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Court : Rajasthan

Decided On : Aug-31-1976

Reported in : 1976WLN478

Judge : Kan Singh and; P.D. Kudal, JJ.

Appeal No. : D.B. Criminal Jail Appeal No. 471 of 1975

Appellant : Ram Swaroop

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

P.D. Kudal, J.

1. The accused appellant Ram Swaroop has filed this appeal from Jail against his conviction dated January 23. 1973, by the learned Additional Sessions Judge, Dholpur. The learned Additional Sessions judge has convicted the accused-appellant under Section 302, IPC, and sentenced him to imprisonment for life, and a fine of Rs. 500/ and in default of payment of fine to further rigorous imprisonment for six months.

2. The prosecution story is that one Hukam Singh, deceased, accompanied his sitter Shiv Devi, on 26-4-1970, to the bus-stand, at about mid day. Smt. Shiv Devi

was going to her father-in-law's place, and as such, was wearing the ornaments. The accused-appellant Ram Swarorp met them at the Bus-station. He offered a 'laddu' to the deceased Hukam Singh stating that it was a 'prasad'. Hukam Singh ate the 'laddu'. As the bus had arrived at that time, Mst. Shiv Devi boarded the bus. In the meantime, another brother Budhi of Mst. Shiv Devi also came there. Ms. Shiv Devi left by the bus. Hukam Singh accompanied by Budhi come back to their house in village Dogarpur After sometime, Hukam Singh started shivering and felt giddy. He started tearing his clothes. On enquiry being made, Hukam Singh stated that he was feeling awfully giddy after having eaten the laddu' given by Ram Swaroop Ram Swaroop had gone to village Dubepura. Karan Singh, Bhagwan Singh and Pritam went to village Dubepura, and brought Ramswaroop from there. Ram Swaroop said if Hukam Singh vomits his condition would be improved. Hukam Singh was brought to Dholpur in a jeep as his condition was worsening. It is said that Ram Swaroop told the villagers that he had administered 'dhatura' to Hukam Singh in that 'laddu', as he intended to remove all the ornament which Mst. Shiv Devi was putting on. He further stated that as Mst. Shiv Devi boarded the bus, the 'laddu' of dhatura could not be given to her. The Chief Medical Officer of Sadar Hospital, Dholpur, Dr. S.K. Soloman, was approached at about 1.40 a.m. At that time, Hukam Singh was gasping with one or two respiration per minutes.

The pulse was also imperceptible He was, therefore, rushed to the hospital for emergency treatment Before any treatment could be given to him, he died. Dr. Dilip Singh, Medical Jurist, performed the post-mortem. Pritam PW. 10 lodged the first information report of this incident to Rajveer Singh PW. 2, Station House Officer, Dholpur, at 4 a.m. on 24-4-1970. The accused-appellant was arrested vide Ex. P/4, and on his personal search a pocket containing 'dhatura' seeds' was found in a cloth tied around his waist, A sealed packet containing the 'dhatura' seeds and the viscera preserved by the Doctor Dilip Singh were sent to the Chemical Examiner for analysis. The contents of the bottle containing viscera were found on examination to be negative for 'dhatura'. The sealed pocket containing the seeds was positive for 'dhatura'. After investigation, the case was challaned on 4-5-1970 before the learned Additional Munsiff-Magistrate No. 2. Dholpur. The accused was committed to the Court of Sessions on 7-11-1970 by

the committing Court after enquiry, The learned Additional Sessions Judge found the accused appellant guilty under Section 302 IPC, and sentenced him to imprisonment for life, and a fine of Rs. 500/-, and in default of payment of fine to undergo a further rigorous imprisonment for six months, by his order dated January 23,1971. It is against this order of conviction that the present appeal has been filed.

3. Shri Doongar Singh, Amicus Curiae, in this case, contended on behalf of the accused appellant that there is no evidence on the basis of which conviction of the accused-appellant under Section 302. IPC could be sustained. He contended that no remains of the 'laddu' offered to Hukam Singh by Ram Swaroop accused appellant have been recovered. He also contended that the vomits of the deceased Hukam Singh were not collected. He also contended that if the vomits had fallen on the earth or clothes of the deceased Hukam Singh, then, neither the clothes have been collected, nor the earth containing the vomits of the deceased have been collected. It was also contended that the medical evidence negates the entire prosecution case. The examination of the viscera was negative for 'dhatura' and even the post-mortem report does not support the prosecution story of poisoning. It was also contended that there were other 'laddu' with Ram Swaroop, accused appellant, which too have not been seized by the police, and put to any chemical analysts. It was also contended that the prosecution story that Ram Swaroop accused appellant wanted Hukam Singh and Shiv Devi to become unconscious by taking 'dhatura' to facilitate the removal of ornaments, is improbable. This could not have been done at the bus stand and especially when the other brother of Hukam Singh, (sic) Budhi, was also present at the site.

