

SUPREME COURT OF INDIA

Puran

Vs.

State of Punjab (I)

Crl.A. No. 25 of 1952

(Mehr Chand Mahajan, S. R. Das and N. H. Bhagwati, JJ.)

13.11.1952

JUDGEMENT

MAHAJAN, J. :-

1. The appellant was tried for the murder of two boys, Tek Chand and Rup Chand, aged 7 and 5 years respectively, by administering poison to them on 18-2-1950 at Ballabgarh. He was acquitted by the Sessions Judge of Hissar but on appeal by the State Government was convicted by the High Court of Punjab and sentenced to death. Hence this appeal by him under Article 134 (1) (a) of the Constitution.

2. On the afternoon of 18-5-1952 these two unfortunate boys went to witness a snake charmer's show in front of the house of one Shambu Dayal. It is alleged that there Puran, the appellant, made them eat some 'Churan' which contained poison. When the boys returned home the elder one started having convulsions and his mother, Ram Kali, sent her daughter, Bimla, to call her father, Mulchand, from the post office, where he is employed as a telegraph peon. Her cries attracted Tribeni Pershad, Mulchand's brother, also to the place; as soon as Mulchand arrived, he went to fetch medical aid. The first person to arrive at the scene was homeopath, Dr. Gian Chand. He diagnosed that the boy was suffering from epileptic fits and went to his shop to fetch medicines. On his return he found one Sohanlal, Vaid, at the house. Both of them gave some medicines to the boy.

The younger boy Rup Chand also began to show signs of having convulsions. Gian Chand then asked Mulchand to send for other doctors, and Dr. Ram Parshad and a vaid, Uma Datt, came. Tek Chand was dead by then. The doctor treated Rup Chand with salt water and gave him enema but the treatment had no effect. Then he asked Chamanlal compounder, who was standing there, to bring a tube for washing the stomach as he suspected the case to be one of poisoning. Chamanlal left the place but did not return soon. The doctor himself went to get the tube and on reaching the Civil Hospital, he wrote out a report to the police and returned with the tube but by then Rupchand had expired.

3. The report from the doctor was received by the head constable Rameshwar Das and he registered a case at 5. 45 P. M. and proceeded to the spot and prepared the inquest report which was finished by 9-30 P. M. Puran was arrested at 10 O' clock that night, and after investigation, was challenged for the offence of murdering the boys.

4. At the trial Rameshwar (P. W. 7) a priest of Ballabgarh and Kishan Chand, P. W. 8, a boy of 10 or

11 years of age, gave evidence that 'churan' was administered by Puran to the two unfortunate boys in their presence. Their evidence did not impress the Sessions Judge and he declined to place any reliance on it. The High court accepted it and remarked that the Sessions Judge unnecessarily viewed it with suspicion by being unduly impressed by the fact that in the inquest report the name of Puran was a subsequent interpolation. We have been taken through the evidence of these two witnesses and have no hesitation in endorsing the opinion of the trial Judge that they are not witnesses of truth. Rameshwar stated as follows:

"About 5 months ago one afternoon at about 3 P. M., I was going to my house from the bazar and in the way I saw a snake charmer displaying his show in front of Shambu Dayal's house and when I was there I heard someone uttering in a 'loud voice' 'Abe-kha le churan'. I turned round and I saw Puran accused giving 'churan' to Tek Chand and Rup Chand, sons of Mulchand. Two or three other little boys were also there. Puran placed his 'churan' on the palms of these boys and they raised palms of their hands and took it near their mouth and then I passed on. I saw all this when passing my way and I did not stay there."

In cross-examination he admitted that there was a dispute between him and the accused's father about a wall built by him on a site claimed by the father of the accused. The witness thus cannot be considered to be quite a disinterested person. He said that he voluntarily went to the police and made his statement there at about 6-15 or 6-30 P. M. His name, however, is not mentioned in the inquest report which was completed by 9-30 P. M. The courts below have found that even the name of the accused was not mentioned therein but was subsequently interpolated in it.

