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Court : Rajasthan

Decided On : Jul-25-1972

Reported in : 1972WLN633

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Appeal No. 476 of 1971

Appellant : Jasiya

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

L.S. Mehta, J.

1. The prosecution story, in brief, is that P W. 1 Mst. Indra Barber, after the death of her husband Mool Chand, contracted another marriage with deceased Phool Chand Balai, of Marwar Junction Mst. Indra had a daughter by her former husband. She went to Jalore to negotiate with accused Jasiya in connection with the marriage of her daughter. Jasiya lived in front of the female Hospital, Jalore. When Mst. Indra did not return home for a couple of days, Phool Chand Balai also went to Jalore. On June 12, 1969, at about '11 p.m. he reached Jasiya's shop, where he saw his wife Mst. Indra and Jasiya sitting on a 'Chabutri'. At that time the

road light was on. Phool Chand told Indra as to why she had not returned home earlier. Jasiya intervened and spoke to Phool Chand that Indra's daughter's marriage had not so far been finalised and unless that was done. Indra should not leave Jalore. Phool Chand did not agree to it. This infuriated Jasiya, and he grappled with Phool Chand. He brought an iron pipe rode from his shop and inflicted a blow on Indra's head and another blow on Phool Chand's skull. Phool Chand full down. One more blow was given to India. He also inflicted another pipe blow on Phool Chand's back Soon after PW 3 Shanti Lal and P.W. 1 Prabhu Mali came over there. The latter had a hand-driven cart with him. He took Phool Chand to Jalore Hospital in his cart. On receipt of telephonic message P W. 7 Mohan Lal, Incharge Police Station, Jalore, sent P.W. 8 Asgar Ali, Head Constable, to the spot. Asgar Ali prepared relevant papers. P W. 6 Dr. Mangal Sharma, Medical Jurist, General Hospital Jalore, examined Phool Chand. He found one lacerated wound l 'X1/3'x skull deep in the middle half, periosteum deep on the back of the head 1' above the occipital protuberance. Duration of the injury was less than 12 hours. Its nature was simple and was caused by a blunt object. The injury report is marked Ex. P. II. The Doctor also examined Mst. Indra and found one lacerated wound -'XI/8' x bone deep lying ante posterior on the middle of the head and another lacerated wound l'XI/8' x periosteum deep lying ante-posteriorly on the head in between the parietal eminence. The injuries were simple in nature and were caused by a blunt weapon. The injury report is marked Ex. P. 12. According to the Doctor the injuries of both the victims could have been caused by an iron rod. On June 13, 1969, Phool Chand died in the hospital. Thereafter the police altered the offence to Section 302, I.P.C. against Jasiya. Postmortem examination of Phool Chand wat conducted by Dr. Mangal Sharma. The Doctor found one lacerated wound 1'x1/3'x skull deep on the back of the head 1 above the occipital protuberance and lying horizontally. In his opinion Phool Chand died of hyperpyrexia. The police, after necessary investigation, submitted a challan to the court of Munsiff Magistrate, Jalore. Learned Munsif-Magistrate conducted preliminary inquiry in accordance with the provisions of Section 207-A Cr. PC and committed the accused Jasiya to the court of Additional Sessions Judge. Jalore. The accused was indicted under Section 302, I.P C by the trial court. He pleaded not guilty to the charge. Prosecution examined 9 witnesses Exs P 20 to P. 22, the

statements of the medical Officers, namely, Dr. S.C. Mathur, Dr. G.S. Gehlot and Dr. Ajit Singh, recorded by the committing court. were also taken in evidence in accordance with the provisions of Section 509, Cr. P.C. The accused in statement under. Section 342, Cr. PC stated that both Mst. Indra and Phool Chand quarrelled between themselves. Phool Chand give a pipe blow on the head of Mst. Indra. When he intervened, he was kicked by Phool Chand and was beaten by him He wanted to inflict a pipe blow on his person. He took the pipe rod from him and hit Phool Chand. Thereafter both Indra and Phool Chand left the place. In his defence he examined one witness Hari Ram. the trial court, by its judgment, dated March 31, 1971, convicted accused Jasiya of the offence under Section 304, (Part II), I.P C and sentenced him to three year's rigorous imprisonment. He was also convicted under Section 323, I P C. for causing simple hurt to Mst. Indra and sentenced to three months' rigorous imprisonment. Both the sentences were directed to run concurrently. Hence this-appeal.

