

Gopal Vs. State of Rajasthan

Gopal Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/757245

Court : Rajasthan

Decided On : Feb-07-1990

Reported in : 1990(2)WLN93

Judge : N.C. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 437 of 1982

Appellant : Gopal

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

N.C. Sharma, J.

1. Appellant Gopal has been found guilty for the offence Under Section 328, IPC for administering poison or other thingh with intent to commit or to facilitate commission of an offence and has been sentenced by the Additional Sessions Judge No. 1, Jaipur City by his judgment dated September 16, 1982 to rigorous imprisonment for a term of 2 1/2 years and also with a fine of Rs. 500/-. The convict has come in appeal to this Court.

2 The prosecution case is that Abdul Mazid (PW 1) owned an auto-rickshaw. On August 5, 1981. Abdul Mazid had given his auto-rickshaw to Gopal for driving at 2

p.m. on August 2, 1981. At about 11 p.m., Abdul Mazid was standing near Rajmandir Cinema, Jaipur along with his two friends Ikrar and Sethi. The appellant was also there and he was noting the numbers of the auto vehicles in the order in which they were to be hired by the customers. It was further mentioned that the appellant also drives the taxi held by Abdul Mazid Abdul Mazid instructed the appellant to pass the taxi at the residence of the former. Thereupon the appellant told Abdul Mazid to take Prasad and on his saying so. the two above named friends of Abdul Mazid took one Laddu each and ate it. One 'Laddu' was given by the appellant to Abdul Mazid He divided the 'Laddu in two parts and kept one part in his mouth and eat it. After eating half part of the 'Laddu', Abdul Mazid told to his friends that he was feeling that the 'Prasad' was sore and inquired from them whether they also feel the same taste The remaining half part of the 'Laddu was given by Abdul Mazid to one of his companions. That companion put that part on his tongue, but he immediately dropped it out. Abdul Mazid told that he was feeling unwell. His companion collected half portion of the 'Laddu' which he had thrown on a piece of paper, and then Ikrar and Pooran took, Abdul Mazid to SMS Hospital, Jaipur where in he was admitted Half piece of the 'Laddu' was deposited in the Emergency Ward. It was mentioned by Abdul Mazid in his report that appellant had administered. some poisonous thing to him by mixing the same in the 'Laddu', as a result of which he had vomitted repeatedly. On the basis of this First Information Report, the Officer in-charge. Police Station, Ashok Nagar, Jaipur registered a case Under Section 328, IPC.

3. It appears from Ex. P. 6 that after Abdul Mazid had been admitted in the SMS Hospital. Jaipur he was examined by the Medical Jurist. It was noted that the patient was conscious. His pulse was 84 and blood pressure 1:0/80. Pupil was bilaeral semi-dilated and respiration rate was 22 per minute. He was advised to save gastric lavage, blood and urine. A telephonic message was given by Madanlalcompounder from SMS Hospital to ths control room and after receiving the inforrration constable Kalu Ram ranged to the Police Station Ashok Nagar, Jaipur (fat he has been informed that Abdul Mazid has been admitted in 28 Wards in the said Hospital and Investigating Officer may be sent to the Hospital. There upon, Prahlad Singh Head Constable reached the hospital. The Investigating Officer recorded the statement of Abdul Mazid Under Section 161, Cr PC on

