tips of fingers of the hands of the appellant. The fact remains that the solution did turn pink when the hands of the appellant were dipped in it. The explanation of the appellant is that both his hands were caught by the members of the raiding party and it is possible that the members of the raiding party whose hands must have already been soiled with the phenolphthalein powder when the arrangements were being made for laying the trap they must have transmitted the same to the hands of the accused. This contention stands belied by the evidence on record. Mahavir Prasad has deposed that he asked one Ganga Singh to demonstrate the phenolphthalein powder test. After

that he was directed to wash his hands. No other member of the raiding party touched the phenolphthalein powder at the time of demonstration. Ganga Singh was a member of the raiding party but when the hands of the accused were sought to be dipped in the solution this task was assigned to SI Satya Narain. Undoubtedly there is nothing to show that his hands were soiled with phenolphthalein powder. The hands of Rajendra Dutt must have been soiled with

581

phenolphthalein powder because he took out the currency notes from his diary and passed them on to the appellant. But it is not suggested that Rajendra Dutt caught the hands of the appellant. Therefore, it is not possible to accept the submission that when the hands of the appellant were caught in the ensuing quarrel between him and the Dy SP Mahavir Prasad, phenolphthalein powder must have been transmitted by persons holding the hands of the appellant. This tell-tale circumstance would lend ample independent corroboration if there be any need to the evidence of Ram Babu and Keshar Mal that they saw Rajendra Dutt giving marked currency notes to the appellant and the appellant accepting the same and putting them underneath the pillow.

Mr. Anthony urged that there are certain tell-tale circumstances in the case which would render the defence plausible. It was urged that the appellant did not disclose any guilty syndrome when the raiding party entered his room and at the first question he denied having accepted any bribe from Rajendra Dutt. How would these two circumstances be sufficient to reject the otherwise reliable testimony? A person with a strong will would not be upset and may remain cool and collected. The appellant did pick up a quarrel with the Dy SP. Why? His suggestion that he insisted on two independent witnesses being kept present appears to be an afterthought. The fact that the appellant picked up a quarrel is borne out from the evidence of the persons present there and by the action of the Dy SP in summoning additional police help. Therefore, we find no circumstances which would impinge upon the prosecution case.

We read the entire evidence of two motbirs Ram Babu and Keshar Mal, evidence of Dy SP Mahavir Prasad, Ext. P-12, the F.I.R., and we are in agreement with the High Court that the case has been proved beyond a shadow of reasonable doubt. The evidence of appellant himself does not raise a plausible defence and has been rightly negated.

Mr. Anthony further urged that the appellant did not demand bribe because there is no such evidence and that even if Rajendra Dutt appears to have given some currency notes the appellant was an unwilling victim and the court must frown upon such attempts of the police to make government servants commit offence. He relied

582

upon the oft quoted passage in Brannan v. Peek(1). In that case the finding was that when the second time the police constable attempted to give a bet the accused showed his reluctance to accept the same. That was also the finding of the justices. The Court frowned upon the police officers in the absence of an Act of Parliament going to the place of the accused so as to induce him to commit an offence. We fail to see how this observation has any relevance in the facts of this case. Once the suggestion that there was a demand of bribe is accepted the appellant could not be said to be an unwilling victim nor a fence sitter who was induced to fall a victim to the trap.

Lastly it was urged that the court would not be justified in raising a presumption under S. 4 (1) of the

Prevention of Corruption Act, 1947. In the facts of this case and in the absence of presumption even if Rajendra Dutt gave some money to the appellant that by itself would not establish the offence and the case must fail. Reliance was placed on Bansi Lal Yadav v. State of Bihar(2). In that case the defence of the accused was that currency notes were thrust in his pocket. Taking cue from this statement, the court held that the acceptance of an amount other than legal remuneration having been admitted the presumption would arise under S. 4(1) and the burden would shift to the accused. It is in this context that this court held that where the accused says that involuntarily the amount was thrust in his pocket he could not be said to have accepted or obtained for himself any gratification other than legal remuneration which alone permits the presumption to be raised. Facts in this case being a demand and voluntarily acceptance, the presumption would squarely arise and has been rightly raised.

Reliance was also placed on the decision of this Court in Sultan Singh v. State of Rajasthan(3). In that case the explanation of the appellant was that Rs. 100 was paid to him towards the arrears of revenue and in the absence of reliable evidence to the contrary the explanation was held acceptable. This is a decision on the facts of that case and would be hardly of any assistance in dealing with the points raised in this case.

583

Therefore, the charge is brought home to the accused and he has been rightly convicted and the sentence awarded being the minimum, no case is made out for interfering with the same.

Accordingly this appeal fails and is dismissed. The bail bond of the appellant is cancelled and he must surrender to serve out the sentence.

H.L.C.

Appeal dismissed.

584