

State of U. P.

Vs

Charles Gurmukh Sobhraj

Criminal Appeal No. 676 of 1985

(M. K. Mukherjee, S. P. Kurdukar JJ)

06.08.1996

JUDGMENT

M. K. MUKHERJEE, J.-

1. Charles Gurmukh Sobhraj, the respondent herein, and Ms Maris Andree Laclare were placed on trial before the Additional Sessions Judge, Varanasi for having entered into a criminal conspiracy, along with one Ajai Chaudhary alias Mohal Lal, to cheat by impersonating themselves as Mr Nipier Ponant and Mrs Nicole Ponant at Nataraj Hotel, Varanasi and as Mr and Mrs Alan Aren Jacobs at Varanasi Hotel, Varanasi, to commit theft of passport, travellers' cheques and other articles belonging to one Mr A. A. Jacobs (the deceased), to forge signatures of A. A. Jacobs on his travellers' cheques and on Guest Registration Card in Varanasi Hotel and to use them as genuine documents and to commit the murder of A. A. Jacobs. They were also accused of having committed all the above illegal acts in pursuance of their criminal conspiracy; and Sobhraj was separately charged for commission of these offences on his own. On connection of the trial the learned Judge recorded an order of conviction and sentence against both of them for the offence of conspiracy and against Sobhraj alone for the offences punishable under Sections 302, 380, 420 and 467 IPC.

2. Aggrieved thereby they filed two separate appeals in the Allahabad High Court which were heard together by a Division Bench. Both the learned Judges comprising the Bench held, by their separate judgments, that the prosecution failed to establish its case against Ms Laclare and, accordingly, allowed her appeal. So far as Sobhraj was concerned the learned Judges were divided in their opinions and hence his appeal was laid before another learned Judge of the Court in accordance with Section 392 CrPC. The learned Judge, before whom the appeal was laid, opined that the appellant (Sobhraj) was entitled to the benefit of reasonable doubt and deserved to be acquitted of the various offences for which he had been charged. In accordance with the opinion so expressed the Division Bench allowed the appeal of Sobhraj and set aside the order of conviction and sentence recorded against him by the Additional Sessions Judge, Varanasi. The above order of the High Court is under challenge in this appeal preferred by the State after obtaining special leave.

3. (a) Briefly stated, the prosecution case is that on 3-1-1976 three foreigners and one Indian checked in at the reception hall of Nataraj Hotel, Varanasi at about 1.20 p. m. One of the foreigners was Jacobs (the deceased), an Israeli national and as subsequently revealed during investigation, the other two foreigners, who had represented themselves as a couple named Mr Nipier Ponant and Mrs Nicole Ponant, were Sobhraj, a French national, and Ms Laclare, a Canadian national. The fourth visitor was an Indian national, who gave out his name as Mohan Lal. After seeing and approving the rooms in the hotel, the Indian national first made an entry in the Arrival and Departure Register of the Hotel (Ext. 1) by putting down his name as Mohan Lal and after he had written the word 'I' to

indicate that his nationality was Indian, Sobhraj told him that he had to stay with Jacobs. Thereupon Mohan Lal deleted the incomplete entry and Sobhraj made an entry in the Register (Ext. 1) for himself as well as for his lady companion in the assumed names of Mr Nipier Ponant and Mrs Nicole Ponant. The deceased Jacobs and the Indian national then went to occupy Room No. '33' and Sobhraj and his lady companion Room No. '38', both on the second floor of the Hotel.

(b) On the following day (4-1-1976) at or about 12.30 p. m. Sobhraj and his lady companion checked out of the Nataraj Hotel on the pretext that it was very cold and that they would prefer to stay in Clarks Hotel, Varanasi. They then made a lump sum payment towards the joint hotel bills of the two rooms saying that the balance would be paid by the other two visitors. A little later, at or about 1 p. m., both of them checked in at Varanasi Hotel, Varanasi under the assumed names of Mr and Mrs Plan Aren Jacobs and they were allotted Room No. 115. Sobhraj made entries in his own hand writing in the Registration Card (Err. Ka-17). Sobhraj also encashed a travellers' cheque for 100 dollars at Varanasi Hotel by forging the initials of Jacobs.