In these circumstances it could not be said that the Sessions Judge was in error when he rejected the evidence of this witness and described him as a chance witness, Such witnesses have the habit of appearing suddenly on the scene when something is happening and then of disappearing after noticing the occurrence about which they are called later on to give evidence. The witness did not see that 'churan' was eaten by the boys in his presence, he admitted the presence of a number of women and children at the time when the accused gave 'churan' to the two boys.

5. The next witness Kishan Chand is a boy of immature years. He deposed as follows:

"About six months ago one afternoon a snake charmer was showing his trick in front of Shambu Dayal's house. ... When the show was over and the snake charmer had left, Puran accused gave some 'churan' to Teka which he ate and then he offered some 'churan' to Rupi to eat. I then went to my house and so did Teka and Rupi go to their homes. Rameshwar P. W. also saw this 'churan' being taken."

In cross-examination he gave a version different to that given by Rameshwar about the administration of 'churan' by Puran to the two boys. He stated that Rupi spit some of the 'churan' but Teka did not and that Rupi took only half, that there was no woman in the 'tamasha'. The spot where 'churan' was given to the boys was described by him as the Chabutra of Shambu Dayal from which Puran was witnessing the 'tamasha'. Rameshwar, however, mentioned a different place where, this event took place. The witness was confronted with his statement made before the police wherein he had stated as under:

"After the 'tamasha' was over, I was coming to my house. I saw Puran Brahman saying to Tek Chand and Rup Chand, sons of Mul Chand Brahman that they should eat 'churan', so that they might never have a stomach trouble and that it was good digestive 'churan'. But Tek Chand and Rup Chand

'refused to take it.' 'Thereupon Puran threatened them and forcibly made them eat the churan". At that time Rameshwar Dutt Brahman and several children were present there."

No satisfactory explanation is forthcoming about these material discrepancies in the two statements made by him. From the statement made to the police it appears that the accused administered 'churan' to the boys by force and in the presence of a number of persons. It is highly improbable that if Puran was administering poison to the boys he would do so in a public place and in the presence of a number of people and in the manner deposed to by this witness. In the inquest report no mention is made of the name of this witness. It cannot be said therefore that the Sessions Judge was in error when he found that his evidence could not be accepted. The direct evidence in the case therefore is not such from which the guilt of the appellant can be held proved.

6. The boys' father, mother, uncle and sister and one Bhoji Ram, gave evidence that the two boys stated that Puran had made them eat 'Churan'. The learned Sessions Judge was of the opinion that the evidence given by these witnesses was all exaggerated and not worthy of belief. The High Court took a different view. After perusing this evidence we are inclined to agree with the view of the learned Sessions Judge before whom the witnesses appeared and made statements.

7. Ram Kali, the mother of the boys who was the first to notice their illness, stated as follows :

"On my inquiry from my boys Tek Chand, the elder boy first said that Puran had given 'churan' to both of them and then Rup Chand said the same thing and also said that Tek Chand had taken the whole quantity while he had taken some and had spitted the rest but Puran had made him eat more after threatening him. They also told me that they were in front of Shambu's house when Puran gave them 'churan' and that Rameshwar and Krishna were also present there "

In cross-examination she failed to give any satisfactory explanation for the discrepancies between her statement made in court and that made before the police. She was not able to explain why she did not mention this fact to Dr. Ram Parkash. If the boys had made statements as alleged by her and also had mentioned the names of the two eye-witnesses (which is highly improbable), it is most unlikely that their names would not have found place in the inquest report. Tribeni Pershad admitted that he and his brother Mulchand were inimical to the accused's family because thirty years ago their father was poisoned by accused's father.

