
(1984) 12 SHI CK 0006
In the High Court Of Himachal Pradesh

Amin Chand and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 19-12-1984

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 323

Citation : (1985) CriLJ 1450 : (1985) ShimLC 298

Hon'ble Judges : V.P. Bhatnagar, J;T.R. Handa, J

Bench : Division Bench

Judgement

V.P. Bhatnagar, J.—This appeal is directed against the judgment of the learned Sessions Judge, Shimla, dated August 29,1983, whereby accused Amin Chand was convicted u/s 302 I.P.C. and sentenced to life imprisonment and to pay a fine of Rs. 2,000/- and in default to undergo further rigorous imprisonment for six months. The Sessions Judge also convicted the said accused u/s 323 of the Penal Code and sentenced him to undergo rigorous imprisonment for one month thereunder. The other two accused, Pushpa and Bija Ram, were also convicted u/s 323 of, the Penal Code and sentenced to undergo imprisonment till the rising of the Court and to pay a fine of Rs. 500/- each and in default to undergo simple imprisonment

2. By a short order made on December 19, 1984, we accepted this appeal, quashed the conviction and sentence against the appellants and ordered their acquittal. Accused Amin Chand was in jail and it was directed that he should be released forthwith, if not required in any other case. It was further observed by us that the reasons for the order of acquittal would be recorded later. We now proceed to do so.

3. There are a few facts of this case which are not disputed by the parties and may be stated at the very outset. Accused Bija Ram and accused Pushpa are the father and wife respectively of accused Amin Chand. All of them are residing in village Koanu in one part of a house in the other part of which Sukh Nand, deceased, his son Ram Lal (PW5), his daughter-in-law, that is, Ram Lal's wife

Sheela (PW2) and Sukh Nand's wife are residing. The parties have their kitchens in the upper storey of this house. Both these kitchens have a common verandah which stands partitioned. There is some accommodation on the ground floor with a courtyard in front thereof. It is also admitted that the accused had old enmity with Sukh Nand, deceased and his family as they had a dispute over land.

4. The occurrence is stated to have taken place on January 18, 1982 at about 8 P.M. The prosecution case is that Sukh Nand, deceased had engaged two labourers, namely, PW-1 Jagat Ram and PW-3 Prem to work in his orchard and both of them were being served their dinner by said Sukh Nand at the time of occurrence. Accused Amin Chand started giving filthy abuses to the deceased who remonstrated and asked him not to do so. There was exchange of hot words between both of them. Sukh Nand went below and was standing in the courtyard of the house when accused Amin Chand is alleged to have hurled stone Ex. P-I at Sukh Nand which hit him on his abdomen. Sukh Nand started staggering but, meanwhile, accused Pushpa pelted another stone which hit him near his right ear. This resulted in the coming out of blood from the ear and further Sukh Nand fell down on the ground. PW 5 Ram Lal came to his rescue but was hit by accused Amin Chand with another stone in the forehead. Accused Bija Ram also threw another stone at Ram Lal which hit him on the right hand. PW 1 Jagat Ram and PW 3 Prem then carried Sukh Nand to the upper storey of the house. PW 5 Ram Lal and PW 1 Jagat Ram then informed Up-Pardhan Gian Chand and PW 4 Karam Chand, who is a member of the Panchayat, about the incident and both of them came to the place of occurrence. In the meantime, the condition of Sukh Nand became serious. PW 5 Ram Lal made an effort to procure a jeep belonging to PW7 Sher Singh, Lambardar but there was no petrol in it. He then went to village Jarol. and brought a doctor who rendered first aid to Sukh Nand and advised that he should be taken to hospital next morning. Sukh Nand " was accordingly taken to the Government Hospital at Rampur where PW 9 Dr. B. S. Negi examined him as well as PW 5 Ram Lal and issued medical certificates pertaining to their injuries at Ex. PW 9/A and Ex. PD respectively.

