

Chet Ram Vs. State

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Court : Himachal Pradesh

Decided On : Apr-02-1971

Reported in : 1971CriLJ1246

Judge : M.H. Beg, C.J.

Appellant : Chet Ram

Respondent : State

Advocate for Pet/Ap. : Mr. Sita Ram

Judgement :

M.H. Beg, C.J.

1. The appellant is a young man aged 27 years who has been convicted by the Sessions' Judge of Mahasu, Under Section 304. Part II, Indian Penal Code, and sentenced to one year's rigorous imprisonment only, and to pay a fine of Rs. 100/-, and in default of payment of fine, to undergo three months' further simple imprisonment.

2. The prosecution case was that on 13th of October, 1969. the appellant, while going from Haripur towards Patta, on a road known as 'Brotiwala Road', came across a woman, Smt. Prabhi, aged about 100 years. and quarrelled with her. Then, the appellant is alleged to have thrown stones at the aged woman and injured her. Rattan Lai (P.W. 4), who was said to be following the appellant at

some distance, was said to have heard voices and seen the accused throwing stones. The accused is alleged to have run towards Patta when he saw Rattan Lai. The appellant was chased by Rattan Lai P.W. 4. The appellant was finally caught by Ram Dass (P.W. 6), the Chowkidar of the Rest House of Patta, who had heard an alarm raised that a murderer was running away. According to the prosecution case, the appellant, on inquiry from him, after having been caught, had stated that the old woman had abused him, and, therefore, he had thrown her down. Kali Ram (P.W. 7), who was also passing with his cattle, informed Gita Ram (P.W. 14), after having been told about the occurrence by Rattan Lai, who was chasing the accused, so that Gita Ram also chased the accused. Kali Ram called out to the villagers and took them to the place where the old woman was lying. Smt. Prabhi was said to have been found in a sinking condition about five steps (five 'Qadams' or 'Karams') below the road. She had injuries on her head and right arm. She expired after having been taken a few yards along the road and her body was deposited there. It appears that, amongst the persons who had lifted Smt. Prabhi, was Siri Ram (P.W. 8), her son, who stated that she was lying below the embankment of the road in an injured condition. Amar Singh (P.W. 10) was the Police Constable on patrol duty to whom the appellant was handed over after arrest. He brought the accused to the spot where the deceased's corpse lay. A first information report was lodged at Police Post Brotiwala at about 6.30 p. m. and was duly recorded at the Police Station, Solan, on the next day.

3. The injuries found on the body of Smt. Prabhi by Dr. K. C. Sharma (P. W, 5), who conducted the postmortem on 15th October, 1969, were reported as follows:

(1) There was greenish discolouration of the skin on iliac fossae. Body was flaccid. Post mortem staining was present. She was clad in Maleshia Kamij and Salwar smeared with blood specially on the left leg. Dupatta white dirty smeared with blood.

(2) There was a lacerated wound on the right temperoparietal region 3' x 1' bone deep. There was a crack fracture of the underneath bone. Clotted blood was present on the hair. There was superficial abrasion half inch x 1' on the right temporal region and anterior to the right tragus with ecchymosis. In addition there

was a superficial lacerated wound 2i' x A' on the dorsal surface of the right foot.

(3) There was a simple fracture of the right humerus at the junction of upper and middle third.

(4) There was a crack fracture of the right temporal bone. There was excavated blood under the scalp and on opening the skull there was evidence of extra dural and subdural clot.

4. The doctor stated that the injuries on the body of the deceased could have been caused by the kind of stones (Exhibit P. 2 to Exhibit P. 7) which had been picked up from the road and exhibited and shown to the doctor. He also gave the opinion that all the injuries could not be caused by a fall. The reason given by the doctor was that there were no injuries on the hands, knees, and on the back. Although the injuries, other than in the first one, are all on the right side (it is doubtful whether the first one is an injury), it is possible that some injury may have resulted from a fall also. The doctor's opinion that the victim must roll, if she had fallen, was good enough for a fall along a steep slope. If the lady fell only a few steps below the road it is possible that some injury may be due to that fall. The question, however, was whether the accused had attacked the woman in the way in which he was alleged to have done so that she fell after an injury to her. To pelt with stones an aged woman, about hundred years old, while she was walking on the brink of a road on a hill, so that she could easily fall as a result, was an obviously dangerous act. At least injury No. 2 or No. 4 or both must have resulted from the stones thrown at her. These are on the right side of the head and the accused was said to have pelted stones from the front but from a point across the road. If, however, a victim moves and ducks to avoid being hit when stones are thrown, these injuries could be caused by stones thrown at her from the place indicated in the site plan.