2. The contention of learned Counsel for the appellant is two-fold. His first grievance is that there is no reliable evidence on the record to show that it was accused Jasiya who caused the head injury on the person of Phool Chand. His second complaint is that even if it is held that Jasiya was the author of the head injury of deceased Phool Chand, it cannot be concluded that Phool Chand died of it as it was simple in nature.

3. As for the first contention, it may be stated that the prosecution has examined 3 eye-witnesses. Prabhu P.W 1, Shanti Lal F W. 3. and Mst. Indra, PW 5 In this examination-in chief Prabhu, P.W. 1, (aged 62 years) substantially supports the prosecution story. He says that the accused Jasiya gave one blow with an iron rod on the head of Mst. Indra and another blow with the same weapon on the had of her husband. In the cross examination he says that when the blow were struck he was standing at a distance of 10 or 12 'Pawandas'. The witness again says in the case-examination.

I cannot see clearly from a distance of 10 to 12 'Pawandas'.

The evidence of Prabhu in this context cannot be said to be dependable When his vision was admittedly so weak, he could not have seen the actual incident during

the late hours of the night.

4. Shanti Lal, P.W 3, has said in the examination-in-chief:

I did not see anybody striking blows.

The evidence of Shanti Lal who has turned hostile to the prosecution, is also, therefore, of no consequence.

5. P.W. 5 Mst. Indra supports the prosecution story in her examination-in chief. She says:

He (Jasiya) gave a blow on my head. Then my husband stood when one blow from that iron pipe was given on his head.

The witness then deposed:

While he was standing from stair, then the blow was given, whereupon my husband fell on the ground. Then Jasiya gave one more blow on my head on account of which well down.

In the cross examination the wetness has said that Jasiya inflicted two head injuries on Phool Chand before he fell down and one injury on the back after he fell down It is true that Mst. Indra's evidence is not fully corroborated by medical evidence and there are some inconsistencies in her examination-in-chief visavas her cross examination, but there is no matter of doubt that Mst. Indra Who Sustained two lacerated wounds during the occurrence, as detailed above, was present on the spot. In the cross examination she resorted to exaggeration, but that dots not mean that in so far as the authorship of the injury on the head of Phool Chand is concerned, her statement is not true. I, therefore, agree with the trial court that it was Jasiya who caused head injury on the person of Phool Chand. This fact Jasiya has also admitted in his statement, recorded under Section 342 Cr. P.C. He has said that he tried to snatch the pipe from Phool Chand and gave its stroke on his head.

6. I now switch over to the second point. The prosecution in this case has examined 4 medical officers: (I) Dr. Mangal Sharma, P.W. 6, (2) Dr. S.B. Mathur,

(3) Dr. G.S. Gehlot, (4) Dr. Ajit Singh.

7. The last three Doctors had been examined by the Committing Court & their statements were taken in evidence by the trial court in accordance with the provisions of Section 509, Cr. PC. Dr. Mangal Sharma (aged 43 years), medical Jurist, General Hospital Jalore, conducted the post-mortem examination of deceased Phool Chand. According to him the deceased had, as mentioned above, a lacerated wound 1'X1/3' skull deep on the middle half periosteum deep on the back 1' above the occipital protuberance. This injury was simple in nature and was caused by a blunt object. In the opinion of Dr. Sharma the cause of death was hyperpyrexia. The Doctor also says that the congestion of the brain was not due to the head injury. The patient had no fever when he had been admitted to the hospital. The witness was allowed to be cross-examined by the prosecution. In the course of cross-examination he has deposed that hyperpyrexia is possible by a head injury and that it is wrong to say that hyperpyrexia in this case is due to the head injury. The Doctor then states:

I came to this conclusion on the ground that there was no effect of injury on any part of the board.... I cannot pay on what account the patent got hyperpyrexia.... Hyperpyraxia is possible due to hot wind and hot season.

The Doctor again says:

If the hyperpyrexia was due to the head injury the temperature would have men gradually I am sure that hyperpyrexia in this case did not develop due to the head injury.