5. The prosecution case further is that PW 9 Dr. B. S. Negi sent a chit Ex. PW-9/B to the Police Station, Rampur about this medico-legal case. PW 11, ASI Dila Ram then came to the hospital and obtained the opinion Ex. PW 9/B/1 from the Medical Officer to the effect-that Sukh Nand was in a position to make statement. This statement is Ex. PW. 11/A. It bears the thumb impression of Sukh Nand and was recorded by PW 11, ASI Dila Ram on January 19, 1982. As Sukh Nand did not respond to, the treatment, he was referred to the Snowdon Hospital on January 20, 1982. He was taken to Shimla on an ambulance when he breathed his last some distance away from Narkanda towards Shimla. He was brought back to Rampur hospital where the Medical Officer declared him dead. The post mortem examination was conducted by PW 6 Dr, Sunil Anand on February 21, 1982 and his report is at Ex. PH. F.I.R. Ex. PW 10/A was lodged by PW 5 Ram Lal on January 21, 1982. The earlier incident had been recorded in the Roznamcha, as disclosed by the copies at Ex. PW 11/B. The stones Ex. P-I to Ex.

P-4 are stated to have been kept first by PW 3 Prem and then handed over to PW 4 Karam Chand from whose custody the Police seized them as case property,

6. The facts with regard to which the parties are not at dispute have been enumerated in para 3 above. These stand admitted by the accused in their statements recorded u/s 313, Cr. P.C. The remaining prosecution story has been denied in toto and no effort has been made to put forward any counter plea in defence.

7. It may be noticed from the facts given " above that PW 1 Jagat Ram, PW 2 Sheela, PW 3 Prem and PW 5 Ram Lal are the eyewitnesses of the occurrence. Their testimony is quite consistent and, leaving aside some minor discrepancies of inconsequential nature, free from any blemish. PW 4 Karam Chand is a member of the village Panchayat and he has also supported the prosecution case inasmuch as he, along with Up-Pradhan Gian Chand, came to the place of occurrence immediately after the occurrence on being informed about the incident by PW 5 Ram Lal and PW 1 Jagat Ram. PW 7 Sher Singh Lambardar has deposed that PW 5 Ram Lal asked him for jeep for taking his father to the hospital but that there was no petrol in the jeep. He arranged the petrol on the following morning and took Sukh Nand to the hospital at Rampur. PW 8 Lok Nath practises Ayurvedic system of medicines at Baghi. He has stated on oath that he had come to see his father at village Jarol on January 18,1982 and that his services were requisitioned for treating Sukh Nand, deceased on that night. He gave one analgin injection to Sukh Nand and also gave some tablets of the same medicine and advised PW 5 Ram Lal to take his father to the hospital immediately. The statement Ex. PW 11/A of Sukh Nand was recorded by PW. 11, ASI Dila Ram. This also corroborates the prosecution story in its material particulars. The learned Sessions Judge has construed the above evidence as formidable and worthy of credence. He was further of the opinion that the medical evidence also pointed out towards the criminal , involvement of the accused. He, therefore, convicted all of them under various sections of the Penal Code as mentioned in the very beginning of this judgment.

8. After having given this case our very anxious consideration, we do not feel satisfied with the view of the learned Sessions Judge as to the culpability of the accused. This is mainly due to the reason that the medical evidence in this case completely demolishes the prosecution case. Also, this is one of those cases where the ocular evidence cannot be permitted to have an edge over the medical evidence. In other words, die medical evidence falsifies the prosecution case in no uncertain terms. Obviously, this very important aspect of the case to which we shall be adverting to shortly has totally escaped" the notice of the learned Sessions Judge, resulting in grave error of judgment.

9. PW 6, Dr. Sunil Anand performed the post mortem examination on January 21,1982. Besides other injuries, he found the right lobe of the liver ruptured on the interior surface at two points and the size of the rupture was 2 cm. X 1 cm. He also found the spleen ruptured 2 inches long. Further, the small intestines

were haemorrhagic up to 6 feet and were also lacerated to the extent of 2 cm. As regards large intestines, the ascending colon was haemorrhagic near iliocaecal junction. In the opinion of Dr. Sunil Anand, Sukh Nand died of internal haemorrhage from the above mentioned injuries to liver, spleen and intestines leading to shock and cardio-respiratory failure. He further opined that these internal injuries can be caused by hitting the abdomen with stone like Ex. P-1. He denied the suggestion -that both the spleen and liver could not be ruptured by one blow with stone Ex. P-1. According to him, these injuries were sufficient in the ordinary course of nature to cause death of Sukh Nand. The learned Sessions Judge based his order of conviction inter alia on the above medical evidence. We find it simply impossible to believe and act upon the opinion thus given by Dr. Sunil Anand hi cross-examination, Dr. Sunil Anand was confronted with the following observations appearing at page 288 of Modi's Medical Jurisprudence and Toxicology (Twentieth Edition):