5. Mr. Sita Ram, learned Counsel for the appellant, has assailed the evidence of Rattan Lai (PW. 4), and submitted that his version is totally unacceptable. He has also submitted, on the strength of such evidence as there is on record, that the accused was insane so that he was absolved from criminal liability for whatever acts he committed. Before taking up the so called plea of insanity, I will consider

the credibility of the evidence relating to the attack by the accused on the old lady with stones ,after a quarrel.

6. It is true that Rattan Lai was not near enough to see how the quarrel started or to hear the actual words uttered. He said that he was at a distance of about 50 or 60 yards behind the accused when he first saw the appellant and had heard voices before that. He could have no talk with the appellant because, according to him, the appellant, who was throwing stones, ran away as soon as he saw him. If this evidence was true, the appellant did not apparently anticipate discovery, and he actually ran when he found that he had been seen throwing stones at the old woman. Again, if this is true, the accused knew full well that he was committing a wrongful act.

7. Rattan Lai had made no mention about the number of stones thrown by the accused either in the first information report lodged by him or in his statement to the police during investigation. In fact, with the passage of time, it is possible that the witness may have an exaggerated picture of what had actually taken place. It is even possible that a witness may imagine, due to an erroneous association of ideas, parts of an incident which did not even occur. He may, for example, have seen stones stained with the fallen woman's blood and he may have afterwards imagined that all these stones had actually hit her. The actual words he used in the first information report were: 'Prabhi ko pather mar ker zakhmi ker diya.' I do not think that there is any real contradiction if he stated, at the trial, that the accused threw ten or twelve stones at the woman. Another contradiction is said to relate to the direction in which he had seen the woman going. He had stated first that the woman was ahead of the accused. He clarified the position, when cross-examined, that the woman was facing the accused and the witness.

8. The manner in which even truthful witnesses may make incorrect or confused statements has been explained by me in *Mangat v. State* 0065/1967 : AIR1967 All204 . I indicated there the difficulty an ordinary witness experiences in describing accurately what he had seen long ago. As Professor Munsterbug said: 'We never know whether we remember, perceive or imagine.' Here, I may also cite an instructive passage from Judge Jerome Frank's 'Law and the Modern Mind' (at

page 108) describing an experiment by a Professor in his class:

A few years ago a painful scene occurred in Berlin, in the University Seminary of Professor von Liszt, the famous criminologist. The Professor had spoken about a book. One of the older students suddenly shouts, I wanted to throw light on the matter from the standpoint of Christian morality, 'Another student .throws in, 'I cannot stand that! The first starts up, exclaiming. 'You have insulted me' The second clenches his fist and cries, If you say another word!' The first draws a revolver. The second rushes madly upon him. The professor steps between them and, as he grasps the man's arm, the revolver goes off. General uproar. In that moment Professor Liszt secures order and asks a part of the students to write an exact account of all that has happened. The whole had been a comedy, carefully planned and rehearsed by the three actors for the purpose of studying the exactitude of observation and recollection. Those who did not write the report at once were, part of them, asked to write it the next day or a week later; and others had to depose their observations under cross-examination. The whole objective performance was cut into fourteen little parts which referred partly to actions, partly to words. As mistakes there were counted the omissions, the wrong additions and the alterations. The smallest number of mistakes gave twenty-six per cent, of erroneous statements; the largest was eighty per cent. The reports with reference to the second half of the performance, which was more strongly emotional, gave an average of fifteen per cent, more mistakes than those of the first half. Words were put into the mouths of men who had been silent spectators during the whole short episode; actions were attributed to the chief participants of which not the slightest trace existed; and essential parts of the tragicomedy were completely eliminated from the memory of a number of witnesses.