August 6, 1981. It appears that the Medical Jurist. SMS Hospital, Jaipur had sent one vial and three bottles sealed as per specimen in Ex. P. 3 to the Chemical Examiner for chemical analysis. The Chemical Examiner Dr. v. N. Purohit reported on April 27, 1982 (Ex.P 5). It appears from his report that three bottles and one vial had been sent to him. In one of the bottles marked 'A' there was gastric lavage of Majeed Khan and the other bottle marked 'B' contained the sample of 'Prasad'. In the third bottle marked 'C' there was urine of Mazid Khan and, in the vial there was a little quantity of blood. Dr. V.N. Purohit opined that the contents of bottles under item 'A' and 'B' were positive for copper sulphate, but the contents of the articles under items 'C' and 'D' were negative for copper sulphate. The contents of all the four articles were negative for arsenic antimony, mercury, opium, barbiturates Datura and Zinc phosphide. The police after necessary investigation filed a charge-sheet against the appellant before the Court of Judicial Magistrate No. 15, Jaipur City, Jaipur. The Judicial Magistrate committed the case for trial to the Court of Sessions by his order dated May 19, 1982. The Sessions Judge transferred the case to the Court of Addl. Sessions Judge No. 1, Jaipur City, Jaipur who after trial held the appellant guilty for the offence; Under Section 328, IPC and convicted him as aforesaid. The convict has come in appeal to this Court.

4. The Addl. Sessions Judge had held that there was copper sulphate in the sample of 'Laddu' which had been sent for chemical examination. He also held that it was proved that 'Laddu' was given by the appellant to Abdul Mazid and the latter had eaten half of it. According to the Addl. Sessions Judge, the motive for crime was that the appellant owed money to Abdul Mazid. He also held that Abdul Mazid has not become indisposed no sooner he eat half part of 'Laddu' which contained copper sulphate, which was a poison.

5. The learned Counsel for the appellants contended that the seized part of the 'Laddu' was sent to the Chemical Analyst with delay and there was no proper evidence that the seal had not been tampered with and the sample was the same which had been obtained from the person of Abdul Mazid. It was also contended that the condition of Abdul Mazid was quite normal and it could not, therefore, be said that any poison was administered to him by the appellant. So far as the appellant is concerned, he had denied everything put so him in his cross-

examination Under Section 313, Cr. PC and has stated that he has been falsely implicated by the police. It is clear from the evidence of Dr. V.R. Purohit (PW/9) and his report Ex. P/6 that Majeed Khan was admitted in the hospital on August 6, 1981 at about 2.30 a.m. When he was examined, he was conscious, Pulse and blood pressure were by and large normal. However, his pupils were semi-dilated. Respiratory rate was on the borderline on its higher side. He was advised to save gastric lavage blood and urine. Opinion was reserved after receiving the chemical examiner's report. The hospital compounded had intimated to the police about an attempt of poison case and this information was received at Ashok Nagar, Police Station at 3.45 a.m. on August 6, 1981 as is clear from Ex. P. 4. Shri Singh was the Sub-Inspector Police, Ashok Nagar Jaipur and he has deposed that he started investigation at 6.25 p.m. He took the articles in sealed condition from the Medical Jurist and sent the same to the Chemical Examiner. The articles sent contained sample of 'Laddu' also. No cross-examination had been made with him so as to doubt that the seals were not intact. Kishori Lal (PW/5) was constable, Police Station, Ashok Nagar, Jaipur and it was he who took three bottles and one vial to the Chemical Examiner and he delivered the same to him and obtained receipt Ex. P/3. He has also said that these articles were sealed. He obtained receipt Ex. P/3 from the Laboratory. Nothing advise to the prosecution could be elicited from his cross-examination.

6. As to the giving of 'Laddu' by the appellant to Abdul Mazid for eating, it may be stated that according to the First Information Report Ex. P. 1, Abdul Mazid & his friend Ikarar and Sethi were standing near Raj Mandir Cinema, Jaipur. At that time, it was mentioned, the appellant gave 'Prasad' to Abdul Mazid, and the above named two friends. Each were given one 'Laddu'. His two friends ate 'Laddu' respectively given to them. So far as Abdul Mazid was concerned, he divided the 'Laddu' in two parts. First of all, he took the first, part of the 'Laddu', but he felt that its taste was too sore. He, therefore, inquired from his other friends whether they also felt taste. Abdul Mazid further mentioned that in statement Ex. P. 1 recorded by Prahlad Singh Head Constable that he gave the other portion of the 'Laddu' to his companion and that companion immediately after eating it had his tongue dropped out. Abdul Mazid was taken to the hospital and half portion of the 'Laddu', which had been dropped, was lifted and kept on a paper and deposited in the

hospital.

