

Ram Bharosey Vs. Emperor

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Court : Allahabad

Decided On : Feb-12-1936

Reported in : AIR1936All833; 166Ind.Cas.430

Appellant : Ram Bharosey

Respondent : Emperor

Judgement :

Niamat Ullah, J.

1. This is an appeal by Ram Bharosey who has been convicted by the learned Sessions Judge of Fatehgarh under Section 302, Penal Code, for causing the death of Brij Nandan by administering arsenic poison on 6th June 1935. He has also been convicted of an offence under Section 328, Penal Code, that is, administering poison for the purpose of committing theft. He has been sentenced to transportation for life under Section 302 and to 10 years rigorous imprisonment under Section 328.

2. The deceased was distantly related to the appellant and was a petty hawker going about with a bundle of cloth to various villages. He was resident of a village called Barauli in the District of Aligarh. The case for the prosecution is that he left his home several days before he was found dead on the morning of 7th June 1935 at a little distance from the road leading from Fatehgarh to the Ganges. He is said to have had on his person two gold rings and 60 or 70 rupees in currency notes

when he left his house. He first went to village Behta where he stayed with a relation. Thence he went to village Sahawar where he had to purchase some cloth. According to the evidence he was at Sahawar on 4th June 1935 and left it on the morning of the 5th. He was seen in the company of the accused in Ganj Dhundwara on the evening of 5th June 1935. According to the evidence of a witness for the prosecution they slept on the roof of a lorry that was waiting outside the railway station of Ganj Dhundwara. They purchased two railway tickets at that station for another railway station Rudain which lies between Ganj Dhundwara and Fatehgarh. They did not, however, alight at Rudain, but elsewhere and somehow reached Fatehgarh in the afternoon. The appellant is related to Bhabhuti Ram who has a parchun shop in partnership with Ram Lal at Fatehgarh. He and the deceased reached the shop of Bhabhuti Ram at 5 p. m. on the 6th. According to the evidence of Bhabhuti Ram and Ram Lal the appellant who had only one lota with him asked for the loan of another from Bhabhuti and took out two pills from a packet in his pocket and prepared what appeared to the witnesses as bhang. The appellant and the deceased partook of the bhang and left for a bath in the Ganges. The accused told Bhabhuti that they would return in the evening and have their meals at his place. The appellant returned to Bhabhuti's house at 11 p. m. but the deceased was not with him. The appellant was offered food but refused to take any. Early in the morning of 7th June 1935 he left Bhabhuti's place. At about 7 o'clock that morning a constable Nasir Mohammad Khan was informed that a dead body was lying at some distance from the road near the Math of a devi. Accordingly he went to the place and saw the dead body which aroused suspicion of foul play in his mind. He informed the Sub-Inspector who drew up an inquest report and took possession of what appeared to him to be vomit and the clothes of the deceased. He found a railway ticket No. 63264 in one of the coat pockets of the deceased.

3. No one was able to identify the dead body which was sent to the Civil Surgeon for post mortem examination. A photograph of the body was preserved. The vomit and the viscera of the deceased were sent to the Chemical Examiner who found arsenic in both of them. According to the medical evidence death was due to arsenic poison which was found in a fairly large quantity (about 5 grains) in the viscera of the deceased. The police investigation which followed did not lead to the

arrest of the appellant till 17th July 1935. The evidence which was produced at the trial was purely circumstantial. The appellant pleaded not guilty and did not admit that he was with the deceased at Fatehgarh on the afternoon of 6th June 1935. The evidence on which the learned Sessions Judge has based his conclusion consists of the testimony of Bhabhuti and Ram Lal who prove that the appellant produced two pills supposed to be bhang and prepared two separate lotas of the refreshment each taken from his own lota. They also prove that the two were last seen together at about 5 p. m. The learned Judge also relies upon the evidence of one Munshi who stated that the appellant was in possession of a 50 rupee note for which he received cash. The learned Judge disbelieved the statement of the accused who denied being with the deceased at Fatehgarh. In summarising his conclusions the learned Judge has observed as follows:

The post mortem examination was performed on 7th June 1935 at 3 p.m. and according to medical opinion the probable time since death was about 12 hours and so the deceased died sometime about 3 a. m. The accused had taken the deceased with him to the Ganges. The accused had therefore to explain what happened to the deceased after that. This was a fact within the special knowledge of the accused and the latter only could explain it. The guilty conscience of the accused can offer no explanation. In fact the accused says that he was not in Fatehgarh that day but in village Rampur.

4. Before commenting upon this conclusion I wish to dispose of the evidence of Munshi Lal in a few words. All he says is that about six months before he gave evidence the appellant was in possession of a 50 rupee note which he gave to a booking clerk at a certain station in exchange for Rs. 50. The evidence is wholly inconclusive as regards the time when the incident deposed to by him happened. As it stands, it might well have happened when Brij Nandan was alive and several days before the occurrence. Apart from this, Munshi's evidence is highly improbable and unconvincing. The booking clerk has not been examined and no reliance can be placed on the evidence of Munshi. The only evidence then on which the case for the prosecution rests is that of Bhabhuti and Ram Lal coupled with the proved fact that the deceased died of arsenic poison. There is not the slightest evidence suggesting that the pills which the appellant had and which

formed the bhang refreshment taken by him and the deceased contained any arsenic. There is not the slightest evidence showing the movements of the deceased after he and the appellant left the house of Bhabhuti at 5 p. m. on 6th June 1935 and before the discovery of his dead body on the morning of 7th June 1935. The fact that the appellant returned alone at 11 p.m. and represented to Bhabhuti that Brij Nandan had parted with him having gone to a relation, a fact which may be true for aught we know, does not raise any inference of guilt either by itself or in conjunction with other facts proved in the case. The fact that he declined to take any food that evening is likewise of no consequence.

