
(1923) 08 AHC CK 0005

Allahabad High Court

Case No: None

Emperor

APPELLANT

Vs

Anis Beg

RESPONDENT

Date of Decision: Aug. 11, 1923

Acts Referred:

- Penal Code, 1860 (IPC) - Section 319, 328

Citation: (1924) ILR (All) 77

Hon'ble Judges: Sulaiman, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sulaiman, J.

This is an appeal from a conviction u/s 328 of the Indian Penal Code, the accused having been charged with poisoning with dhatura a number of persons including one Musammat Chando, who is a girl of about 12 years. The accused is about 16 years of age, and it is the prosecution case that he became infatuated with the girl Musammat Chando and began to make advances to her and did various tricks to make her inclined towards him. It is said that he first got her brother Narain to take a cake of soap and crochet needle and ten annas that Musammat Chando might knit him something. He also asked her brother to get him some earth from below her left foot. He then tried to get some sweets sent to her through one Manohar, who refused to take them. Ultimately he persuaded Kanhaiya, a boy of about 12 years of age, to take five peras, one of which is said to have contained dhatura, in order that they might be given to Musammat Chando and other members of her family. There can be no doubt that Kanhaiya did distribute these peras to various people, including Musammat Chando. All the persons who took these peras showed symptoms of poisoning. This was in the evening of the 1st of May, 1923. A private practitioner Dr. Dikshit was sent for about 9.15 p.m. and he noticed that Musammat Chando was in a state of delirium. She was picking at the cot and drawing imaginary

threads from her fingers. Shanti, a boy, was in a condition of collapse and his heart was failing. The condition of the children of the tailor was also bad. The doctor came to the conclusion that all that was the effect of the dhatura poisoning, particularly as he noticed the pupils of these people dilated. At about 3.30 a.m. that night three of these persons were sent to the hospital and were there examined by the medical officer in charge. He found the pupils of Musammat Chando dilated and her (sic) delirious. The pupils of two others were also found dilated, one of whom was slightly unconscious but the other person was in his senses. This doctor also came to the conclusion that these persons showed signs of dhatura poisoning. None of these doctors was able to see any vomit or stools and they could not give any more definite opinion.

2. The broad facts of the case cannot be much disputed. There is no doubt that the appellant did become infatuated with the girl and did try various tricks to make her favourably inclined towards him. It is the previous conduct of the accused that has made the learned Sessions Judge come to the finding that there was really no "intention" on the part of the appellant to cause any hurt to either of the persons to whom the peras were given. The accused had pleaded *ari alibi*, but led no evidence to substantiate that plea. The evidence given by Kanhaiya Lal, supported by the evidence of halwai who sold the peras to the accused, as well as of Piarey Lal, a passer-by who saw him purchase them and handing them over to Kanhaiya Lal, who was standing close to the confectioner's shop, conclusively establishes that the accused had handed over the peras to Kanhaiya Lal, which were distributed to the persons already mentioned.

3. On behalf of the appellant it has been argued very strenuously that he must have been under a mistaken belief that these peras would act as a love philtre, and his only object in making Musammat Chando eat them was to make her love him.

4. It is also suggested that as Kanhaiya Lal is the son of a local hakim, it is highly probable that it was he who had procured this drug. Whether Kanhaiya Lal was in the conspiracy or not, there can, in my opinion, be no doubt that the accused must have intended to administer some specific drug which he believed would act as a love philtre.

5. The medical evidence proves that this drug was dhatura. The question then is whether, under the circumstances, it can be inferred that the accused knew the nature of the drug which was going to be administered.

6. As I agree with the finding of the learned Sessions Judge that there was really no intention on the part of the accused to cause hurt to any person, it is clear that the offence cannot fall within the first portion of Section 328 of the Indian Penal Code. I am also of opinion that the intention to persuade Musammat Chando by some mysterious means or other to fall in love with him, cannot be said to be an intention to commit or facilitate the commission of any offence. In this view the act cannot fail

within the second portion of that section either.

7. The question remains whether it can be said that the accused knew it to be likely that he will thereby cause hurt to any of those persons. I find it impossible to believe that Kanhaiya Lal would have mixed up this drug in the peras without informing the accused what drug it was. Even if Kanhaiya Lal knew, all about it, there can in my mind be no doubt that the accused also knew the nature of the drug. I find it impossible to conjecture, or assume, that the drug which the accused wanted to put in the peras, was a drug other than the one which the doctors say must have been. If it was sought to be shown that a mistake had been made, and owing to such mistake a wrong drug had been mixed up, it was the duty of the accused to show it. There was no plea of this kind put forward, nor any evidence led. The evidence of Kanhaiya Lal if believed, negatives it altogether. In any case I am not prepared to assume that the accused was not aware that the drug which was mixed in one of the peras at least, was anything but dhatura, which the doctors found to have been the drug. Dhatura is a very common drug, and it is well known that it is poisonous. "A" person of the age of the accused must be presumed to know that such a drug is poisonous. If he causes such a drug to be administered, he must be presumed at least to know that it is likely that he will thereby cause hurt. The word "hurt" is defined in Section 319 of the Indian Penal Code as meaning either bodily pain or disease or infirmity to any person. The bodily pain or infirmity obviously may either be permanent or temporary. If a person by the administration of that drug is thrown into a delirium, with the possible risk of falling into coma and becoming unconscious for the time being, it is clear that both bodily pain and infirmity are caused. "" Infirmity "" has been defined by one another as inability of an organ to perform its normal function which may either be temporary or permanent. In my opinion this definition seems to be correct. Under the circumstances there can be no doubt that the accused must be deemed to have had knowledge that the administering of the drug was likely to cause hurt within the meaning of Section 319 of the Indian Penal Code.

8. It is very fortunate that none of the persons who took the peras died. The boy Shanti, however, was in a very serious condition of collapse and at one time it was seriously (sic) that his heart was failing. Luckily he escaped death. Musammat Chando also was comparatively very seriously ill. Under the circumstances, although the accused cannot be said to have actually intended to cause any hurt to either of these persons, yet as his act was a grossly rash one, I think that the sentence of one year's rigorous imprisonment does not err on the side of severity. The result is that this appeal fails and it is dismissed. The appellant, who is on bail, must surrender at once.