

PETITIONER:
BHAGWAN SINGH

Vs.

RESPONDENT:
THE STATE OF HARYANA

DATE OF JUDGMENT 09/12/1975

BENCH:
GOSWAMI, P.K.
BENCH:
GOSWAMI, P.K.
BHAGWATI, P.N.
UNTWALIA, N.L.

CITATION:
1976 AIR 202 1976 SCR (2) 921
1976 SCC (1) 389
CITATOR INFO :
R 1977 SC 170 (13)
R 1986 SC 1769 (5)
RF 1991 SC 1853 (6)

ACT:
Indian Penal Code-Section 161 & 165 A-Conviction under-
No legal bar based on the testimony of a "hostile witness",
if corroborated by other reliable evidence-Cross examination
u/s. 154 Evidence Act does not efface his evidence.

HEADNOTE:

"B" the appellant/Head Constable with a view to help the accused not only to get an acquittal but get back the seized coins approached "J" a constable who was in charge of an investigation of a case under section 411 I.P.C. to substitute the J seized gold coins with different markings offering a bribe of Rs. 1,000/-. J reported the matter to the D.S.P. concerned and as per the directions, the raiding party arrested 'B' and the other accused in a hotel and also recovered from him the gold coins of different markings. The currency notes of Rs. 1,000/- in the hands of 'J' offered by 'B' were also recovered.

The Special Judge convicted 'B' and sentenced him to undergo R.I. for one year which was maintained by the High Court.

On appeal by special leave, the appellant contended that since the prosecution case rested principally on the testimony of 'J', the whole edifice is destroyed on that witness being declared 'hostile'.

Rejecting the contention and dismissing the appeal, the Court

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HELD: The prosecution could have even avoided requesting for permission to cross examine the witness u/s 154 evidence Act. But the fact that the court gave permission to the prosecutor to cross examine him as what is described as "hostile witness", does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to have a conviction upon his testimony if corroborated by other reliable evidence. [923D-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 201 of 1971

Appeal by Special Leave from the Judgment and order dated the 10th March 1971 of the Punjab and Haryana High Court at Chandigarh in Criminal Appeal No. 1165 of 1969.

D. Mookerjee and R. L. Kohli for the appellant.

H. S. Marwah and R. N. Sachthey for respondent.

The Judgment of the Court was delivered by

GOSWAMI, J. This appeal by special leave is directed against the judgment of the High Court of Punjab and Haryana affirming the conviction of the appellant under section 165A, Indian Penal Code.

The facts briefly are that the appellant, Bhagwan Singh, is a C.I.D. police constable and would be naturally familiar with Head Constable, Jagat Singh (P.W. 1). Jagat Singh had detected a case under section 411, I.P.C., on April 25, 1968. In that case one

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Rameshwar Dass of Ambala City was arrested by Jagat Singh at Murthal Bus Stand after searching his person and recovering from him 20 gold coins and 47 gold bangles weighing 101 tolas. Rameshwar Dass was produced in court on April 27, 1968 and was remanded to judicial custody till April 29. In order to help Rameshwar Dass, Om Parkash and Sulekh Chand, who were co-accused with the appellant (since acquitted) apparently took the help of the appellant to approach Jagat Singh to save Rameshwar Dass from the criminal case. The appellant suggested to Jagat Singh to substitute the seized gold coins by 20 other gold coins which he would be supplied with and if he would do that he would be paid Rs. 1000/- for this help in the criminal case. When this was proposed to Jagat Singh, the other two accused were with him. At first Jagat Singh refused to accede to this unusual request but later on asked him to see him at Dogra Hotel the same day at 5.30 P.M.

While Jagat Singh gave that hope to the appellant and the two co-accused, the former also immediately approached the Deputy Superintendent of Police, Gurbhaksh Singh (P.W. 6) and informed him about this matter. The D.S.P. recorded his statement which is marked as Ext. P-A. The D.S.P. sent for the Station House Officer of the Police Station, Sonapat, and directed him to go to the Dogra Hotel and arrange for the detection of the crime. Jagat Singh was also directed to go to the Hotel and meet the appellant and others as previously suggested by him. The D.S.P. along with the Sub-Inspector, Ram Singh (P.W. 4), waited in a shop near the Dogra Hotel and after the appellant had passed the money to Jagat Singh a signal, as arranged, was given on which the raiding party rushed to the Hotel and found Jagat Singh and the appellant sitting on a table facing each other. At that time currency notes of the value of Rs. 1000/- were in the hands of Jagat Singh and these were taken possession of by the police and on search of the appellant 20 gold coins having hook-marks were recovered from his pocket.

The above story of the prosecution was sought to be established by the evidence of P.W. 1, Jagat Singh, P.W. 2, Ajit Singh, P.W. 4, Ram Singh, S.H.O., and P.W. 6, D.S.P., Gurbhaksh Singh. One of the witnesses of the raiding party was given up as being won over by the appellant. Nathuram (P.W. 3), proprietor of the Hotel, also did not fully support the prosecution case and was declared hostile by the

prosecutor.

The Special Judge, Rohtak, convicted the appellant and sentenced him to undergo rigorous imprisonment for one year and acquitted the other two co-accused, as stated earlier. The High Court on appeal maintained the conviction and sentence. Hence this appeal by special leave.

We have heard the learned counsel for the appellant and are unable to find any infirmity in the conviction. It is clear that the two co-accused being interested in Rameshwar Dass took the help of the appellant to influence Jagat Singh for substitution of the stolen exhibits

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in order that the case under section 411 IPC against Rameshwar Dass would absolutely fail. Jagat Singh was definitely approached by the appellant in view of his belonging to the same force and he attempted to bribe Jagat Singh by paying Rs. 1000/- which must have been supplied by the two co-accused interested in Rameshwar Dass to ruin the prosecution case. Once the stolen gold coins were substituted, the identity would be lost and the accused would be entitled to acquittal and even the accused in that event might be able to claim the gold coins. The appellant thus attempted to bribe Jagat Singh in order to show favour to Rameshwar Dass by accepting the bribe.

In this case the Public Prosecutor obtained permission from the court to cross-examine P.W. Jagat Singh since he did not specifically refer to the two co-accused in his examination-in-chief. Mr. Debabrata Mukherjee, on behalf of the appellant, submits that since the prosecution case rests principally upon Jagat Singh's testimony, the whole edifice is destroyed on that witness being declared hostile and the appellant is entitled to an acquittal.

We have carefully perused the evidence of Jagat Singh, who was examined in the trial after more than a year of detection of the case. The prosecution could have even avoided requesting for permission to cross-examine the witness under section 154 of the Evidence Act. But the fact that the court gave permission to the Prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base a conviction upon his testimony if corroborated by other reliable evidence. We are satisfied in this case that the evidence of Jagat Singh, but for whose prompt assistance the case would not have seen the light of day and whose statement had immediately been recorded by the D.S.P., is amply corroborated by other evidence mentioned above to inspire confidence in his testimony. Apart from that the fact of recovery of the gold coins in the pocket of the appellant gave a seal of finality to the truth of the charge against the appellant. If Jagat Singh had accepted the bribe he would have been guilty under section 161 I.P.C. There is, therefore, clear abetment by the appellant of the offence under section 161 I.P.C. and the ingredients of section 165A I.P.C. are established against him.

There is thus no merit in this appeal and the same is dismissed.

S.R.

Appeal dismissed.

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