On account of its situation, rupture of a normal spleen is very rare unless caused by considerable crushing and grinding force, such as the passing of a carriage or motor car over the body, or by a crush in a railway accident, or by a fall from a very great height;

He agreed with the above observations but stuck to his earlier opinion that the injuries to spleen, liver and intestines found during the post-mortem examination could be caused by a single blow with stone Ex. P-1.

10. As the stone Ex.P-1 had not been fully described in the evidence, we sent for it and had it roughly measured It is an ordinary stone of about 5 inches in length and inches in width. We have serious doubts if a stone of this kind, even if hurled from a height, could cause all the injuries with a single blow on the abdomen. This is particularly so because the liver is situate on the right side of the abdomen whereas the spleen is on its left side. Intestines are spread over in the abdomen. We, therefore, summoned Dr. D. K. Ghosh, Lecturer, Department of Forensic Medicine, Indira Gandhi Medical College, Shimla and examined him on December 19, 1984. Dr. Ghosh is MBBS, MD from Calcutta University. He perused the post-mortem report Ex. PH and was shown the stone Ex. P-1. He thereafter gave the following opinion which may be reproduced verbatim:

I have gone through the post-mortem report Ex. PH and also of the statement made by Dr. Sunil Anand, PW 6 before the trial Court. I have also seen the stone Ex. P-1 in Court today. In my opinion, the various injuries found on the body of the deceased as per the aforesaid post-mortem report like rupture of the spleen, the rupture of the liver and the rupture of the intestines could not be caused with one blow by a stone like Ex. P-1. In my opinion, the deceased after receiving the injuries as mentioned in the -post-mortem report could not have survived for more than one hour.

Q. What are your reasons in support of your opinion that one blow with stone Ex. P-1 could not result in all the injuries on the person of the deceased as shown in

the post-mortem report Ex. PH.

A. All these injuries are not possible simultaneously by the stone Ex. P-I as liver and spleen are situated in the upper abdomen on the right and left side respectively separated by a distance of approximately 4 to 5 inches whereas the loops of the small intestines are all over the abdomen, more so, over the middle and the lower abdomen and iliocaecal region which is the junction of small and large intestines and is situated down in the lower abdomen on the right side, i.e. right ilio fossa and so single hit by a stone of this size, volume and weight is not possible until and unless the organs are diseased and the person soon thereafter has fallen down from a height on a hard rough surface hitting such an object or has rolled down from a height or from staircases.

Cross examination by Mr. M. R. Chaudhary, Assistant Advocate General : Nil Opportunity given.

Cross-examination by the counsel for the accused : Nil. Opportunity given.

Thus, our very first reaction to the truthfulness of the prosecution case on the conjoint evaluation of the testimony of eye-witnesses and the medical evidence stands fortified. To reiterate, we are of the firm view that the injuries found on liver, spleen and intestines of Sukh Nand, deceased could not have been possibly caused by one blow with stone Ex. PI. That Sukh Nand, on being hit second time near the ear, fell down at the place where he was standing in the courtyard, also does not explain the injuries. Obviously, he did not fall from a height nor any rolling down from a height or from staircase was involved. It, therefore, follows as a necessary corollary that these very injuries were caused in some other manner and that the true version has been withheld from the Court. The direct evidence, in this view of the matter, cannot be but totally false. We are also in agreement with the opinion of Dr. D. K. Ghosh to the effect that the deceased after receiving the injuries as mentioned in the post-mortem report could not have survived for more than one hour. If that be the case, his death on January 21, 1982, could not have been caused as a result of the injuries inflicted upon him as back as on January 18, 1982. This fact affords another strong reason why the prosecution case cannot be relied upon at all. It is not only difficult but simply impossible to uphold the findings of the learned Sessions Judge in this state of affairs.

