Dharam Das Wadhwani vs State Of Uttar Pradesh on 14 March, 1974

Equivalent citations: 1975 AIR 241, AIR 1975 SUPREME COURT 241, 1974 4 SCC 267, 1974 9 SCR 607, 1974 SCC(CRI) 429, 1974 4 SCC 589

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, Hans Raj Khanna

PETITIONER:
DHARAM DAS WADHWANI

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT14/03/1974

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
KHANNA, HANS RAJ

CITATION:
1975 AIR 241
CITATOR INFO :
R 1991 SC1388 (8)

ACT:
Practice-Criminal Trial-Circumstantial evidence-Appreciation of

HEADNOTE:
The accused,a compounder in a hospital was charged with the offence under s. 328 I. P. C., of administering poison to one of the two doctors of the hospital. He was acquitted by the trial court but found guilty by the High Court. Dismissing the appeal to this Court,
HELD : The critical rule of proof by circumstantial evidence, is that such testimony can be the probative basis for conviction only if one rigorous test is satisfied, namely, that the circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and on

every reasonable hypothesis the guilt of the accused must be the only inference. Every evidentiary circumstance is a probative link, strong, or weak, and must be made out with certainty. Link after link forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link, taken separately, may just suggest but when hooked on to the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating facts suffice to convict a man. If a reasonable doubt arises regarding the guilt of the accused, benefit of that doubt cannot be withheld from him. But proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. [61 1E, G-H, 612A-B]

In the present case, the accused bore a grudge against the victim. When he was requested by the victim to bring aspirin he brought it in two packets. There were traces of strychnine crystals in the paper of the packet from which the victim had swallowed what he thought was aspirin, and an analysis of the stomach wash showed that he had consumed strychnine. The accused falsely denied that there was any stock of strychnine, He took a quarter of an hour to get the aspirin, suggesting that he went into the store room to take out a little strychnine. The circumstance that the two packets contained different substances-aspirin in one and strychnine in another-shows that the accused took the powders from 2 different bottles, eliminating the possibility of an accident. When another doctor asked him a searching question about the aspirin the accused was seen to be trembling. The accused never showed any anxiety to save the victim. In the commital court he took a false plea of denial and modified his plea in the Sessions Court to present a plausible defence. These circumstances lead to the only reasonable inference that he is guilty, and the other likelihoods are mere possibilities. [612C-G]

S.S. Bobade v. State of Maharashtra [1973] 2 SCC 801 and Kali Ram v. State of Himachal Pradesh A. 1. R. 1973 S.C. 2773 followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 222 of 1970.

Appeal by leave from the Judgment and Order dated the 15th January, 1970 of the Allahabad High Court at Allahabad in. Government Appeal No. 132 of 1967.

Nuruddin Ahmed, B. P. Singh AND A. K. Varma, for the Appel- lant.

o. P. Rana for the Respondent.

The Judgment of the Court was delivered by- KRISHNA IYER, J.-A few facts with unique features, attracting a recondite provision of the Penal Code, constitute the subject-matter of the criminal case which ended in an acquittal in the sessions Court reversed at the appellate level and is re- agitated before us in this appeal by special leave. The offence for which the accused has been punished is one under s. 328, I. P. C., for administering poison to a doctor by a compounder with intent to cause hurt. We did bestow anxious reflection on the materials placed before us in the light of the submissions made by counsel for the appellant, Shri Nuruddin Ahmed, but, with due regard to their peculiarities and probabilities, we have established ourselves on the conclusion that the High Court has held right that the accused is guilty of the offence charged. The prosecution case, in brief, takes us to a small hospital scene where we have two medical officers, P. Ws. 2 and 3, a compounder the accused, and a peon, Badri. The senior doctor, P. W. 2, arrives in the hospital around 9 30 a.m. with a bad headache and asks the accused, appellant for ten grains of aspirin. Some 12 or 13 minutes are taken for the appellant to bring to his own doctor aspirin which is readily available in the dispensing room. The, appellant brings two packets, 'asprin' written on them, and the patient-this time the doctor himself-consumes one packet. Bitten by bitterness of taste unusual in aspirin, P. W. 2 asks the attender, Badri, to fetch a glass of water. By that time, P. W. 3, the other doctor, had come and is sitting in the next chair. P. W. 2 complains to P. W. 3 about the strange bitterness in the tongue, aspirin being tasteless. He gargles his mouth, washes his face with water and asks the attender to buy some beatle leaves, apparently to overcome the bad taste. Thereafter he proceeds to his normal work and tries to give injection to a patient waiting, but begins to feel shaky. Within a few minutes P. W. 2 has the sensation of cramps in the calf muscles and P.W. 3, the other doctor, is perplexed. So he goes into the dispensing room and asks the accused from which bottle he had given the aspirin. The latter shows a bottle of aspirin kept there, and when asked whether he had accidently given strychnine denies that strychnine, a deadly poison, is in stock at all. Of course, the accused himself begins to tremble. Any way, P. W. 3 seals the bottle of aspirin taken from the dispensing room as well as the paper of the packet in which the medicines taken by P. W. 2 was kept, and the other unconsumed packet. Apprehensive of poisoning, P. W. 2 is removed to the District Hospital, where he is given a stomach wash. His condition becomes precarious and his statement is recorded by P.W.7, the Police Officer attached to the Kotwali Police Station, and a case is registered under s. 328, 1. P. C., against the accused, Ex. Ka. 1. P.W. 3 gives a written report, Ex. Ka. 2, and also the sealed packets to P. W. 7, the Police Officer. Thereafter, investigation begins and the dispensing and store rooms are inspected and the stock register examined. No bottle of strychnine is seen in the dispensing room, but one containing 4.2 grams of this lethal poison is found in the store room-vide Ex. Ka. 8, the search memo. The Chemical Examiner found on analysis of the stomach wash that P. W. 2 had consumed strychnine. There were traces of stry-