4. On behalf of the State, it was contended that the accused-appellant, Ram Swaroop, is not a person of sound character. He is a pick-pocket and had practised such a trick on a person previously also. Attention was invited to a decision by the Assistant Sessions Judge No. 1, Dholpur dated 29-7-1970, in Sessions Case No. 1 of 1970, in which the accused appellant Ram Swaroop had been found guilty of committing an offence under Section 328 read with Section 392, IPC, and was sentenced to five years rigorous imprisonment for administering 'dhatura' poisoning in 'laddu' to one Raja Ram, his wife Mst. Kstoori and his son

Bachan Singh, on the ground that after making them unconscious, the accused appellant Ram Swaroop removed the ornaments of Mst. Kstoori when the victim became unconscious. It was also contended that the circumstantial evidence leads only to one inference that Hukum Singh died because of 'dhatura' poisoning administered by the accused-appellant Ram Swaroop. It was also contended that the extra-judicial confessions made by the accused-appellant Ram Swaroop are sufficient for sustaining the conviction of the accused-appellant under Section 302 IPC.

5. We have carefully considered the respective contentions of the learned Counsel for the parties, and have closely examined the record.

6. Dr. Dilip singh PW. 1 stated that he suspected it a case of 'dhatura' poisoning, and in his view, the cause of death was poisoning. He preserved the visceras, and sent it for chemical examination. The witness further stated that he had not noted any other symptoms of the 'dhatura' poisoning in his postmortem report Ex. P 1. The symptoms which were present before the death, and at the time when the patient was admitted in the hospital could be on the bed head, ticket' The congestion is possible in the cases of pneumonia and head-stroke. The death had been caused due to asphyxia. If the visceras are found negative for 'dhatura' poisoning, then he was sure the death was not caused by 'dhatura' poisoning Dr. S.K Soloman PW 12, stated that the he saw the patient. He was in an unconscious state. He was also gasping with one or two respirations per minute. The pulse was imperceptible. He has further stated that as it was a suspected case of poisoning the Medical Jurist, Dr. Dilip Singh was informed and he was directed to contact the police as well. He further stated that he had noted down the condition of the patient in Ex. P 7, which was in his hand and' signed by him, In his opinion the condition of the deceased before his death could be the result of 'dhatura' poisoning because the respiratory system was failing. The cardio respiratory system was also falling. The pulse was also irregular and internment. The patient had also reached the state of coma, which is the culminating point in the case of 'dhatura' poisoning. On being cross-examined, he stated that he had not concluded in the bed head ticket that it was a case of 'dhatura' poisoning because it was too much premature to do 'so In the case of 'dhatura' poisoning, the effect of

the poison depends on the quantity, and the mode of administering it. It cannot be definitely said that the cause of death would be by 'dhatura' poisoning even if the viscerae are found negative for 'dhatura'. He also stated that cardio respiratory failure is the cause of death in so many diseases like high fever, diarrhoea or severe infections.

7. Budhi PW. 8, the brother of the deceased Hukam Singh stated that Mst. Shiv Devi was going to her father-in law's place in the last Vaisakh. He saw Ram Swaroop giving him 'laddu' to Hukam Singh describing it as 'prasad'. He has further stated that the accused-appellant Ram Swaroop had few more 'laddus' with him in his cloth-pocket. Ram Swaroop could not give 'laddu.' to Shiv Devi as the bus had arrived and she was in a hurry to board on the bus. Mst. Shiv Devi PW. 7 stated that 'laddu' was offered as 'prasad' at the bus-stand by Ram Swaroop to Hukam Singh and as the bus had arrived' she boarded the bus, and left for father-in-law's place.

8. PW 10 Pritam stated that Hukam Singh told him that Ram Swaroop had given him a 'laddu' as 'prasad', and that after eating the same he felt giddy, and his condition was worsening. He also told him that 'laddu' was given to him at the bus-stand. Bhagwan Singh, Pritam and Karan Singh went to Dubepura, and brought Ram Swaroop. Ram Swaroop told them that he saw Hukam Singh's sister Shiv Devi wearing ornaments, therefore, he wanted to make Hukam Singh unconscious and his sister with a view to deprive her of the ornaments. He further stated that his plan could not succeed as the bus had arrived in the meantime, and Shiv Devi boarded the same. Bhagwan Singh PW 11 also went to Hukam Singh's house He saw Hukam Singh tearing the clothes, feeling giddy and vomiting. His body was aching, What Ram Swaroop stated to PW 10 Pritam was stated in the presence of PW 11 Bhagwan Singh also.

