

Satya Mali Vs. the State

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Court : Orissa

Decided On : Nov-14-1963

Reported in : AIR1964Ori173; 1964CriLJ42

Judge : R.L. Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304A and 337; [Evidence Act, 1872](#) - Sections 101 to 104

Appeal No. : Criminal Revn. No. 172 of 1963

Appellant : Satya Mali

Respondent : The State

Advocate for Def. : Naba Kumar Das, Standing Counsel

Advocate for Pet/Ap. : Ranjit Mohanty, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a revision against the appellate judgment of the Sessions Judge of Sambalpur maintaining the conviction of that petitioner under Sections 304A and

337 1. P. C. and the sentence of rigorous imprisonment for two years for the former offence and 4 months for the latter offence passed by a First Class Magistrate of Sambalpur.

2. The case is undoubtedly of an extra-ordinary nature. In village Dhama P. S. Sambalpur one Dasarathi Sahara (who was tried along with the petitioner but was acquitted) posed as a snake charmer who could by giving proper training to young disciples, prevent them from being affected in any way by snake bite. He further stated that he was himself a disciple of the petitioner, Satya Mali (who was his Guru). Several credulous villagers (numbering about 18) enlisted themselves as Dasarathi's disciples and underwent a course of training prescribed by him. The petitioner as the Guru came to the village on 21-11-1960 to complete the training. The trainees were asked to observe fast for the whole of 22-11-1960. In the afternoon of that day petitioner and Dasarathi went to a jungle and brought some herbs. Puja was performed then the herbs were powdered on a grinding stone and made into pills of the sizes of figs.

On 23-11-1960 Puja was again performed with the usual mantras; a goat was sacrificed and the pills were distributed along with goat meat, to the trainees, thereby completing the course of training. Dasarathi himself took a pill. Sometime after taking the pills the trainees began to vomit. Four of them died at the spot after some time and the rest became sick and were taken to the hospital where one of them (Satrughana) died. The remaining persons however, recovered either due to medical treatment or due to their own natural powers of resistance. The Medical Officer Dr. Rath (p. w. 15) preserved the vomit of the persons whom he treated. Similarly, another medical officer Dr. Pradhan (p. w. 16) who held the post mortem examination on the corpses of the five deceased persons preserved their viscera which were also sent to the Chemical Examiner for analysis. The Sub Inspector of Police (p. w. 17) also seized the grinding stone in which the pills were said to have been prepared and sent it to the Chemical Examiner. But the report of the Chemical Examiner shows that no poison was detected in any of the exhibits sent to him.

3. Notwithstanding this report of the Chemical Examiner the two lower courts thought that the death of the five persons and the serious illness of the remaining must have been caused by the pills administered to them by the petitioner with the help of Dasarathi and that he was guilty of a rash and negligent act. The lower appellate court thought that the Chemical Examiner submitted his report only on 11-7-1962 even though the incriminating articles had been sent to him on 28-1-1961 and that during this long interval the, poison might have disappeared. Having thus rejected the report of the Chemical Examiner he thought that on the oral evidence on record it could be reasonably held that it was on account of the pills administered by the petitioner that the five disciples died and many other fell sick and suffered grievously.

4. I regret to point out that in a case of this type where a fairly heavy sentence of imprisonment has been passed, the lower appellate Court ought to have more carefully studied the records and appreciated the case in its true perspective. The number of persons who died and the number who fell sick being large has apparently created a prejudice against the petitioner to such an extent that the primary duty of the prosecution, in a criminal case, to establish the guilt of the accused beyond reasonable doubt has been ignored. Neither the Chemical Examiner's report nor that of the two medical officers shows that the death of the five persons was due to poisoning. P. W. 15 also has not been able to say definitely that the sickness caused to the disciples who survived was due to the administering of poison.

It is true that many of the surviving disciples of the petitioner have spoken about the course of training underwent by them, the fasting underwent by them on the previous day, the performance of Puja, that collection of herbs from the jungle by the petitioner, their being ground into paste and made into pills, etc. on 23-11-1960 and the administering the same to them and to the deceased persons. But the prosecution must further show that it was on account of the taking of these pills that the persons either died, or fell sick. This piece of evidence is totally wanting in this case. None of the eyewitnesses has categorically stated that on the fatal morning, apart from taking the pills neither the deceased nor any of the persons who fell sick took anything else. There was undoubtedly some interval between

the taking of pills by these persons and their death or sickness as the case may be.

Thus, p. w. 1 says even in examination in chief that the trainees took the pills at noon and 4 of them died only at 4 p. m. He has not stated that during this interval they did not take any other food or drink. Similarly p. w. 2 stated that he became giddy and intoxicated only two or three hours after taking the pill. P. W. 3 has given the interval as more than an hour. P. W. 4 has stated that after the taking of pills all of them, went to their respective houses and then giddiness and other after effects began. The evidence of p. ws. 6, 7, 8, 9, 10, 11 and 13 is also of the same type. P. W. 12 has estimated the interval at about an hour. None of these witnesses has stated even in examination in chief that no other food or drink was taken by these disciples that day. Unless there is such an assertion it cannot be held conclusively that the pills were solely responsible for the death and sickness of the trainees

Doubtless, if the grinding stone which was seized by the Police was found to contain poison and the same poison was found either in the vomit of the surviving victims or the viscera of the deceased persons a court can reasonably infer that the death and sickness were due to the pills administered by the petitioner. But this connecting link is wanting in this case.

5. I should further point out that the case wasnot defended properly and an important piece of evidencein favour of the petitioner was not brought on record,according to law. Thus P. W. 11 (Dhanapati Bhag)while being examined under Section 164 Cr. P. C. statedthat after sacrificing a goat the heated liver of the goatwas also distributed, along with the pills to the disciplesby the petitioner. He also added that it was bitterto taste: This statement should have been put to thewitness during cross examination and if he denied the samehis previous statement under Section 164 Cr. P. C. shouldhave been admitted in evidence.

Similarly, p. w. 4 deposed, in the course of his statement under Section 164 Cr. P. C. that the trainees were given heated liver and some quantity of medicine (meaning the pills). He should also have been questioned on this point during his cross examination and if he denied the aforesaid statement it should have been

formally marked as evidence. This has not been done. Nevertheless in the interests of justice I have carefully gone through the statements of these persons, recorded under Section 164 Cr. P. C. There is therefor some material on record (though not formally proved as evidence) to show that along with the pills, the trainees took a portion of the heated liver of the goat that was sacrificed. If one has to surmise as to who was responsible for the death and illness of the persons, one might as well say that they were due to their eating the liver of the goat.

6. Instances of food poisoning from meat are well known -- vide Modi's Medical Jurisprudence and Toxicology (14th Edition) pages 646-647. The statement of P. W. 11 Dhanapati Bhag to the effect that when they took a portion of the heated liver of the goat it was bitter to taste, may lend some support to that view that the death and sickness might have been caused by eating the heated liver of the goat. It was the primary duty of the prosecution to establish beyond reasonable doubt that the death and sickness were due directly to the trainees taking the pills administered by the petitioner, and it has failed to discharge this burden.

7. The revision is allowed, the conviction and sentences are set aside and the petitioner is acquitted.

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