9. Added to the difficulties of witnesses in correctly recalling and describing past events which become subject-matter of subsequent discussion and inquiry, there are. in such cases, dangers of dramatisation by witnesses. Courts, in search of the core of truth, have to beware of being misled by half truths or individually defective pieces of evidence. Firstly, undeniable facts and circumstances should be examined. Secondly, the pattern of the case thus revealed, in the context _of a whole sequence of proved facts, must be scrutinized to determine whether a

natural, probable and, therefore, a credible course of events is disclosed. Thirdly, the minutiae of evidence, including established discrepancies, should be put in the crucible of the whole context of an alleged crime or occurrence and tested, particularly with reference to the proved circumstances which generally provide a more reliable indication of truth than the faulty human testimony, so that the process of separating the grain from the chaff may take place. . Fourthly, in arriving at an assessment of credibility of individual witnesses, regard must be had to the possible motives for either deliberate mendacity or subconscious bias. Lastly, the demeanour and bearing of a witness in Court should be carefully noticed and an appellate Court should remember that a trial Court has had. in this respect, an advantage which it does not possess.

10. In the instant case although no background of hostility between the accused and the deceased has been proved, the defence itself has provided a reason, the accused's alleged mental instability, for something about the old - woman or what she may have said or done which may have upset the accused. This reason is that the accused was mentally unstable. But, it is established, beyond doubt, by the evidence of a whole host of witnesses, that the accused had run after the alleged attack upon the old woman so that he knew full well that he had done a wrong by injuring her. He made no attempt, when arrested, to make out that there was a mistake in arresting him. The accused is alleged to have even admitted throwing down, the woman because she had, he thought, abused him. No enmity of the accused with the police or with Rattan Lall (P.W. 4). or Ram Dass (P., W 6). or Kali Ram (P.W. 7), or Gita Ram (P.W. 14) whatsoever has been brought out or even alleged.

11. Much was sought to be made of the English translation of a statement of Ram Dass, the Chowkidar. which was:

On our inquiry the accused told us that the old lady had abused him and he threw her down.

This statement is admissible Under Section 6 of the Indian Evidence Act as a part of res gestae. It corroborated the statement of Rattan Lai (P.W. 4) that there was some altercation between the appellant and the old woman before he started

throwing stones at her. It is contended that this statement conflicts with the version that the accused threw stones at the deceased. Such a contention assumes that Ram Dass recalled the exact words used by the accused. Moreover, the assertions of the accused need not have been wholly true.

12. It may be that Rattan Lai did not see the number, of stones thrown by the appellant. It is even possible that only one of the stones thrown struck her. But, there is no likelihood, on the version given by Rattan Lai, corroborated by the medical evidence and the evidence of other witnesses who arrested the accused, that the woman fell down accidentally and then died. The medical evidence does not conflict with the evidence given by Rattan Lai that the appellant had thrown stones at the old woman before she fell. Even if the opinion of the doctor, based on the reasons given by him, may not be wholly correct, the version of Rattan Lai is not falsified by medical evidence. I am, therefore, unable to discard the evidence of Rattan Lai (P.W. 4) because of any alleged contradiction between it and probabilities of the case as revealed either by medical or other evidence.

13. It has, however, been contended that there is a serious contradiction between the statements of Rattan Lai and the site plan which has been prepared by Lila Datt Head-Constable (P.W. 11). The site plan was only admissible as evidence of what the Head-Constable who prepared it, found on the spot, An attempt was made to argue that the points at which the site plan shows the accused and Rattan Lai and the deceased, at the time of the occurrence, do not tally with statements of Rattan Lai who was not asked whether he had given those locations to the Head-Constable. The trial Court thought that there was some confusion in the defectively prepared site plan because the body of the deceased is shown to have been found at point 'B' in the site plan. Evidently, that is the point, below the embankment, where the woman fell. The Patwari, Naurta Ram (P.W. 3), has given the correct place in his site plan (Ex. P.C.) where she died and her body was actually found placed on the road. There is no evidence anywhere to show that the body had actually fallen into a Khad which was a few steps removed from where the deceased fell. It is clear that the body was not found in a Khad. If the evidence of the witnesses is believed, the whole theory of an accidental fall into a Khad must be ruled out altogether. If there was really an accident, there is no reason why the