(c) Sometime in the afternoon of 5-1-1976, Sobhraj expressed his desire to check out of the Varanasi Hotel. Accordingly, the cashier prepared the final bill for their stay at the hotel amounting to Rs 296.05. Sobhraj then paid the bill through travellers' cheques for 50 and 100 dollars, again forging the initials of Jacobs. After deducting the sum of Rs 296.05 the hotel employee paid the balance amounting to Rs 1008.95 to Sobhraj. After leaving Varanasi Hotel Sobhraj and his lady companion again went to Nataraj Hotel at 4.15 p. m. and made enquiries at the Reception Counter about their friends Mohan Lal and Jacobs, They were informed by the Manager Shri Narain Chandra Bhattacharya (PW 1) that both of them were in their room. Sobhraj and his lady companion then went to Room No. 33. After about 15 minutes Somaru (PW 2), waiter of the hotel, responded to a call made by Sobhraj from Room No. 33, for a glass of water. When Somaru brought the glass of water Sobhraj handed it over to Jacobs along with a pill. Jacobs swallowed the pill with the help of the water and thereafter Somaru left the room with the empty glass. After about 15 minutes all four of them went downstairs; and then seeing off Sobhraj and his lady companion Mohan Lal and Jacobs returned to their room.

(d) Since thereafter Jacobs neither took any meals nor came out of his room. No one else also visited his room. When even on 6-1-1976 Jacobs did not come out of his room and also did not ask for his meals throughout the day, Shri Bhattacharya (PW 1) went to his room and knocked at the door. As there was no response from inside the Manager turned the latchkey and opened the door. He found Jacobs lying dead on the bed. Immediately the services of Dr S. N. Rai were requisitioned who after examining Jacobs, declared him dead. Thereafter Shri Bhattacharya sent a report regarding the death of Jacobs to Chetganj Police Station.

(e) Chetganj Police Station, however, did not register any case on the basis of that report but commenced Dauyaft Hai after making the requisite entry in the general diary-book. Inspector Surendra Pratap Rai (PW 6) and Sub-inspector Ram Singh Chauhan (PW 9) then went to Nataraj Hotel and first got photographs (Ext. 3) of the deceased taken. After completing other formalities, Inspector Surendra Pratap Rai arranged to send the dead body for post-mortem, examination, Autopsy of the dead body of Jacobs was conducted by Dr A. K. Banejee, (PW 14) at S. S. P. G. Hospital,

Varanasi on 7-1-1976 at 3 p. m. According to the doctor the deceased did not have any external mark of injury. However, his abdomen was distended and signs of decomposition had set in. There was greenish discolouration of the pubic region, neck and lower part of the abdomen and the nails were cyanosed. Internal examination of the body revealed that membranes of the scalp were congested, Brain was decomposed, and right and left lungs were congested. Right side of the heart was empty. Peritoneum was congested and stomach contained 3 ozs. of greenish yellow pasty material. Small intestines contained digested food in its upper part and gases and minerals. Large intestine was empty and contained mucus and gases, liver was congested, gall bladder was half full and spleen and kidney were deeply congested. The doctor opined that the deceased had died about a day a half back but he could not give any opinion regarding cause of the death, preserved the viscera of the deceased which was sent to the Chemical Examiner Forensic Science Laboratory, Lucknow. The Chemical Examiner eventually reported that the viscera contained decomposition products of zinc phosphide poison and parts thereof also contained chloropromazine in traces.

(f) Investigation into Jacobs's death was entrusted to Inspector Ram Acharya Chaudhari (PW 20) of the Crime Branch of CID, Uttar Pradesh. On 13-7-1976 he came across a news item appearing in Swatantra Bharat, a Hindi daily published from Lucknow which contained some clue regarding the murder of Jacobs. Accordingly, he went to Delhi and interrogated Sobhraj who, at that time, was in custody of Tilak Nagar Police Station. Shri Chaudhari obtained the specimen handwritings of Sobhraj on six sheets of paper (Exts. Ka-50 to Ka-55). Thereafter on 26-7-1976, he seized the Register of Nataraj Hotel and along with the sample handwritings of Sobhraj earlier taken, sent it to the Handwriting Expert Shri Prakash Chandra Pathak (PW 19). It may be mentioned that till then the case was being investigated into by the police on the basis of the report which had been made by the Manager of Nataraj Hotel with regard to the death of Jacobs on 6-1-1976, but no formal first information report was lodged, Thereafter a formal first information report was lodged by Inspector Chaudhari at Chetganj Police Station on 30-7-1976; and after registering a case thereupon he went to Varanasi Hotel and seized the Guest Registration Card (Ext. Ka-17), bill for payment (Ext. Ka-22), the Register relating the entries in the name of A. Jacobs and a copy of the foreign exchange transaction receipt (Ext. Ka-21). Thereafter Shri Chaudhari went to Delhi and again obtained specimen handwritings of Sobhraj, [Exts. Ka- 38(1) to Ka-38(4)] in the presence of the Metropolitan Magistrate, Delhi. He sent those specimen handwritings as well as the Guest Registration Card (Ext. Ka-17) to the handwriting expert for his report. In course of his investigation, Shri Chaudhari seized some documents from Ranjit Hotel, Delhi and from Hotel Mandavi, Panaji, Goa.

