
(1974) 09 SHI CK 0011
In the High Court Of Himachal Pradesh

M.L. Ahuja and Others

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 17-09-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 561A
Penal Code, 1860 (IPC) — Section 302

Citation : (1975) CriLJ 330 : (1974) 3 ILR HP 882

Hon'ble Judges : D.B. Lal, J;C.R. Thakur, J

Bench : Division Bench

Judgement

D. B. Lal, J.—This is an application presumably u/s 561-A of the Code of Criminal Procedure and has been preferred by three doctors of Ripon Hospital, Simla, namely Dr. M. L. Ahuja, Radiologist; Dr. J. K. application arises in the following circumstances.

2. A case Rama Nand v. State, u/s 302, Indian Penal Code, was put for trial before the Sessions Judge, Mandi. A skeleton was discovered from river Sutlej, of which post mortem examination was conducted by Dr. J. K. Sharma. Some components of that skeleton were sent to other doctors for determination of sex and age of the deceased. Dr. R, S. Pathania examined the mandible while the same was put under X-Ray test by Dr. M. L. Ahuja, Radiologist. The reports that arrived were despatched to the Police, and the dates indicated that long after the actual date of examination the documents could be placed in the hands of the Police. The post mortem examination was conducted "in a perfunctory manner". The mandible along with other components of the skeleton were sealed in two packets but these were subsequently broken because the mandible was sent to Dr. M. L. Ahuja and Dr. R. S. Pathania. while the other components were to be sent to Dr. O. P. Bhargava. Subsequently all the components were again put in sealed bundles and these were sent in that condition to Dr. O. P. Bhargava, Professor of Anatomy in the Medical College. Dr. J. K. Sharma being immature in post mortem examination, sought for the assistance of Dr, S. M. L. Grover the Chief Medical Officer, and even wrote down that it was proper for him to conduct

the post mortem examination with the assistance of the senior doctor. However, this assistance was not forthcoming and Dr. J. K. Sharma alone performed the post mortem examination. All this led to certain irregularities and even innocent mistakes, with the result that the entire medical evidence was discarded by the High Court. However, on the basis of other circumstantial evidence and taking whatever little assistance the Court could take from the medical evidence, the appeal was decided and a finding of conviction was recorded.

3. The learned Sessions Judge while recording the finding of conviction, was equally faced with the difficulty regarding medical evidence. He was a little more vociferous than the High Court and made certain sweeping generalisations as to the conduct of the doctors of the Ripon Hospital. Accordingly he has written certain paragraphs in his judgment to which exception has been taken and the present application has been filed for expunction of the remarks against the three doctors.

4. It is abundantly clear that a trial Court is expected to give only such remarks which are necessary to sustain a judicial finding. In other words, only such remarks need be made in the judgment which are in furtherance of the ends of justice and not to fulfil any other object except deciding the case in a correct perspective so that appropriate finding is given. It is undisputed that the remarks should be borne out from evidence and must not be pure surmises and conjectures made by the Court. If the intention is to harm any public servant, or even if that intention is missing but the remarks made are reckless and are likely to jeopardise the interest of public service and endanger the prospect of a public servant and even injure his reputation or harm his official career, such remarks require to be expunged as they are no longer necessary. In other words, the remarks made by the trial Judge should be bona fide and should be directed only to one and the only end, namely the dispensation of justice in trial.

5. While hearing the appeal and deciding the same in paragraphs 26 and 28 of our judgment we ourselves wrote the following:

Nevertheless he was asked to do the work which he did, apparently in a most perfunctory manner. (For Post mortem examination).

XX XX XX XX There is definite Indication that the report was delayed by him.

XX XX XX XX Thereafter he broke open the seals and brought the mandible himself to Dr. M. L. Ahuja, Radiologist.

XX XX XX XX If these statements are believed, it would be undisputed that the mandible could not be from the skeleton of a child bearing the age below ten years.

XX XX XX XX Upon this the learned Sessions Judge inferred that the mandible was replaced at some stage or the other, may be due to inadvertence on the part of Dr. J. K. Sharma who admittedly broke open the seals and brought the mandible from one place to the other in unsealed condition.

XX XX XX XX That is again an indication that most probably the mandible produced before Dr. Ahuja or Dr. Pathania or Dr. Bhargawa was not the same which was found with the skeleton.

It is abundantly clear that there is no finding by the High Court that Dr. J. K. Sharma intentionally committed any mistake or that his conduct was mala fide. It is a different question that being inexperienced he could not perform the post mortem examination in a proper manner. In fact, his conduct was all along bona fide because he pointed out, at the very first instance, that the case was complicated one and he must get assistance from his senior doctor. Again there is no finding by the High Court that the mandible was replaced by Dr. J. K. Sharma or any of the other two doctors. It is again quite a different question that somebody else who was interested, may be from the side of the accused, might have succeeded in replacing the mandible at any stage.

6. As to the dates given on the report, the same was delivered to the Police after some delay, but there is again no finding by the High Court that the delay was due to any extraneous reason or bad intention on the part of these doctors. Dr. Ahuja no doubt forgot to give the date on his report, but as his statement before the High Court indicated, he examined the mandible on the very day he received it from Dr. Sharma and wrote down his report. Therefore, in the opinion of the High Court, no exception could be taken, as to the conduct of these doctors, nor was it inferred that they acted in a mala fide manner, or that any dishonest motive was involved at any stage during the course of the medical examination.

7. Nevertheless, the learned Sessions Judge has made certain sweeping remarks which, in our opinion, were not called for and must be expunged. We give below such remarks for which we propose expunction under our inherent powers:

Dr. J. K. Sharma sat over the postmortem examination report till 19-10-1972 - (para 34).

XX XX XX XX (This inordinate delay in sending the report) smacks suspicion - (para 34).

XX XX XX XX So it is clear that this report was prepared by the radiologist some time before 21-6-1972. The only inference is that he made this report on 21-6-1972. (para 35)

XX XX XX XX This further shows that the report of Dr. Ahuja Radiologist was not ready on 17-6-1972, otherwise Dr. J. K. Sharma would have handed over the same to Shri Tek Chand A. S. I. along with this dental clinic report, on 17-6-1972. (para 36)

XX XX XX XX These two medical experts vitally differ suggesting that they examined two different mandibles, (para 37)

XX XX XX XX The whole things smacks nothing but that how carelessly and indifferently the post-mortem examination cases are handled inferring

inefficiency or dishonesty (para 37)

XX XX XX XX These acts of omission and commission on the part of the concerned medical doctors at the Rippon Hospital. Simla, in mishandling the case calls for a departmental probe and fixation of responsibility in order to obviate the repetition of such irregularities in such serious matters in future. (Para 39)

8. The above noted remarks, in our opinion, should be removed from the judgment and the language may be corrected mutatis mutandis for any future use.

9. .We, therefore, order according