Ram Lochan Ahir vs State Of West Bengal on 10 December, 1962

Equivalent citations: 1963 AIR 1074, 1963 SCR SUPL. (2) 852, AIR 1963 SUPREME COURT 1074, 1963 SCD 638, 1964 (1) SCJ 82, 1964 MADLJ(CRI) 19

Author: N. Rajagopala Ayyangar

Bench: N. Rajagopala Ayyangar, Syed Jaffer Imam, J.R. Mudholkar

PETITIONER:
RAM LOCHAN AHIR

Vs.

RESPONDENT:
STATE OF WEST BENGAL

DATE OF JUDGMENT:
10/12/1962

BENCH:
AYYANGAR, N. RAJAGOPALA
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AYYANGAR, N. RAJAGOPALA
IMAM, SYED JAFFER
SUBBARAO, K.
MUDHOLKAR, J.R.

CITATION:
1963 AIR 1074 1963 SCR Supl. (2) 852

ACT:
Criminal Trial-Murder-Identification-Admissibility of super imposed photograph to establish identity of skeleton--Mis-direction to jury-Interference with verdict of jury on hupothetical considerations-- Indian Act 1872 (1 of 1872), ss.9, 27.

HEADNOTE:
The appellant was tried by the jury for kidnapping and committing the murder of one Pancham Sukla. The jury returned a verdict of guilty against him under ss. 364 and 302 of the Indian Penal Code. The Sessions judge accepted the verdict and sentenced him to death under s. 302 and to rigorous imprisonment for life under s. 364. The High Court

acquitted appellant of the offence of kidnapping under s. 364, but while confirming his conviction under s. 302, reduced the sentence to imprisonment for life. The appellant came to this Court on a certificate granted by the High Court. In this Court, the appellant challenged the identification of the skeleton produced in the case as that of the deceased. His other contentions were that the super-imposed photograph was not admissible under any section of the Evidence Act, there was misdirection to the jury in setting out the statement of the accused to the police which led to the discovery of the skeleton and that he had no intention of killing deceased and killing must have taken place as a result of some quarrel between him and the deceased.

The super-imposed photograph was admissible in evidence under s. 9 of the Evidence Act. That photograph was not any trick photograph seeking to make something appear different from what it was in reality. There was no distortion of truth involved in it or attempted by it. A superimposed photograph is really two photographs merged into one or rather one photograph seen beneath the other. Both the photographs are of existing things and they are superimposed or brought into the same plane enlarged to the same size for the purpose of comparison. Both the photographs would be admissible in evidence and no objection could be taken to their being examined together.

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There was no misdirection to the jury insetting out the statement of the accused to the police which led to the dis-covery of the skeleton.

There was no substance in the contention of the appellant that killing must have taken place as a result of some quarrel. The jury had held appellant guilty of murder. This Court is not concerned with the correctness of the acquittal of the appellant by the High Court under s. 364 of Indian Penal Code. No suggestion has been made before this Court that there was misdirection by the Sessions judge in his charge to the jury. There is no scope for the argument that verdict of the jury should be interfered with or the conviction based on it altered on hypothetical considerations not founded on any facts on record.

Kotayya v. Emperor, A. 1. R. 1947 P. C. 67 and State of U.P. v. Deoman Upadhyaya, (19611 1 S. C. R. 14, relied on.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal NO. 134 of 1961.

Appeal from the judgment and order dated March 28/29, 1961, of the Calcutta High Court in Criminal Appeal No. 769 of 1960.

D. N. Mukherjee, for the appellant.

P. K. Chakravarti and P. K. Bose, for the respondent.

1962. December 10. The judgment of the Court was delivered by AYYANGAR, J.-This is an appeal on a certificate under Art. 134 (1) (c) against the conviction of the appellant under s. 302, Indian Penal Code and the sentence for imprisonment for life passed against him for the said offence. One Pancham Sukla was an employee under the Calcutta Port Commissioner where also the appellant was employed. Pancham attended office last on the 10th of March, 1960 and at about 5.30 that evening he was seen in the company of the appellant. That was the last time he was seen alive and since then he has not been found. Pancham not having returned to his house, his brother-in-law and another lodged a report with the police stating that Pancham had been missing for the previous two days and in the said report gave a description of the missing person as well as the clothes that he wore at the time he left his residence. The fact that Pancham was last seen with the appellant was stated in a further report which the brother- in-law lodged with the police on the next day-March 13, 1960. The appellant was arrested on March 21, 1960 and on interrogation by the police he stated that Pancham Sukla was dead and admitted that he had buried the body of the deceased in the mud in a tank of which he gave a description. The place pointed out was searched and therefrom a human skeleton partly covered with a torn dhoti, underwear and a torn kurta in the side pocket of which was found a flag, were discovered. The appellant was also stated to have pointed out to the police in the course of further investigation that he had thrown a knife into the same tank. A search was made when not merely a knife but a shoe with a rubber sole, a human lower jaw bone etc., were recovered. After some more investigation a complaint was laid before the Magistrate, who after enquiry committed the appellant to take his trial before the Sessions Court where he was tried with the aid of a jury.