(g) On conclusion of investigation Shri Chaudhari submitted charge- sheet stating therein that reliable evidence was available to establish that Sobhraj accompanied by deceased Jacobs and two others had gone to Hotel Nataraj, Varanasi on 3-1-1976 and checked in there; that while Sobhraj along with his lady companion stayed in Room No. 38 of the Hotel in the name of Mr and Mrs Ponant their other two companions, namely, the deceased Jacobs and one Mohan Lal stayed in Room No. 33; that while staying there Sobhraj stole the passport and travellers' cheques belonging to Jacobs and shifted to Hotel Varanasi; that on 5-1-1976 he came back to Hotel Nataraj and

administered zinc phosphide poison to Jacobs who tooe the same without suspecting any foul play and died as a result thereof; that Sobhraj and his lady companion then disappeared from Varanasi and that on 7-1-1976 they checked in at Hotel Mandavi, Panaji, Goa in the name of Mr and Mrs Alan Aren Jacobs.

4. Sobhraj pleaded not guilty to the charges levelled against him and denied the entire prosecution allegations. In his statement recorded under Section 313 CrPC he asserted that he was not even in India when the offences attributed to him were stated to have been committed.
5. In support of their respective cases the prosecution examined twenty-three witnesses and the two defence witnesses. Of the two defence witnesses, Dr C. B. Tripathi (DW 2), Lecturer, Department of Forensic Science, All India Institute of Medical Sciences, Banaras Hindu University was examined on behalf of Sobhraj whereas Ram Achabir Shukla (DW 1) an employee in the office of the Hindustan Times publication, Delhi was examined on behalf of Ms Laclare.
6. On a detailed discussion of the evidence adduced during the trial the learned trial Judge and the High Court recorded concurrent findings in respect of the following facts and circumstances:
 - (i) On 3-1-1976 at or about 1.20 p. m. three foreigners, of whom two were men and the third a woman, and an Indian national checked in at Hotel Nataraj, Varanasi. While one of the foreigners was the deceased Alan Aren Jacobs the other two foreigners, checked in in the name of Mr Nipier Ponant and Mrs Nicole Ponant;
 - (ii) On 4-1-1976 the two foreigners who posed as Mr and Mrs Ponant left Nataraj Hotel on the pretext that they were going to stay in Clarks Hotel but instead thereof they went and checked in at Hotel Varanasi in the name of Mr and Mrs Alan Aren Jacobs after stealing the passport of the deceased Jacobs and tampering with the same;
 - (iii) They also encashed the travellers' cheques belonging to Jacobs who had stayed back at Hotel Nataraj;
 - (iv) Those two foreigners encashed some more travellers' cheques belonging to Jacobs at Hotel Varanasi on 5-1-1976 and thereafter checked out of that Hotel;
 - (v) Then in the afternoon they went to Hotel Nataraj again, met Jacobs and the Indian in Room No. 33 and after sometime left the Hotel; (vi) Jacobs was found dead in Room No. 33 of Nataraj Hotel on 6-1-1976; and
 - (vii) On 7-1-1976 those two foreigners checked in at Hotel Mandavi, Panaji, Goa on 7-1-1976 in the name of Mr and Mrs Alan Aren Jacobs.

7. After recording their respective findings that the above facts and circumstances stood conclusively proved the learned courts below proceeded to consider the evidence laid by the prosecution to establish that those two foreigners were Sobhraj and Ms Laclare. The witnesses who came forward to prove this part of the prosecution case were Narain Bhattacharya (PW 1), the Manager, and Somaru (PW 2), waiter of Nataraj Hotel, and Miss Arti Chatterjee (PW 11), a receptionist, and Devashish Banerjee (PW 12), an Assistant of Varanasi Hotel. All of them identified Sobhraj as the foreigner who had accompanied the deceased and was concerned in the various objectionable activities. Besides, the prosecution relied upon the evidence of Shri Prakash

Chand Pathak (PW 19) the Handwriting Expert. He opined on comparison of the sample handwritings of Sobhraj, handwriting of the person who had checked in at Hotel Nataraj in the name of Mr and Mrs Ponant and the handwriting on the Guest Registration Card at Hotel Varanasi, wherein the said foreigner had checked in in the name of Alan Aren Jacobs, that all the above writings were of one and the same person. He further opined that the words and figures appearing in the sample writings tallied with the two writings obtained from Nataraj Hotel and Varanasi Hotel.

