

Gujarat High Court

Ramsing Badharsing vs State on 7 July, 1960

Equivalent citations: AIR 1960 Guj 7

Author: Raju

Bench: Shelat, Raju

JUDGMENT Raju, J.

(1) This is a case in which the police resorted to the technique of anthracene powder and ultra-violet rays. According to the prosecution, anthracene powder was applied to the currency notes and was found on the hands of the appellant. This circumstance is sought to be used to prove that the appellant had received the notes. When the prosecution wants to prove the presence of anthracene powder on the hands of the appellant, it is the duty of the prosecution to prove by means of expert evidence or books on science the nature of anthracene powder, the manner in which its presence can be detected and the tests to be applied for the purpose. The tests must be such that if after they are applied and the tests to be applied for the purpose. The and the results are positive, the positive results lead to one and only one conclusion, namely the finding of anthracene powder. It is for the prosecution to prove that positive results are a conclusive proof of the find of anthracene powder. This is a matter on which experts should give evidence. The prosecution can also rely on books of science. In this case, the prosecution has not led any evidence of this type as to the nature of anthracene powder and the means of detecting presence of anthracene powder. It is true that ultra violet lamp was used, but there is no evidence as to the result to be expected when ultraviolet rays are applied. The complainant has merely deposed that when Vithaldas gave Rs. 100/- in 10 notes of Rs. 10/- each to the complainant, powder was applied and the Jamadan put them in his pocket. He does not speak of any demonstration being given at that time. According to this witnessed, when the police party arrived at the house of the appellant, the Sahib asked the accused about the money and then applied light to his hands and the witness saw the powder which was shining and greenish. As regards the Jhaba, the complainant merely says that the Jamadan held the Jhaba in his hands and looked inside the pocket. The complainant does not say that he noticed anything on the Jhaba. The complainant's brother Karkandia has deposed that at the Society the Jamadan applied something to the notes and said that it was powder. The witness does not speak of any demonstration or experiment having been made. He was only told that powder had been applied. He deposed that the hands of the appellant were examined but did not say what the result of that examination was. He does not speak of the alleged examination of the Jhaba under ultra-violet light. According to Panache Kanchanlal, when the first Panchanama was made, powder was applied to the 10 notes which were put in the pocket of Kadva. He does not speak of any demonstration or experiment having been made. According to the witness, when the Sahib saw the hands of the appellant with the lamp, they had something like powder marks. When the Jhaba was examined, powder like marks were also seen in the pocket. According to the Panch Jamnadas, when the police officer applied powder to the notes, he showed them to the witness in the light of ultra-violet lamp. The witness found some stains and some slight change of color. The stains and some slight change of color. The stains were neither bright nor faint. When the hands of the appellant were seen in the light of the ultra-violet lamp he saw stains on his hands of the type which he had seen on the notes. When he saw the Shaba in the light of the lamp he saw stains in the pocket of the Jhaba. Even the Police Inspector Gohil has not stated ho the presence of anthracene powder could be detected. He merely

deposed that Head Constable Jaswantsin explained the working of the lamp to the Panchas, and applied anthracene powder to the notes and then showed them to the Panchas. But he had not deposed as to what he had seen under the light of the lamp. According to this Police Inspector, when the hands of the appellant were seen with the lamp, he saw marks of powder. When the pocket of the Jhaba was examined, it had powder marks. It is therefore, not clear from the evidence of these witnesses as to whether they were under. One witness speaks of marks of powder, another witness speaks of powder like marks, a third witness speaks of change of color and the fourth speaks of greenish shining. Head Constable Jaswantsinh, who is supposed to know something more about the powder and the means of detecting it has not been examined. Nor has any expert witness deposed that when such stains or shining are noticed in the light of ultra-violet lamp, that is a sure indication of the presence of anthracene powder or that that at least makes the presence of anthracene powder highly improbable. The prosecution must lead positive evidence by way of expert evidence or books of science to prove the sure method of detection of anthracene powder, the nature of the test to be applied, the nature of the result to be expected and whether a layman can detect anthracene powder when such a test is applied. The prosecution must also prove that if the test leads to a positive result, it conclusively proves the presence of anthracene powder and nothing else. It is difficult to believe that in this case illiterate persons like the complainant and his brother and Panchas who were laymen and not at all experts on this question were able to detect anthracene powder on the hands of the appellant and on his Jhaba. Even the Police Inspector does not claim to be an expert in detecting anthracene powder. Head Constable Jaswantsingh has not been examined. In these circumstances, it would not be correct to hold that the prosecution has succeeded in proving the presence of anthracene pocket of the Jhaba. In the present case, we hold that the prosecution has failed to prove beyond reasonable doubt the presence of anthracene powder.

(2) Conviction and sentence set aside.