of two offences : (1) under s. 364, Indian Penal Code of having abducted Pancham Sukla in order that he might be murdered, and (2) the substantive offence of having committed the murder under s. 302, Indian Penal Code. It may be mentioned that at the trial the articles recoverd-the dhoti, shirt, underwear, shoe and the flag were all indentified as having belonged to and being worn by the deceased when he was last seen. The jury accepted the evidence of the prosecution and returned a verdict of guilty against the appellant on both the counts. The learned Session's judge accepted the verdict and sentenced him to death under s. 302, Indian Penal Code and to rigorous imprisonment for life in respect of the offence under s. 364, Indian Penal Code.

The appellant filed an appeal to the High Court of Calcutta and the learned judges acquitted the appellant of the offence of kidnapping under s. 364, Indian Penal Code but confirmed the finding of guilt as regards the offence of murder tinder s.302, Indian Penal Code but reduced the sentence to imprisonment for life.

Having regard to the points which have been urged before us we do not think it necessary to canvass the grounds upon which the learned judges set aside the verdict of guilty returned by the jury and the conviction of the appellant by the Sessions judge in respect of the offence under s. 364, Indian Penal Code, but are concerned only with two points which have been made by learned Counsel in

support of the appeal. The first point urged relates to the identification of the skeleton which was found in the tank as that of the deceased Pancham Sukla; in other words, whether there was proof that Pancham Sukla was killed or had even died. The identification of the skeleton rested on three distinct lines of evidence : (1) The statement of the appellant to the police under s. 27 of the Indian Evidence Act which led to the discovery of the skeleton; (2) The identification of the clothes, shoe etc. which were found on or near the skeleton as those which were worn by Pancham Sukla at the time he last left his house. The place where these articles were discovered in relation to that where the skeleton was found unmistakably pointed to the articles having formed part of the dress of person whose skeleton was there found; and (3) a photograph of Pancham Sukla superimposed on the photograph of the skeleton.

judge and the High Court as regards the admissibility in evidence of the superimposed photograph as a means of identifying the skeleton as that of the deceased and it is this legal objection raised by the appellant that forms the ground of the certificate granted by the learned judges of the High Court. Learned Counsel urged before us that the superimposed photograph was not admissible in evidence and that its reception vitiated the verdict of the jury. We are clearly of the opinion that even if this photograph was not admissible in evidence the verdict of the jury and the conviction of the appellant could not be set aside, because there was very cogent other evidence to prove the identity of the skeleton. Since, however, the learned judges of the High Court have thought fit to grant a certificate, though they were themselves conscious of the fact that besides the photographs there was plenty of other evidence to sustain the conviction, we consider it proper to express our opinion on the question.

The process adopted for taking the superimposed photograph as explained by P. W. 18-the Assistant Chemical Examiner of the West Bengal Government was this : He first got a photogrgph of Panchom Sukla. This was photographed, the negative being taken on a quarter plate and the negative was enlarged. He got the skull and as the skull Was broken in some parts the bones were pieced together and an enlarged photograph of the skull as reconstructed was taken. A negative of this was enlarged to the same size as the negative of the photo of the deceased with the angle and positions of the two being identical. The two negatives were then superimposed. For the superimposition the technique employed by him was thus explained :

> "The ground glass of the camera was taken out, the negative of the photograph alleged of Pancham Sukla was placed on it, prominent markings of the negative were carefully jotted down on the ground glass, the markings being the following, viz., nasion-nasomental line, malar bones with prominences and two outer canthuses and two inner canthuses of the two eye balls and the inner ends of the supra orbital ridges, thereafter the ground glass was fitted in the camera, the skull was so orientated that all the points of the skull came in exact position with the markings made on the ground glass as mentioned when the photograph of the skull was taken; then the two negatives were placed by aligning in such a way that all the points as mentioned above corresponded on a sensitive bromide paper under an enlarger. The resultant is the photograph submitted to the Court."

The photographer who executed this work under the supervision of P. W. 18 was Tapendra Nath Mazumder, who was examined as P. W. 19. This superimposed photograph showed the shape and contour of the bones of the face underneath the face as it looked when the deceased was alive, and the prosecution sought by means of this document to establish the identity of the skull as that of the deceased, or in any event to dispel any positive argument for the. defence that the skull was not that of the deceased.

The contention urged before us by learned Counsel was that this photograph was not admissible under any section of the Indian Evidence Act. If learned Counsel is right here, he could succeed in having this evidence rejected as inadmissible. We are, however, clearly of the opinion that it is admissible in evidence under s. 9 of the Evidence Act. The section reads:

> "9. Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of any thing or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."