8. While the trial court found the evidence of identification of Sobhraj by the four employees of Nataraj and Varanasi Hotels reliable, more so, when it was corroborated by the opinion of the handwriting expert, the High Court found it difficult to accept such evidence and the reasons given by the High Court for the same were that those four witnesses identified Sobhraj after a lapse of more than five years and at no stage during the investigation was the capacity of the witnesses to remember the features of the foreigners who had checked in at the Hotels Nataraj and Varanasi got tested by conducting usual identification proceedings. The High Court felt that in absence of any test identification parade so held it was wholly unsafe to rely on the bare testimony of the witnesses regarding identification for the first time in court and that too after a long lapse of time. In making the above observations the High Court also took into consideration the fact that the above four witnesses admitted that they had brief occasions to see the foreigners who had come to stay in their Hotels and that too in the usual course of business. According to the High Court their evidence did not disclose any special reason for them to retain the image of the foreigners concerned for a period of almost six years i. e. till they came to give evidence before the court in the year 1982. The High Court also took note of the fact that Sobhraj was shown to Narain Chandra Bhattacharya (PW 1) and Somaru (PW 2) while he was in the lock-up of Tis Hazari Court of Delhi. So far as the evidence of handwriting expert was concerned, the High Court detailed the manner in which the sample handwritings were taken as also the opinion of the expert and on a thorough discussion thereof observed as follows:

"In my opinion in a case like the present one where the expert bases his conclusion about identity of the person who had written the questioned documents by comparing the same with the sample writing (which, in his opinion, appeared to be disguised) merely on the ground that there was some similarity in some of the letters and figures occurring in the sample handwritings here and there and similar letters and figures appearing in the questioned documents, it would not be safe to act upon such opinion unless it stands corroborated by some other reliable evidence. In the instant case such a corroboration, if at all, could be provided by the evidence of four witnesses, namely, N. C. Bhattacharya (PW 1), Somaru (PW 2), Km Arti Chatterjee (PW 11) and Devashish Banerjee (PW 12) identifying the appellant as the person who wrote the questioned documents. But, as already held, the evidence of these four witnesses in this regard is wholly unreliable.

As. in my opinion, the present case is not such in which identity of the person writing the questioned document can be fixed merely on the basis of uncorroborated testimony of the handwriting expert and as such corroboration is not forthcoming, I am of opinion that the prosecution has failed to establish that the questioned documents were in the handwriting of appellant charles Sobhraj."

9. For the foregoing discussion the High Court recorded a finding that the prosecution failed to conclusively establish that Sobhraj was the male foreigner who had accompanied Jacobs to Varanasi on 3-1-1976, stole his passport and travellers' cheques and utilised the same for his ulterior purposes

after tampering with them.

10. Apart from its inability to accept the evidence of Somaru (PW 2) regarding identification of Sobhraj as the foreigner who came to Nataraj Hotel, the High Court further found that his statement that on 5-1-1976 at or about 4.30 p, m, he brought a glass of water as ordered by Sobhraj and that Jacobs swallowed a pill offered by Sobhraj with the water from that glass (which according to the prosecution contained a poisonous substance and ultimately resulted in the death of Jacobs) was wholly unacceptable. The grounds canvassed by the High Court for such conclusion were, that Somaru did not disclose such an important fact to the police till 28- 5-1976, even though since the offence was committed, he had met them on a number of occasions; that it was unlikely that Sobhraj would have asked him to fetch a glass of water to give a pill to the deceased for Shri Bhattacharya (PW 1) had stated that a glass is normally kept in the rooms in the Hotel and there is also running water in the tap in the bathroom; and that if Sobhraj wanted to give a poisonous pill to the deceased he could have done it secretly, when he had such an opportunity instead of doing it in the presence of a waiter of the Hotel.

11. To ascertain whether any or all of the above findings recorded in favour of Sobhraj by the High Court can be sustained or not, we have carefully gone through the voluminous evidence adduced during trial. Having done so we are unable to hold that the findings are patently wrong or perverse so as to entitle us to disturb the same.

12. Though the conclusion drawn by the High Court, that the prosecution failed to prove beyond reasonable doubts that Sobhraj was the foreigner who had committed the offences in question, was itself sufficient to record an acquittal in his favour the High Court made a further probe into the question whether the prosecution succeeded in proving that the death of Jacobs was caused by administration of zinc phosphide poison as contended by the prosecution and answered the same in the negative. We need not however delve into this aspect of the prosecution case for even if we hold that the finding of the High Court in this regard cannot be sustained, still the appeal has to fail) for the reasons mentioned earlier.

13. On the conclusions as above we uphold the impugned judgment of the High Court and dismiss the appeal.