

Bhupendra Nath Prasad

Vs

State of Bihar

Criminal Appeal No. 433 of 1991

(K. Jayachandra Reddy, G. N. Ray JJ)

31.07.1992

JUDGEMENT

K. JAYACHANDRA REDDY, J.:-

1. The sole accused in the case is the appellant. He has been convicted under Ss. 302 and 328, IPC and sentenced to undergo imprisonment for life under S. 302, IPC and no separate sentence was awarded under S. 328, IPC. The appeal preferred by him was dismissed by the High Court. Hence the present appeal pursuant to the special leave granted by this Court. It is alleged that he committed the murder of Chandra Mani Lal Chowdhary (the deceased) by administering poison. The prosecution case is as follows:

The deceased was the husband of Smt. Kamla Kumari Devi, P.W. 7, the informant in this case. There was a litigation between the accused and the deceased. Therefore they were on inimical terms. However, the accused tried to establish friendship with the deceased putting an appearance of having changed in his attitude and used to visit the deceased now and then. On 7-2-79 at about 7 p.m. the accused visited the house of the deceased and requested him to go to his house. In spite of the protests made by his wife and daughters the deceased went to the house of the accused. He returned at 9 p.m. in the night and started vomiting. He informed his wife that after he took betel (pan) offered by the accused at his residence he had five or six vomittings and became restless. The informant P.W. 7, Kamla Kumari Devi and her family members took the deceased to Dr. Arun Kumar Sinha, P.W. 6 attached to the local hospital. He admitted the deceased in the hospital. He found the deceased to be in drowsy condition. The wife and other family members of the deceased told the Doctor, P.W. 6 that somebody made the deceased to take wine and betel and thereafter he started vomiting. P.W.6 treated him by giving a stomach wash and preserved the same. He informed the police. The deceased, however, died at 1-40 a.m. After recording the statement of P.W. 7, the wife of the deceased an FIR was registered and the investigation was commenced by P.Ws. 12 and 13, the Investigating Officers. The dead body was sent for post-mortem. The Doctor, who conducted the post-mortem, sent the viscera to the Chemical Examiner and reserved the opinion regarding the cause of death till the report of the Chemical Examiner was available. However, the report of the Chemical Examiner was not even marked in the case and therefore from the post-mortem report the cause of death could not be ascertained. It may also be mentioned that the Doctor who conducted the post-mortem was not examined. The

prosecution examined the daughters of the deceased namely P.Ws. 8, 9 and 10. The prosecution, however, relied on the Chemical Examiner's report regarding the vomitted substance which shows that Strychnine Nux Vomica, a poison was present in the gastric contents and the vomitted substance, The trial court relying on the oral testimony of the wife and the daughters of the deceased who deposed that the deceased told them that the accused took him to his house and gave him betel and thereafter he became giddy and vomitted and also on the other circumstance that in the vomittings and the gastric contents Nux Vomica was found by the Chemical Examiner, reached the conclusion that the prosecution has established that the accused administered the poison to the deceased which resulted in his death. The appeal preferred by the accused was dismissed by the High Court.

2. Learned counsel for the appellant submits that the earliest version was that the deceased told his family members that somebody gave wine and betel to him and it is only in their later version that they improved and implicated the accused by stating that the deceased told them that it was the accused who gave him the betel. His further submission is that the cause of death is not established by the prosecution and therefore it is highly unsafe to convict the appellant.

3. We find considerable force in this submission. P.W. 6, the Doctor, in his chief examination itself has stated that the family members who brought the deceased to the hospital told him that somebody made him to take wine and betel and that since thereafter he started vomiting and feeling giddiness. In cross examination P.W. 6 further admitted that he has written in the bed-ticket that the death was due to cardio respiratory failure. It is also elicited from him that such failure could be due to over drinking of wine or due to poison. He also stated that when brought to the hospital, the wine odour was coming from the mouth of the deceased. So his evidence is not very helpful as to the cause of death. As already mentioned the Doctor, who conducted the post-mortem, has not been examined. However, the post-mortem certificate is on record. It only shows that the viscera was preserved for chemical analysis and the opinion as to the cause of death was reserved till the report of the Chemical Examiner regarding the viscera was received. As already noted no such report of the Chemical Examiner has been produced nor the Doctor who conducted the post-mortem has given any opinion as to the cause of death. Therefore we are left with the Chemical Examiner's report given on the basis of the test examination of the stomach wash and the vomitted substance, said to have been seized by the Police and sent to the Chemical Examiner. P.W. 6 the Doctor does not speak about any such seizure. P.W. 1, a Compounder in the hospital, however, deposed that the vomitted substance was put in a bottle and sealed but he does not say that the same was seized. P.W. 3, however, deposed that the police officer seized the vomitted substance at the house of the deceased and a seizure report was prepared and he affixed his signature. P.W. 12, an Investigating Officer also stated that he seized the vomitted substance. It is needless to say that in a criminal case the cause of death has to be ascertained conclusively. As already noted the post-mortem report does-not in any manner establish the same. Even accepting that Nux vomica was found in the vomitted substance it "cannot be concluded that the death was due to poisoning and particularly when P.W. 6, the Doctor has noted that the death was due to cardio respiratory failure either due to taking excess wine or due to poison. Admittedly the alcoholic smell was coming from the mouth of the deceased when he was unconscious. Therefore a reasonable doubt arises about the cause of death. Even otherwise there is no satisfactory evidence in this case that it was the accused who gave the betel containing poison to the deceased. The wife and the daughters of the deceased who took the deceased to the hospital stated before P.W. 6, the Doctor that the deceased told them that somebody gave him wine and betel and thereafter he became giddy. These witnesses were cross-examined with their earlier statements and P.W. 12, an Investigating Officer admitted that the wife of the deceased did not state before him

that the accused had taken her husband with him. Thus the evidence regarding the so-called oral dying declaration is also unsatisfactory and does not inspire confidence. It is well-settled that in a case depending upon circumstantial evidence all the circumstances should conclusively point towards the guilt of the accused. In this case even the cause of death has not been conclusively established. Therefore, we are constrained to interfere. Accordingly the conviction and sentence awarded against the appellant are set aside and the appeal is allowed. He is on bail. His bail bond shall stand cancelled. Appeal allowed.

</html