The question at issue in the case is the identity of the skeleton. That identity could be established by its physical or visual examination with reference to any peculiar features in it which would mark it out as belonging to the person whose bones or skeleton it is stated to be. Similarly the size of the bones, their angularity or curvature, the prominences or the recessions would be features on which examination and comparison might serve to establish the "'identity of a thing" whithin the meaning of s. 9. What we have in the present case is first a photograph of that skull. That the skull would be admissible in evidence for establishing the identity of the deceased was not disputed, and similarly a photograph of that skull. That a photograph of the deceased was admissible in evidence to prove his facial features, where these are facts in issue or relevant facts, is also beyond controversy. Now what P.W. 18 with the assistance of P.W. 19 has done is to combine these two. The outlines of the skull which is seen in the superimposed photograph show the nasion prominences, the width of the jaw bones and their shape. the general contours of the cheek bones, the position of the eye cavity and the comparison of these with the contours etc., of the face of the deceased as seen in the photograph serve to prove that features found in the skull and the features in the bones of the face of the deceased are indentical or at least not dissimiliar. It appears to us that such evidence would clearly be within s. 9 of the Evidence Act. The learned Counsel for the appellant urged that the superimposed photograph was not a photograph of any thing in existence and was for that reason not admissible in evidence. This argument proceeds on a fallacy. In the first place, a superimposed photograph is not any trick photograph seeking to make something appear different from what it is in reality. There is no distortion of truth involed in it or attempted by it. A superimposed photograph is really two photographs merged into one or rather one photograph seen beneath the other. Both the photographs are of existing things and they are superimposed or brought into the same plane enlarged to the same size for the purpose of comparison. Possibly some illustrations might make this point clear. For instance, if the photo of the deceased when alive were printed on a transparent medium and that were placed above a photograph of the skull-both being of the same size-the visual

picture seen of the two together would approximate to the document objected as inadmissible. In the above, it would be seen both the photographs would be admissible in evidence and no objection could be taken to their being examined together. Again for instance, if instead of a two-dimensional photograph we had first a hollow model of the head of the deceased-say of transparent or semi-transparent material-constructed or made from a photograph, that certainly would be admissible in evidence provided there was proof that the model was exactly and accurately made. If the model were dismantled into segments and placed upon the skull with a view to show that the curves and angles, the prominences or depressions etc. exactly corresponded there could be no dispute that it would be a perfect method of establishing identity. If this were granted the superimposed photograph which is merely a substitute for the experiment with the model which we have just now described would be equally admissible as evidence to establish the identity of a thing. It was pointed out that this was the first occasion that in India an identity of a skeleton was sought to be established by means of superimposed photographs and that P. W. 18 had done this experiment by reference to what he had read in the books on the subject and that on that ground the evidence could' not be accepted. Any deficiency in scientific accuracy might go to the weight of the evidence which in the case on hand was a matter for the jury to consider, but we are now only on a very narrow question as to whether it is excluded from evidence as inadmissible. Our answer is that it was admissible in evidence., The next point urged was that there had been a misdirection to the jury in setting out the statement of the accused to the police which led to the discovery of the skeleton. We have carefully gone through the charge to the jury and are satisfied that there is no substance in this objection. The learned Sessions judge has quoted extracts from the decision of the Privy Council in Kotayya v. Emperor (1) and of this Court in State of U. P. v. Deoman Upadhyaya (2) in which the scope of s. 27 of the Indian Evidence Act has been discussed and has drawn to the attention of the jury only that portion of the statement of the accused which led to the discovery of the skeleton and the knife etc. Lastly it was urged that the grounds upon which the learned judges had set aside the conviction of the appellant of the offence under s. 364, Indian Penal Code would necessarily lead to the conclusion (1) A.I.R. 1947 P.C. 67. (2) [1961] 1. S.C.R. 14, that he could not be held guilty of an offence under s. 302, Indian Penal Code. The argument was on these lines. The learned judges considered that the appellant had not, having regard to certain facts which they considered had been made out, the intention of killing Pancham when he took him out and that the killing must have taken place as a result of some quarrel which arose between them. From this learned Counsel sought to urge : (1) that there was a quarrel, (2) that having regard to the quarrel the appellant must have had the right of private ,defence, and that (3) consequently killing was either fully protected or at the most it was a case of an offence under s. 304 Part 1, Indian Penal Code. We consider that there is no foundation for this argument. The trial was by jury whose verdict was that the appellant was guilty of murder. As we stated earlier, we are not now concerned with the correctness of the acquittal by the High Court of the appellant of the offence under s. 364, Ind tan Penal Code or of the reasons on which that order was based. We must, however, point out that there is no suggestion before us that save and except what we have discussed earlier there had been any misdirection by the Sessions judge in his charge to the jury. There is therefore no scope for the argument that that verdict should be interfered with or the conviction based on it altered on hypothetical considerations not founded on any facts on record.

The appeal fails and is dismissed,