7. Mahesh Kumar P.W. 2 has been examined by the prosecution to state that on August 5, 1981 at about 9.30 pm, the appellant had given to him a sum of Rs. 2/- in order to bring 'Laddu of Basan. He went to the shop and brought 'Laddus' and then he left the place. Mahesh Kumar has also stated that he had brought the 'Laddus' from a shop which was opposite Raj mandir Cinema. He brought four 'Laddus' All the 'Laddu's were of the same type. It is the prosecution case that the appellant had given 'Laddu's to Abdul Mazid and his friends also near Rajmandir Cinema where Mahesh Kumar had told the same to him. The learned Counsel for the appellant urged that Ikarar and Sethi who were said to be present have not been examined by the prosecution. It is true that both these witnesses have not been examined in the Court. So far as Ikarar is concerned, he was left out by the prosecution, Ikarar had been served as appears from the summons sent to him for June 25, 1982 and, it is surprising that the prosecution left Ikarar who was most material witness in the case Vinod Sethi was not even cited as a witness by the prosecution. Thus, the prosecution itself failed to examine two most material witnesses in the case to support the prosecution version. In the statement given by Abdul Mazid to Prahlad Singh, Head Constable, as Ex. P. 1, it was clearly mentioned that Ikarar and Sethi who were friends of Abdul Mazid were also there and 'Laddu had also been given to them eating Even the half portion of the 'Laddu', which had been given to Abdul Mazid, is said to have been by him for testing to Ikarar. Ikarar corroborated that he also felt the same taste, but that was not done by the prosecution.

8. It is also pertinent to note that according to Mahesh Kumar P.W. 2 'Laddu's were brought from that very place i.e. Rajmandir Cinema at about 9.30 p.m. where Abdul Mazid and his friends were present. It is said to be a place auto-transport unit keeps persons in order to park their auto rickshaw according to priority. Gopal was even deputed for that purpose. There was no chance or occasion for the appellant to bring copper sulphate and mix the same in the 'Laddu' which had been brought by Mahesh. Kumar. As already stated, the evidence is entirely lacking that Ikarar and Sethi had also eaten 'Laddu's and as to what taste they felt. It was the incumbent duty of the prosecution to examine all material witnesses to

support its case. There is every reason to draw adverse inference against the prosecution for non-examination of Ikarar and Sethi. According to Abdul Mazid, half portion of the 'Laddu' had fallen on the ground, 'Laddu' could not remain intact and one cannot Rule out the possibility of mixing of copper sulphate by Abdul Mazid and his associates in order to implicate the appellant, for the reason that Abdul Mazid did not feel well after taking the 'Laddu', otherwise the condition of Abdul Mazid was normal as would appear from the medical report Ex. P. 6 except that he felt a sore taste. That may be on account of the 'Laddus' being not fresh. As to the motive, which could have led the appellant to administer poison to Abdul Mazid, the theory that the appellant owed Rs. 2,000/- to Abdul Mazid is entirely missing in Ex. P. 1 and it seems to be an after-thought.

9. Conviction cannot be based solely on the report of the Chemical Analyst that the contents of bottle items A and B were positive for copper sulphate. As already stated, there was occasion to mix copper sulphate by Abdul Mazid or his associates also. When two things are possible, one more favorable to the accused will be taken and especially when material and corroborating evidence are available, but the prosecution deliberately withheld it.

10. The appellant, in these circumstances, is entitled to benefit of doubt and I gave him that benefit.

11. I allow this appeal, set aside the conviction and sentence recorded by the Addl. Sessions Judge No. 1, Jaipur City, Jaipur to the appellant for offence Under Section 328, IPC by his judgment dated Sept. 16, 1982 and acquit him of the said offence. The appellant is on bail. His personal bond and surety bonds are hereby cancelled. He need not surrender.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com