chnine crystals in the paper of the packet from which P. W. 2 had swallowed the headache cure. The other packet, which was not used, contained only aspirin. The symptoms which P. W. 2 developed were clearly indicative of strychnine poisoning.

It has been found by the High Court that it was the accused compounder who brought the two packets of medicine to P. W.

2. Likewise, it has been found that if was the accused who dispensed the medicine and that there was no strychnine in the dispensing room, but there was some quantity of it in the store room. The High Court has also held that the accused's denial to P. W. 3 that there was no strychnine available in stock was false and that the interrogation so upset the accused that he began to tremble. These are the broad findings which have led to the conviction of the accused, whose stand, however, was one of denial. He agreed, while examined in the sessions court, that P. W. 2 had told Badri, the attendant, to bring aspirin and he in turn told the accused that Doctor Saheb had wanted two 'purjas' of aspirin, whereupon the accused told Badri that aspirin packets were kept ready there and he had better take them out and give to the doctor. In short, he dis- connected himself from the doctor's request for aspirin or the delivery of the two packets of medicine. The further answer of the accused was that P. W. 3 merely asked him where the bottle of aspirin was and not where the bottle of aspirin from which he gave the packet to P. W. 2 was. That is to say, the incriminating component of that part of the, testimony of P. W. 3 is denied by the accused. He denies again that he told P. W. 3 that there was no strychnine in stock while, as a fact, 4 2 grams thereof were found in the store room. He suggests an answer to why such a case should have been started against him that it is due to the grudge P. W. 3, Dr. Baijal, bore against him. In this context, it is meaningful to note that before the Committal Court he took a patently false stand, namely, that P.W. 2 had neither asked him for aspirin nor had he dispensed any to him. Indeed, he has resorted to an audacious plea that "purias are dispensed by the hospital attendants . . . . three persons work as hospital attendants; I got rest on every Friday and on that day I enjoy holiday." The obvious attempt was to fob off the poisonous packet-on the hospital attendant. In the Session Court, however, he abandoned this impossible position and put forward a more plausible case, trying to cash in hopefully on Badri, the peon, being set up as a dispensing chemist so far as the puria in question was concerned.

The Sessions Court acquitted the accused on a perverse view of the evidence. Although the learned Judge has set down the points pressed into service by the prosecution properly, he has gone off at a tangent into an investigation as to why the paper with which the poisonous puria was made was not mentioned in Ex. Ka. 2. He gets entangled in a serious series of trivialities and magnifies minor militating circumstances to persuade himself to the conclusion that there was something very fishy in the investigation on this aspect.

The learned Sessions Judge asks why the accused, should have given two purias instead of one, and why he should have taken the chance of the doctor taking the innocuous puria out of the two, if he had an offending intent. He works himself up into the chance possibility of strychnine getting into the doctor's body through the water he ,drank after the powder was taken, forgetting that P. W. 2 complained of the bitter taste when he took the powder and not after he drank the water.

The learned Sessions Judge observed "The possibility of the strychnine having found its way in the system of Dr. Sen Gupta by some way other than the contents of the Puria cannot at all be excluded, for there is evidence of Dr. Sen Gupta himself that he took the powder of the Puria along with water which Badri had brought and the possibility of strychnine being in the water cannot be excluded."

Another casual circumstance which the Sessions Judge chases is that the hospital peons prepare mixtures and powders, suggesting thereby that the purias in question might have been got prepared

by Hospital peons and not the accused. Yet another fanciful argument which has appealed to him is, in his own words, that:

> "Dr. Sen Gupta has admitted that strychnine is used in other medicines also. It, therefore, cannot be safely ruled out that the strychnine found its way into one of the aspirin Purias already prepared and accidently that Puria was taken by Dr. Sen Gupta."

Not content with these freak conjectures, the learned Sessions Judge fancies that had the accused an intention against his victim, he would have given him ten grains of strychnine which would have knocked him down at once since one part of strychnine in 7000 parts of water would have made the whole quantity bitter and even half a grain of strychnine could have been a fatal dose. On the question of motive, the Sessions Judge has again made mistakes, and as for the long interval for supplying the packets, the Judge has a convenient personal theory:

> "Anyone who has any experience of how a dispenser works at a hospital knows that they are neither very prompt nor very efficient. After all Dr. Sen Gupta was only having a headache and there was no immediate urgency."