Dr. S.B. Mathur Head of the Department Forensic Medicine, Medical College, Jodhpur, has said that in medico-legal cases medico-legal report can be given on the basis of the facts observed in the post mortem report. Postmortem report Ex. P. 10 reveals the external injury on the head due to which the temperature during the life time was necessary. The Doctor further said that in this case the study of Ex. C- 1 shows that the head injury resulted in hyptrpyrexia because the rest of the organs of the deceased were healthy. Final opinion in regard to the cause of death can be given after the post-mortem examination has been conducted Dr. G.S

Gehlot testifies that Phool Chand was admitted to Dr. Ajit Singh's ward. He was called just before his death at about 5.15 p.m. Soon after he died within 10 minutes. His respiration was slow His temperature was 100. In the cross examination he has said that he could not say how his temperature rose up. It might be due to the head injury or some other cause. He was not present at the time of conducting the post mortem examination. Dr. Ajit Singh, to whose ward -he patient had been admitted, states that according to his view the patient died of the head injury. In the cross examination he says that he has so far never given an opinion in a medico-legal case. He did not see the patient after 12 in noon. He was not present at the time of the post-mortem examination, nor had he seen the post mortem report prior to entering the witness-box. The opinion of Dr. Ajit Singh does not lead us to a sure ground as he had neither any medico-legal experience, nor had he seen the patient just before his death.

8. The question that survives for consideration is whether or not Dr. Manipal Sharma's evidence can be given preference over the testimony of Dr. S.B. Mathur, Head of the Department of Forensic Medicine, Medical College, Jodhpur. The evidence of the Medical Officer, who conducted the post-mortem examination is explicit as regards the actual cause of death. Dr. S.B. Mathur was examined by the committing court. The police it appears, was not satisfied with the evidence of Dr. Mangal Sharma. The committing court did not examine Dr. Mathur on the points which were in evidence in the statement of the Medical Officer, who conducted the postmortem examination. But it took his statement on matters entered in the post-mortem report. The post-mortem report is not admissible as evidence except to contradict the officer who made it. It may, however, be used by that officer when under examination for the purpose of refreshing his memory. In this connection a reference is made to Queen Empress v. Jadu Das ILR 27 Cal 295 (P. 305). In Roghuni Singh v. The Emperor ILR 9 Cal 455 it has been observed by a Division Bench of the Calcutta High Court:

The evidence of a medical man who has seen, and has made a post-mortem examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and, secondly, as evidence of the opinion of an expert as to the manner in which those

injuries were in effected, and as to the cause of death A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper node of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and to ask the witness's opinion on these facts.

In this case there can be no doubt that Dr. Mathur in his deposition based his opinion in important respects net upon the facts which Doctor Manghal Sharma stated, but upon the facts mentioned in the post-mortem report. This report was not evidence and, therefore, no facts could have been taken therefrom. Dr. Mangal Sharma could also have used the report to refresh his memory. There is still a more important consideration. Dr. Mangal Sharma had actually seen the dead body and bad performed the post-mortem examination. His evidence is admissible, first, to prove the nature of the injury which he had observed on the copse, and, secondly, as opinion evidence with respect to the manner in which the injury was inflicted, and the cause of death. Dr. Mathur was in the position of an expert witness. He could give nothing but an opinion evidence. He was put only hypothetical questions. Even if that course had been pursued, it would have been only fair to the accused to give Dr. Mangal Sharma an opportunity of stating his reasons vis-a-vis Dr. Mathur's statement the positive assertion contained in his deposition. Unfortunately Dr. Mathur was asked to sit in judgment upon the opinion of Dr. Mangal Sharma, as expressed in post mortem examination report, and judge his credibility. I think the course adopted in this case is erroneous. Having regard to the great materiality of the question it is impossible to say otherwise than that the appellant has been prejudiced by the miner in which the medical evidence has been dealt with by the trial court. It is necessary in order to maintain a charge of homicide that death should be clearly connected with the injury. 'A doubt', as has been pointed out by Taylor in his Principles and Practice of Medical Jurisprudence, 12th Edition, VOL 1, P. 181, 'on this point must, of course, lead to an acquittal of the accused.' The inevitable conclusion of the above discussion is that the trial court went wrong in holding that hyperpyrexia was the direct result of the simple injury sustained by the deceased at the hands of the accused. The accused in the circumstances of the should have only been convicted of the offence under Section 323 I PC. in respect of the injury caused to Phool Chand.

No argument has been put forward in regard to the conviction and sentence in respect of the injury caused to Mst. Indra.

9. In the result, I acquit the appellant Jasiya of the offence under Section 304 (part II) I.P.C. convict him of the crime under Section 323 I.P.C. for causing simple hurts to both Mst. Indra and Phool Chand. He has already under gone three months religious imprisonment and that would meet the ends of justice. I accordingly direct that the sentence already served by the appellant should be the sentence in the case.

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