SUPREME COURT OF INDIA

Mohan

Vs.

State of U.P.

Crl.A.No.108 of 1959

(S. K. Das, A. K. Sarkar and M. Hidayatullah, JJ.)

05.11.1959

JUDGEMENT

SARKAR, J.:

1. This appeal is entirely without substance.

2. The appellant was convicted by the Sessions Judge of Budaun for the murder of one Ram Bharosey on 15-11-1957, by giving him "peras" (sweets) containing arsenic, to eat, and sentenced to death. On appeal the conviction and sentence were confirmed by the High Court at Allahabad. The appellant has now appealed to this Court with special leave.

3. Ram Bharosey was the cousin of the appellant. About noon on 15-11-1957, Ram Bharosey went to his field to graze cattle. His sister Chameli followed him a little later. On reaching the field Chameli took charge of the cattle and Ram Bharosey began to scrape grass. Sometime in the afternoon the appellant came to Ram Bharosey in the field from the side of the river Ganga and told him that he had brought "prashad" of Gangaji and gave him three "peras" to eat. Ram Bharosey took the three "peras". This took place in the presence of Chameli. One Bikram who was grazing cattle nearby, also saw the appellant giving "peras" to Ram Bharosey. Both Chameli and Bikram asked the appellant for "prashad" for themselves but the appellant told them that he had no more "prashad" to give. Thereafter, the appellant went away in the direction of his own house. Half an hour later, Ram Bharosey began to feel unwell. He had nausea, pain in body and giddiness. He then asked his sister to take him home. Bikram also came to Ram Bharosey when he complained of feeling unwell and to him Ram Bharosey said that he had become sick since eating the "peras" given by the appellant and that he thought that the appellant had given him poison. Ram Bharosey's illness grew worse when he came home and a number of neighbours came to see him, and to some of them he said that he had become ill after taking the "peras" given by the appellant and that he though that the appellant had put poison in them. Ram Bharosey died about dusk.

4. Ram Bharosey's father. Thakuri, who was away from home arrived next morning and lodged information at the police station. Investigation ensued and a post-mortem examination of the body of Ram Bharosey was held. The post-mortem did not disclose any cause as to death. The viscera of Ram Bharosey was however sent to the Chemical Examiner and he found over twenty eight grains of arsenic in it. That was much more than what is sufficient to kill a normally healthy person and both the Courts below have found that the arsenic had killed Ram Bharosey.

5. It also appears from the evidence which was accepted by the Courts below, that before leaving for the field Ram Bharosey and Chameli had both partaken of the same food which was prepared by Chameli, and after taking the food Ram Bharosey had preceded Chameli to the field. It further appears from the evidence that after taking the "peras" given by the appellant Ram Bharosey had taken no other food.

6. It was stated by the prosecution that the appellant had developed an illicit attachment for the wife of Ram Bharosey. It was suggested that that was the motive which caused the appellant to give poison to Ram Bharosey in the 'peras" with the intention of doing away with him.

7. On the evidence stated above both the Courts below found the appellant guilty of the offence of murder of Ram Bharosey by administering poison contained in the "peras."

8. The learned advocate for the appellant has first contended that the conviction is wrong in law in view of the decision of this Court in Dharambir Singh v. The State of Punjab, Cri. App. No. 98 of 1958 (SC). That was a case of murder by poisoning. It was there said:

"Three questions arise in all such cases, viz., (firstly), did the deceased die of the poison in question? (secondly), had the accused the poison in question in his possession? and (thirdly,) had the accused an opportunity to administer the poison in question to the deceased? Therefore, along with the motive, the prosecution has also to establish that the deceased died of a particular poison said to have been administered, that the accused was in possession of that poison and that he had the opportunity to administer the same to the deceased, ..."

9. The learned advocate contended that in the present case the second element stated in Dharambir Singh's case, Cri. App. No. 98 of 1958 (SC), namely, proof of the possession of the poison by the appellant was wanting. We think that this contention is wholly unfounded. The evidence in this case shows that the appellant gave Ram Bharosey the "peras" and within half an hour he became ill and died within two hours. It is also clear from the evidence that the food which Ram Bharosey had taken before noon did not contain arsenic or any other poison for Chameli also took the same food and suffered no ill-effect whatever. There is further no evidence that in the field Ram Bharosey took any food apart from the "peras" given to him by the appellant. Lastly, of course, it is clear from the result of the chemical examination that he had died of arsenic poisoning. The courts below found from all this -a finding to which in our opinion no exception can be taken - that arsenic was contained in the "peras" given by the appellant to Ram Bharosey. We did not understand the learned advocate to challenge this finding. Now, it seems to us that if there was arsenic in the "peras" which the appellant gave to Ram Bharosey, it inevitably follows that the appellant was in possession of arsenic before he gave them to Ram Bharosey. Therefore, in our view, the second proposition mentioned in Dharamabir Singh's case, Cri App. No. 98 of 1958 (SC) on which the learned advocate for the appellant relies, is satisfied in the present case.

10. We would like also to point out that Dharambir Singh's case, Cri. App. No. 98 of 1958 (SC) is different from the present case. There, there was no proof of anything to eat having been given by the accused to the deceased. The question was, whether, in the circumstances of the case, a reasonable inference could be drawn that the accused had given poison to the deceased. In the present case, we have direct evidence that the "peras" were given by the appellant to Ram Bharose and the only reasonable conclusion is that those "peras" contained arsenic which caused the death of Ram Bharosey.

11. The next point of the learned advocate is that there were no signs of corrosion in the stomach or of the nails having turned bluish and no other symptom indicative of arsenic poisoning., It is enough for us to say in regard to this contention that no question had been put to any witness to elicit what symptoms would appear in a case of arsenic poisoning. The medical evidence is clear that death was due to arsenic poisoning. That evidence was accepted by the Courts below. We cannot allow that point to be recanvassed here.

12. The learned advocate then referred us to certain text-books on medical jurisprudence and, relying thereon, contended that in the case of arsenic poisoning, death would ensue after fortyfive minutes and before twenty-four hours from the administration of it. His contention was that as the death in the case occurred in less than two hours, it could not have been due to arsenic. Again we have to point out that this aspect of the matter was not put to any witness and does not appear to have been raised in the Courts below. We are therefore not prepared to allow it to be canvassed before us. Furthermore, if death from arsenic could occur at any time after forty-five minutes and before twenty-four hours from its administration, death occurring within two hours of the administration of a drug may well be due to arsenic poisoning.

13. Lastly, the learned advocate pointed out that there was evidence that on Jagan had beaten Ram Bharosey and his father Thakuri a few days before 15-11-1957. According to him, this proved that there was enmity between Jagan and the deceased and therefore it might have been Jagan who had administered the poison. The same suggestion had been made in the Courts below and rejected. The point raised is purely a point of fact and we do not propose to go into it. We are quite satisfied that this point was rightly decided against the appellant in the Courts below.

14. In the result, the appeal is dismissed.

Appeal dismissed.

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