We could easily illustrate more of this species but desist from doing so as it is unnecessary. All that we need say is that a court is not concerned with fantastic possibilities but with practical realities.

The learned Judges of the High Court have set the record straight, if we may say so. They have come to the conclusion that it was the accused who was directed to bring aspirin and it was he who brought the two packets, the contents of one of which were poisonous. The learned Judges have held on a study of the evidence that the accused's plea that there was no strychnine in stock was false and that he had sought to put off P. W.s 2 and 3 by such a false answer. The intention of the accused to introduce strychnine is inferred by the High Court thus "In view of the circumstances that the two packets handed over to Dr. Sen Gupta contained two different, substance, it is clear that the same were taken from two different bottles.. It cannot be, therefore, said that the respondent committed an accidental though bona fide mistake of giving the powder from a wrong bottle. The fact that he took powder from two different bottles whereas he ought to have taken from only one, itself shows that he had a-guilty mind.

The effect of the motive made out in the case has not been lost' sight of by the High Court, although too much has not been read into it, rightly if we may say so. The ultimate conclusion reached by the learned Judges is that the accused gave a packet containing strychnine to P. W. 2 for being consumed by him. On these fact,", which have been arrived at by a reasonable appraisal of the evidence, the present appellant has been found guilty by the High Court. Shri Nuruddin Ahmed, counsel for the appellant, rightly stressed that the prosecution edifice was built on circumstantial evidence only since' no one had seen the accused mix strychnine with aspirin before serving the doctor. The critical rule of proof by circumstantial' evidence, counsel reminded us, is that such testimony can be the probative basis for conviction only if one rigorous test is satisfied. The circumstances must make so strong a mesh that the innocence of the accused is wholly excluded and

on every reasonable hypothesis the guilt of the accused must be the only inference. Shri Nuruddin Ahmed suggested some maybes in the case excluding his client's culpability, and contended that the test of incompatibility with. the innocence of the accused had not been fulfilled at all here. As a, proposition of law and commonsense, we agree that unlike direct evidence the indirect light circumstances may throw may vary from suspicion to certitude and care must be taken to avoid subjective pitfalls of exaggerating a conjecture into a conviction.

Every evidentiary circumstance is a probative link, strong or, weak, and must be made out with certainty. Link after link forged firmly by credible testimony may form a strong chain of sure guilt binding the accused. Each link taken separately may just suggest but when hooked on to the next and on again may manacle the accused inescapably. Only then can a concatenation of incriminating, facts suffice to convict a man. Short of that is insufficient. The question then is whether the cumulative effect of the guilt pointing circumstances in the present case is such that the court can conclude, not that the accused may be guilty but that he must be guilty. We must here utter a word of caution about this mental sense of 'must' lest it should be confused with exclusion of every contrary possibility. We have in S. S. Robade v. State of Maharashtra(l) explained that proof beyond reasonable doubt cannot be distorted into a doctrine of acquittal when any delicate or remote doubt flits past a feeble mind. These observations are warranted by frequent acquittals on flimsy possibilities which are not infrequently set aside by the High Courts weakening the credibility of the judicature. The rule of benefits of reasonable doubt does not imply a frail willow bending to every whif of hesitancy. Judges are made of sterner stuff and must take a practical view of legitimate inferences flowing from evidence, circumstantial or direct. At the same time it may be affirmed, as pointed out by this Court in Kali Ram v. State ,of Himachal Pradesh (2), that if a reasonable doubt arises regarding the guilt of the accused, the benefit of that cannot be withheld from him. Coming to the case in hand, the Sessions Judge has been obsessed by mere maybes. Maybe, the attender made the packets; may be the doctor , witnesses are adulterating truth; may be the motive is untrue or inadequate; may be the presence' of two purias, one of which is aspring suggests the accused's innocence, and so on. Doubt feeds on itself. Here are certain incontrovertible facts. The accused bore an immediate grudge against P. W. 1-the adequacy of motivation is a subjective exploration. The accused was requested to bring aspirin and he brought it in two tiny packets. He was perhaps not faking a 'chance because the doctor might well have swallowed both but for the intolerable bitterness of the first. He falsely denied the stock of strychnine and took a long quarter of hour to get a little aspirin to his own boss, suggesting that he went into the store room to take a little strychnine. He trembled when P. W. 3 turned to ask him a searching question. He never showed any anxiety to save the doctor out of the calamity and in the committal court took a false plea of denial modified in the Sessions Court to present a plausible defence. The following questions arise: Did the accused prepare the medicine which did indubitably contain poison ? Yes. Did he do it accidently ? No. Did he have motive to harm the victim ? Yes. Did he deny falsely in the committal court' ? Yes, and that is itself a guilty circumstance. Do other likelihoods neutralise the incrimination available from these If circumstances ? Noreasonable inferences but theoretical possibilities. If crime is to bepunished gossamer web niceties must yield to realistic appraisals. The compounder has dispensed a deleterious substance to his owndoctor and has been rightly held guilty. The sentence does not call for interference either. We dismiss the appeal.

Appeal dismissed.

V.P.S. (1) [1973] 2 SCC,801.

(2) AIR 1973 SC.2773.