It is thus plain that the accused could have no motive in poisoning the two unfortunate boys; on the other hand, Tribenipershad, Mulchand and their family people have certainly a motive for implicating Puran in a false case in order to take revenge for the alleged crime of his father. The evidence of the family witnesses as to the statement supposed to have been made by the two boys does not seem to be worthy of credence in view of the evidence of Dr. Ram Parkash who is an independent witness in the case. Dr. Ram Parkash when called to render medical aid to the boys, made an inquiry as to what the boys had eaten and this is what he says about it :

"When I arrived at the house I found one of the boys dead, while the other Rup Chand was still alive and he was having convulsions. Before I arrived there a number of doctors were already there and they were doctor Gian Chand, Sohanlal, vaid, Uma Datta, vaid. Rup Chand was in his senses at that time and he could talk sensibly. 'On an inquiry made by Gian Chand from Rup Chand if he had taken any sweets or khowa, Rup Chand replied in the negative'. Parents of the boys were then questioned and it was given out by them that the other boy was saying that the two brothers had been administered some 'churan' by Puran.... I did not mention in my statement before the police or

before the committing magistrate that on an inquiry from the parents they said that Tek Chand was saying that they had been given 'churan' by Puran accused.

I have given my evidence today on refreshing my memory from my notes Ex. P. W. 2/1 which I prepared at the house of Mulchand. Then I went there after the death of Rup Chand. There is no mention in these notes about what the parents of the boys told us at that time. When I first arrived at the spot 'I did inquire from all present about the history of the boys, but I was not given any definite history by those persons, however, different versions were being given by different persons present. Rup Chand boy did not mention about having taken churan in any form.'"

From this statement it is quite clear that neither Rup Chand nor the parents told Dr. Ram Parkash, when he arrived at the scene, that churan had been administered to the boys by Puran. There is no reason to distrust this testimony and if this is believed, it conclusively proves that the evidence now given by the members of the family is not true and that the story that Puran gave churan was an afterthought and was concocted subsequently on suspicion that in all likelihood their enemy Puran must have given churan to the boys. This also explains the interpolation of the name of Puran in the inquest report after it had been completed.

8. The homeopath, Dr. Gian Chand, deposed that he saw Puran at the house of Mulchand at 7 or 8 p.m. and that when Dr. Ram Parkash arrived he did inquire the history of the boys and that at that time he did not tell him that Rup Chand or Tek Chand had told him that Puran had given churan to them nor anybody else talked about churan to Dr. Ram Parkash, and that he (the witness) did not tell anybody about what the boys had told him regarding churan. It is highly unlikely that if churan had been given by Puran and the boys had said so to all present there, then the doctor who was specially called for treatment would not have been told about it either by Rup Chand or by the persons present there or that the accused would have come to Mulchand's house after having committed the crime.

The two v aids who were admittedly there were not called to give evidence and no satisfactory explanation has been given why they were kept out of the witness box. Bhoji Ram, P. W, 10, a neighbour, deposed that he went to see Rup Chand, the ailing boy and sat by his side and inquired if he had taken anything and the boy replied that Puran had made him eat some 'churan'. In cross-examination he admitted that he gave evidence against Puran in a theft case in which Puran was convicted and bound over for a year. It is obvious that this witness is not on good terms with the accused. The evidence of this witness as to the statement made to him by Rup Chand cannot be accepted as true in view of the evidence of Dr. Ram Parkash and Dr. Gian Chand. The witness said that when Rup Chand replied to his query both Dr. Ram Parkash and Dr. Gian Chand were present. This has been denied by them. The trial Judge was thus right in not trusting this witness.

The evidence therefore as regards the dying declaration made by the two boys cannot be accepted as true.

9. The last piece of evidence in the case is the alleged confession of Puran. The confession is in these terms:

"On 10-2-1950, I went to Delhi from Ballabgarh, I was to appear in the court on 11-2-1950. At about 3 p.m. on 10-2-1950. I reached Delhi and purchased two tablets of strychnine poison (kuchla) from the shop of a Hindu in the mohalla of Phatak Hashab Khan for one rupee at the rate of annas eight. On 11-2-1950, I came back to my house from Delhi. I powdered two tablets of kuchla and

mixed it into the churan. On 18-2-1950, I administered this poisoned churan to my both the cousin brothers. The name of one is Tek Chand aged 7 years and Rup aged 9 years. In the noon time, I administered this poison to both of them in the street of Ballabgarh where snake show was going on.