11. We are aware of the rule pertaining to appraisal of evidence flowing from the interpretation of Sections 45 and 60 of the Evidence Act, 1872. If the direct evidence is satisfactory and reliable, it has to be preferred to expert evidence. In other words, such direct evidence cannot be rejected on hypothetical medical evidence. However, it is another matter in case the medical evidence is totally inconsistent with the direct testimony and renders the latter absolutely untrustworthy, as is the case over here. The witnesses may or may not have spoken the truth but it cannot be disputed that the liver, spleen and intestines of Sukh Nand were found ruptured. When all the witnesses depose that these

injuries have been caused as a result of one blow by the stone Ex.P-1, followed by a fall of a simple nature, they are telling lies because such injuries, to our mind, just cannot happen in this manner. Therefore, on the facts of this case, the only conclusion can be that the medical evidence in general and the opinion of Dr. Ghosh in particular belies the entire prosecution case and that the real cause of death has been concealed from the Court. Solanki Chimanbhai Ukabhai Vs. State of Gujarat, in support of his case. In that case, the deceased was given a kick on his back as a result of which the deceased fell down and then the assailant gave two-or three spear blows on the chest of the deceased. The doctor gave the following opinion in his cross-examination:

It is possible that two different instruments might have been used for causing external injuries Nos. 1 and 2, because external injury No. 1 is the incised wound and the external injury No. 2 is the stab wound. External injury No. 1 is more likely to have been caused when he might be in lying position rather than in sitting one. Looking to the nature of injury No. 1 it is not correct to say that the assailant might be standing and the victim might be sleeping flat. Injuries Nos. 1 and 2 are possible by a blow with dagger at the hands of the assailant, surmounting the victim.

Relying on the above opinion that two instruments might have been used for causing external injuries Nos. 1 and 2, the learned Sessions Judge in that case held that the doctor's evidence belied the prosecution case. The positive evidence of the doctor in examination-in-chief that both the aforesaid injuries were possible by a sharp cutting instrument such as the spear was ignored. In appeal, the High Court of Gujarat observed that it tantamounts to entering into the realm of conjecture in holding that injury No. 1 was not possible by spear because there was no specific cross-examination of the medical witness to elicit such a possibility. It further held that injury No. 1 could be caused by the spear if the blade of the spear had landed sidewise on the person of the deceased. It was in this background that the Supreme Court made the following observations in para 12 at page 825 of its judgment:

Ordinarily, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence.

In fact, the observations made above and the facts of Solanki Chimanbhai Ukabhai's case (supra) lend support to our view since the medical evidence in the present case is sufficient to prove conclusively that the injuries found on Sukh Hand could not possibly have been caused in the manner alleged by the

prosecution. The eye-witnesses, therefore, stand totally discredited and their testimony has to be thrown out.

12. Before parting with the case, we may also notice the cases of Bhajan Das v. Emperor AIR 1924 Lah 218 : 24 Cri LJ 421 and Emperor v. Saberali Sarkar AIR 1920 Cal 401 : 21 Cri LJ 666 cited by the learned Counsel for the accused in support of his contention that in case the accused is ignorant of deceased's diseased spleen and death is caused as a result of simple injuries, conviction can only be for causing simple hurt u/s 323 of the Penal Code. Those cases do not apply to the facts of this case at all because there is no evidence before us that the spleen of Sukh Nand was diseased or, for that matter, normal. In fact, this is a serious lacuna. The manner in which the post-mortem examination has been conducted by Dr. Sunil Anand, to say the least, is highly unsatisfactory. It was incumbent upon him to have noted down the general state of health of the spleen and the liver, their sizes and weight, after finding that these two organs had been ruptured. Dr. Sunil Anand, however, admitted that this was the first postmortem examination "conducted by him. He did so under the supervision of Dr. B. S. Negi but somehow the post-mortem report was not shown to Dr. B. S. Negi and not a single question was asked to him throughout his " testimony pertaining to any aspect of the postmortem examination.

13. In view of the reasons given above, we have no hesitation whatsoever in holding that the prosecution has miserably failed to bring guilt home to the accused. We have also no doubt in our minds that the injuries resulting in Sukh Nand's death were caused in a totally different manner than what has been projected before us in the evidence. Due to these compelling reasons, we accepted the appeal, set aside the order of conviction of the accused and made a brief order on December 19, 1984 that accused Amin Chand, who was in jail, be released forthwith.