9. Having discussed the material evidence, we now first advert to the decision of the learned Assistant Sessions Judge, Dholpur in Sessions Case No. 1 of 1970 dated 29-7-1970 This decision has not been relied upon by the learned trial Court also. Only such decisions are relevant which are covered by Sections 40, 41 and 42 of the Indian Evidence Act The present incident of poisoning is alleged to have

taken place on 26-4-70. The judgment of the learned Assistant Sessions Judge is dated 29-7-1970, which is a subsequent decision. and is not covered either by Sections 40, 41 and 42 of the Indian Evidence Act. Under these circumstances, the trial Judge was correct in not placing any reliance on this judgment.

10. The most important proof of poisoning is the detection of poison in the excreta (vomit, urin, etc) and blood during life, and in the contents of the stomach and bowels, and in the tissues of the body after death. The finding of poison in food, medicine or any other suspected substance is corroborative but not conclusive proof, for the poison may have been added to any of these substances just to substantiate a false charge against an enemy.

11. Modi in his Medical Jurisprudence and Toxicology (1975 Edition) at page 696 has observed as under:

Symptoms: The symptoms usually appear within half-an-hour after swallowing the poison. Vomitting often occurs immediately after taking the seeds. especially then crushed, as they produced gastric irritation A bitter taste, dryness of the mouth and throat. burning pain in the Stomach, dysphagia, headache and difficulty in talking are the first symptom that are complained of. These are followed by giddiness, staggering, gait in coordination of the muscles, peculiar flubbed appearance of the face, dry, hot skin with a rise in temperature, Photophobia. dilated pupils with loss of accommodation, for near vision, and injected connectives, urinary Retention, inability to pass urine and drowsiness, Sometimes, a scarlatinal rash or expoliation of the skin is seen over most of the body, and the temperature is raised very high.

12. Post mortem appearances of 'dhatura' poisoning are usually as follows:

Datura seeds or their fragments may be found in the stomach and intestines. It is, therefore, necessary to make a careful search for them in the vommitted matter, stomach contents and feaces, The oesophagus stomach, duodenum and other internal organs are mostly congested. In rare cases the mucous membrane of the stomach may be found slightly inflamed.

The active principle of datura is excreted unchanged in the urine almost immediately on its administration and the excretion is completed in ten to twenty hours. It is therefore, advisable to preserve urine in cases of (sic) poisoning, since the urine will show the active principle on chemical analysis, while the stomach wash may not occasionally respond to the test.

13. Taylor in Principles and Practice of Medical Jurisprudence (Volume II, (sic) Edition) at page 608 described the symptoms of 'dhatura' poisoning as under:

Symptoms Hyoscine has a bitter taste, which it generally imparts to the food with which it is mixed, this is sometimes recognized when it is eaten. Symptoms identical with these of belladonna poisoning soon follow. There is at first a dryness in throat, attended with a feeling of faintness, headache, and giddiness, the person has difficulty in walking straight and appears as if intoxicated, while at the same time he is very restless. The pupils are dilated, he will some time complain of indistinctness of vision, or drowsiness, and he almost always falls asleep. The sleep may later increase to complete insensibility with dilated pupils, (d) flushed face, and muttering delirium. The delirium is characterised by confusion and great restlessness There is a great thirst.

14. The prosecution has failed to establish that the death of Hukam Singh occurred because of dhatura poisoning administered to him by Ram Swaroop in laddu. No remnants of the 'laddu' were seized and put to chemical analysis The viscerae have been found to be negative for 'dhatura'. The medical evidence of the two Doctors, as discussed above, do not in any way establish the guilt of the accused. Both the Doctors (Dr. Dilip Singh and Dr. S.K. Soloman) have not supported the prosecution story. Dr. Soloman stated that the cardiac respiratory failure could be caused by many diseases like high fever, diarrhoea or severe infections. Neither the 'laddu' which were with the accused appellant Ram Swaroop had been seized by the police, and put to chemical analysis. No vomit either from the clothes or from the earth was collected, and put to chemical analysis. In these circumstances, the cause of death of Hukam Singh by poisoning through the administration of 'dhatura' in 'laddu' could not be established and the extra judicial confession alleged to have been made before PW 10 Pritam and PW

11 Bhagwan Singh does not in any way help the prosecution case.

15. The cardinal principle of administration of criminal justice is that the guilt of the accused should be brought home beyond all manner of doubt. The circumstances should be such as should inevitably result to only one conclusion that the death of the deceased was caused by administration of 'dhatura' through 'laddu'. As discussed above, none of these conditions are satisfied in the present case.

16. Under these circumstances, we are unable to up-bold the conviction of the accused appellant under Section 302, IPC. He is given benefit of doubt. The appeal filed by the accused appellant is hereby allowed, his conviction and sentence under Section 302 IPC are. set aside and he is hereby acquitted. The accused-appellant shall be released from custody forth with, if not required in any other case.

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