accused should have run away and Rattan Lai (P.W. 4) and others should have deposed falsely against the appellant. And, there is also no reason why the appellant should have run away and not have protested on his arrest and said that the woman had merely fallen accidentally. The appellant was caught practically, red-handed.

14. The defence case was that the appellant had gone to a Gurdwara at Haripur and pulled off a sheet from underneath the Granth Saheb, and that he had been beaten by the Sewadars at the Gurdwara so he had run. The defence case also is that his father was chasing the accused when the accused reached 'Singh-ka-dyar' about three miles from Haripur. It is possible that the father may have arrived later from his house and stated that his son was mentally unbalanced. He was not there until the accused was brought back to 'Singh-ka-dyar' at 12 noon, an hour after the occurrence.

15. An accused who is shown to be merely mentally unbalanced does not satisfy requirements of a plea of insanity or un soundness of mind which are thus stated in Section 84 of the Indian Penal Code:

84. Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

16. It is well established that the burden of establishing this exception rests upon the accused as provided by Section 105 of the Indian Evidence Act. It is another matter that the accused may have led some evidence, which, though not satisfying the requirements of proof laid down by Section 105, that is proof of the plea by a balance of probabilities, may yet succeed in throwing the prosecution case into the region of reasonable doubt. The question of the degree to which an accused person must establish his plea and how he may, even when not discharging his legal duty fully, succeed in getting the benefit of doubt has been dealt with at length by me in *Rishi Kesh Singh v. The State* : AIR1970 All51 (FB). I need not repeat there what was already said by me there on this subject.

17. I would, however, like to point out that the plea of an exception Under Section 84, Indian Penal Code, was not even, strictly speaking, set up by the accused person here. He led no evidence to show what the defect of mind was which made him incapable of knowing the nature of the alleged offence or prevented him from knowing that it was either wrong or contrary to law. The appellant stated that he did not remember at all what had happened on 13th October, 1969. This could amount to setting up amnesia which is a term used (see: Encyclopedia Britannica) for functional disturbances of memory, whether general or partial, and not of unsoundness of mind which makes a person incapable of knowing the nature of the act or that he is doing what is either wrong or contrary to law when the act was committed. The appellant only set up his ill health and tendency to get mentally unbalanced in the following words:

I was running a hotel at Shilnu in Ilaqa Nalagarh where a bridge was under construction. I fell seriously ill and was under treatment for about two months. I had typhoid fever, stomach trouble which had upset my mind. I suffered from chronic constipation. I lost my balance of mind and roamed like lunatic. I even threw away the utensils of the hotel and also the money. Thereafter, what happened to me I cannot say. I regained my mental normalcy in the jail at Solan after about 3-4 months. I have absolutely no recollection what I did and how I behaved during this period. Though mentally these days I am normal, but my physical health has been very much shattered on account of various ailments, like constipation, burning sensation in stomach and head. I have no knowledge even now. I had been shown to a doctor at Snowdon after my bail. Even during my stay in the sub-jail I had been taking treatment from the jail dispensary. Still I take medicine daily.

18. The plea taken by the appellant, in the above statement, in so far as it is separable from alleged amnesia, can only amount to one of mental instability due to physical ill health. Strictly speaking, this is not a plea of such unsoundness of mind that the accused did not know the nature of the act committed by him at the time of its commission.