After two hours, their body began to become stiff. At that very time, they reached their house. The mohallahwalas told that they had been administered some poison by somebody. The remaining poison was mixed in the sand by me Mittar Sain who is my uncle suspected me, gave my name to the Police. I had enmity with Mittar Sain. Mittar Sain told one brother, Mulchand who had two sons. I gave the poison to them for experiment, in order to see if they would die or not. because I had learnt from Sadhus that a man dies with the use of kuchlas. Both the boys died after two and a half hours time."

It was made before a magistrate on the 24th February, while the accused was in the custody of the police, i.e., six days after his arrest and was retracted on the 7th March, after a fortnight of its having been made. It is a settled rule of evidence that unless a retracted confession is corroborated in material particulars, it is not prudent to base a conviction in a criminal case on its strength alone. Our attention has not been drawn to any evidence which corroborates in material particulars the statements contained in the confession. The learned Sessions Judge observed that whatever evidence had been placed on the record contradicted the confession instead of corroborating it. The High Court was of the opinion that the oral evidence above discussed sufficiently corroborated the confessional statement. That evidence, however, is not worthy of belief and cannot be used for this purpose. The prosecution was in a position to lead evidence in corroboration of the confession but it did not do so.

Puran in the confessional statement had said that he went to Delhi on the 10th February to attend a case on the 11th. This fact, if true, could easily have been proved. It could have been ascertained from him in what court he had to appear on 11-9-1950. It appears that the statement made by him that he went to Delhi on the 10th is not true. It was then stated by Puran that he purchased two tablets of kuchla from a shop in Phatak Hashab Khan. Effort was made to find a shop-keeper in that locality but he was not called to give evidence in the case. If the statement in the confession was true that he had purchased two tablets of strychnine from a shop in Phatak Hashab Khan, this fact could easily have been proved by the evidence of the shopkeeper as no poison can be sold to a person without his signature being taken on some kind of register maintained for the purpose.

Then it was stated by Puran that he powdered the two tablets in a pestle and mortar, mixed them with churan and administered it to his cousin brothers and the remaining poison he mixed with sand. The pestle and mortar and the sand were sent to the chemical examiner but no traces of poison were found in them. These facts therefore instead of supporting the confession go against its truthful character. In the confessional statement no mention was made by Puran of the two eye-witnesses, Rameshwar and Kishen Chand. The High Court was therefore in error in placing reliance for the conviction of the accused on his confessional statement.

10. It seems to us that the attention of the High Court was not drawn to this Court's decision in - 'Surajpal Singh v. State', AIR 1952 SC 52 (A), wherein it was pointed out that though the High Court has full power to review the evidence upon which an order of acquittal is founded, yet the presumption of innocence of the accused being further reinforced by his acquittal by the trial Court, the findings of that Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons. In - 'Sheo Swarup v. Emperor,' AIR 1934 PC 227 (2) (B), their Lordships of the Privy Council observed that no

limitation should be placed upon the power of the High Court to review at large the evidence upon which the order of acquittal is founded but that in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should, and will, always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a judge who had the advantage of seeing the witnesses.

We have not been able to see that any compelling or substantial reasons existed for reversing the acquittal order in this case and none has been pointed out by the High Court in its decision. No attempt has been made in the judgment to discuss the evidence of the prosecution witnesses or to explain satisfactorily the discrepancies that were of a material nature and which had been pointed out in those statements by the Sessions Judge in his careful and detailed judgment. We are satisfied that this was not a case for interference with the acquittal order in an appeal under S. 417, Criminal P.C.

11. For the reasons given above we allow this appeal, set aside the order of the High Court and restore the order of the Sessions Judge acquitting the appellant.

Appeal allowed.

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