5. It seems to me that the learned Sessions Judge has based his conclusion mostly on the inability of the accused to explain how the deceased took arsenic poison and died and that according to the learned Judge an inference of guilt is permissible from the failure of the accused to prove his innocence. The learned Judge apparently considered that Section 106, Evidence Act, warrants the view taken by him. That section provides that the burden of proving a fact especially within the knowledge of the accused is on him. In applying this rule the illustrations appended to Section 106 should not be lost sight of. It is perfectly clear that Section 106 contemplates facts which in their nature are such as to be within the knowledge of the accused and of nobody else: for instance, his own intention in doing an act (Illus. A) or the fact that he purchased a ticket though he was subsequently found to be without one (Illus. B). It has no application to cases where the fact in question, having regard to its nature, is such as to be capable of being known not only by the accused but also by others if they happened to be present when it took place. It cannot, in my opinion, be invoked to make up for the inability of the prosecution to produce evidence of circumstances pointing to the guilt of the accused. Where facts proved by evidence give rise to the inference of guilt, unless rebutted, it is not the result of the application of Section 106, but of the probative force of such facts. In the present case the whereabouts of the deceased after 5. p. m. on 6th June 1935 till his dead body was found next morning, or whether he took anything after taking the bhang prepared by the accused, cannot be said to be matters specially within the knowledge of the accused. It is quite possible that the two separated early in the evening after a bath in the Ganges and afterwards the deceased took something which contained

arsenic. To throw the burden of proof on the accused to prove his innocence, in circumstances like these, is highly dangerous.

6. Putting the case for the prosecution at its highest all that is possible to say is that there is a suspicion against the accused, but to hold positively that the accused administered arsenic through the bhang which the deceased took in the afternoon of 6th June 1935 is in my opinion wholly unwarranted. The witnesses for the prosecution on whose evidence the learned Sessions Judge has relied is open to criticism. It is, however, not necessary to comment upon it in detail as in my opinion it is insufficient even if it be accepted at its face value. Accordingly, I allow this appeal, set aside the conviction and sentence and acquit the appellant.

Allsop, J.

7. I agree with my learned brother that this conviction cannot possibly be upheld. The evidence produced by the prosecution is quite unconvincing and I suspect that the major portion of it is untrue. There can be no doubt I think that the evidence of the witness Munshi that the appellant changed notes for a sum of Rs. 50 in silver is absolutely false. It would be too great a coincidence if the appellant having stolen notes to the value of Rs. 50 and naturally being desirous of exchanging them for silver should happen to be at a railway station where the station master or booking clerk was so anxious to exchange silver for notes that he should get somebody to go on to the platform and ask everybody there whether they had notes which they were willing to exchange. For the rest of the evidence I am prepared to admit that it may be true, but even if it is true it certainly does not prove the guilt of the appellant. There are two witnesses who say that they saw the deceased and the appellant together at Ganj Dhundwara on the night before the murder is alleged to have been committed. A ticket was found on the body of the deceased. There is evidence that it was bought that morning at Ganj Dhundwara. It was a ticket for Rudain and would have enabled the deceased to travel by the early morning train which would reach Fatehgarh about 10 o'clock in the morning. The two men are supposed to have been seen together again at Farrukhabad Junction soon after another train arrived from Kasganj about 5 o'clock in the afternoon, but the evidence of the witness upon this point has been disbelieved by

the learned Sessions Judge.

8. The remaining evidence is that of two witnesses Bhabhuti and Ram Lal who say that the deceased and the appellant came to their shop and borrowed a lota about 5-30 that afternoon and that the appellant produced two pills which he put into two separate lotas of water saying that they were bhang. The appellant drank one lota full and the deceased drank the other. Thereafter the deceased and the appellant went away saying that they were going to bathe in the Ganges. The appellant returned alone about 11-30 and said that the deceased had left him with a friend whom he had met near the railway station. The appellant is a relation of Bhabhuti's and it is said that he was to have had a meal with Bhabhuti after returning from the Ganges but that he refused food when he was offered it. The body of the deceased was found early next morning a few hundred yards away from the shop and the medical evidence shows that he had died of arsenic poisoning. There is nothing whatsoever to show that the pills which the appellant is supposed to have administered to the deceased contained any arsenic and it is difficult to see why the appellant should have chosen this occasion upon which to administer poison publicly if he intended to administer it at all. There is really no justification for deducing from these circumstances that the appellant must have murdered the deceased.

9. The learned Judge has been much influenced by the fact that the appellant has pleaded alibi and has denied that he was ever with the deceased on the night before the murder. I think where an inference adverse to an accused person can be drawn from a number of circumstances if the accused person is unable to offer any explanation which is compatible with his innocence or if it is proved that any explanation which he offers is false that is a further circumstance from which an inference can be drawn against him, but it is unsafe to hold that an accused person is necessarily guilty because he is making a false statement. Every case must be considered on its own merits and certainly in the present case I do not think it would be at all safe to assume that the appellant must be guilty because he has denied his association with the deceased just before the murder was committed. A person who is accused of a crime especially if he is ignorant and frightened may take what seems to him to be the line of least resistance and the

best defence and may foolishly make a false statement when he would be better advised to make a true one. Section 106, Evidence Act, obviously refers to cases where the defence of the accused depends on his proving a certain fact, that is, cases where his guilt is established on the evidence produced by the prosecution unless he is able to prove some other facts especially within his knowledge which would render the evidence for the prosecution nugatory. I am satisfied that the case against the appellant is not proved at all.

ORDER

10. The appeal is allowed, the convictions and sentences passed on the appellant are set aside and he is acquitted. He will be forthwith released.

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