19. The evidence given by the appellant's father Ratti' Ram (D. W. 5) is to the effect that a Sant gave the appellant some hemp (Bhang) which upset his mind so that he threw away the utensils of the hotel.. This indicates the behaviour of the appellant due to administration of some drug to the appellant at a time prior to the occurrence. The mere statements, showing that he used to behave in this manner occasionally, made by Ratti Ram (D. W. 5). Hiru Ram (D. W. 1), Rameshwar Dass (D. W. 2), Nathu Ram (D. W. 3), Bhagat Ram (D. W. 4) and Kanahya (D. W. 6), even if they could be believed, would only indicate that the appellant suffered, from mental instability from time to time. If Ratti Ram's statement is true, it could mean that the accused so behaved on each occasion that he took the drug. If this was the true state of affairs, the plea could not stand on a footing higher than that of intoxication. It should be remembered that voluntary intoxication is not a plea recognized as an exception to criminal liability. It may be different if some drug is administered to a person against his will and he then loses his balance of mind to such an extent that he is unable to see, at the time when an act is committed, that he is doing some wrong.

20. As regards the accused's mental condition sometime before the occurrence on the same day, his father said that the appellant went to a Gurd-wara and pulled the sheet from under the Granth Saheb and that he was beaten by the Sewadars and ran away from there. No injuries on the body of the appellant were proved. Nor was any evidence from the Gurdwara produced. Even if the appellant was mentally not quite normal at that time, I am unable to hold that this amounts to establishing a plea of his insanity within the meaning of Section 84 of the Indian Penal Code within the Me Naughton rules, which the framers of Section 84, Indian Penal Code, seemed to have kept in view. Indeed, the view could be taken that aberrations due to mere mental instability or weakness of mind should be even more severely punished as persons suffering from these require severer punishment to restrain them in future from wrong doing. Section 84, Indian Penal Code, protects a person from criminal liability only if he suffers from lack of knowledge of the nature of the act complained of. Where such a plea, establishing legal insanity, is made out, the accused, who may be absolved from criminal liability, may still be liable to be confined in an asylum until experts consider it safe enough to discharge him.

21. An argument advanced on behalf of the appellant was that the police had suppressed the evidence of the mental condition of the appellant. I find that there is evidence given by prosecution witnesses that, after the appellant was arrested by Amar Singh (P.W. 10), he was behaving quite normally. It was not necessary to mention this in the first information report as the police and the witnesses could not anticipate the nature of the plea the accused would take at his trial. It was stated by the accused that he was treated by some doctor at Snowdon Hospital and that he was getting some treatment during the period of the trial. No attempt was made by the defence to get a doctor from Snowdon Hospital- summoned. My attention was invited to a remand order, obtained by the prosecution, during the course of investigation, where it was stated ; that the remand was called for because the appellant was to be examined by a doctor at Snowdon Hospital. It is immaterial whether the police did or did not get him examined at the hospital, It may be that the police authorities had wanted to get him examined, but later on changed their minds. It is also possible that he was examined but nothing abnormal was found so that no importance was given by the prosecution to this matter. It was the appellant who had alleged that he was examined by a doctor at Snowdon Hospital. Obviously, the meaning of Section 105 of the Evidence Act is that evidence to establish an exception must be attempted to be produced by the accused pleading it. He made no attempt to get it either in the trial Court or here. I am, therefore, unable to hold that the prosecution had failed to discharge any burden resting on it. The appellant has not succeeded in proving anything beyond some mental instability. This is not enough to entitle him to even the benefit of doubt on an ingredient of the offence with which he was charged. The act of throwing stones on a helpless old woman, aged about a hundred years, walking on the brink of a road, next to the steep side of a mountain, was inherently likely in the ordinary course of events, to cause her fall and death. I find that she was struck by one or more of the stones knowingly thrown by the appellant, and, therefore, she fell and died. In these circumstances, an offence punishable Under Section 304. Part II, Indian Penal Code, seems to be made out. Even if it could be urged that nothing more than an offence Under Section 325, Indian Penal Code, is proved, the sentence, which is fairly lenient, could not be reduced. There seems no point in merely altering the section under which the accused was convicted.

22. In the result, I uphold the conviction and sentence of the appellant and dismiss this appeal. The appellant is on bail. He shall surrender forthwith to serve out the remaining period of his sentence.

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