

Taqi Mirza Vs. Rex

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Court : Allahabad

Decided On : Jun-20-1949

Reported in : AIR1949All708

Appellant : Taqi Mirza

Respondent : Rex

Judgement :

Mushtaq Ahmad, J.

1. One Taqi Mirza, aged 18 year according to the first information report, appeals against his conviction under Section 307,. Penal Code and sentence of three years' rigorous imprisonment by the learned Sessions Judge of Allahabad.
2. The occurrence had taken place at 6-46 p. M. on 8th November 1946, in Mohalla Nai Basti, Allahabad City. A report of the incident was lodged by one Chhotelal Ahir, a milk vendor, at the Kotwali Police Station at 7 p. m. the same evening, in which the appellant and another young Muslim were mentioned as his assailants.
3. The allegations in the said report were that, when Chhotelal, after supplying milk, was returning from Muthiganj to his house and hail reached a place known as the 'Tuta Puff' (damaged culvert) in Mohalla Nai Basti, two Muslims, both aged 18 years, surrounded him, that one of them, namely the appellant, attacked him with

a knife, that the appellant, whom he knew, lived in the Muslim League Office of the Mohalla and that there was no one except an ahir who had seen the incident, that man being one Jagannath.

4. I may mention at once that Jagannath Ahir though examined in the Court of the Committing Magistrate, was only tendered by the prosecution for cross examination in the Court of Session. He did not say that he had identified the assailant of Chhotelal. So far as the appellant is concerned he clearly said that he had known him from his childhood. It is obvious that, if he had seen the appellant attacking Chhotelal, he must have named the appellant as such.

5. The appellant's conviction was based entirely on the evidence of the informant Chhotelal. The prosecution had no doubt examined, besides Jagannath two other persons, Bachchu and Kishori also in the Court of the Committing Magistrate but they merely tendered them in the Court of Session for cross-examination and the accused refused to cross-examine them. They have, therefore, to be eliminated from our consideration altogether.

6. As regards the value of the uncorroborated testimony of Chhotelal, the informant, two questions arise, one of fact and the other of law. The question of fact is whether, on the statement he made, he was rightly believed by the learned Sessions Judge that he had really identified the appellant to have inflicted a knife injury on his shoulder. The question of law is whether, assuming that Chhotelal's evidence, on the face of it, was not open to any question, it would be in consonance with the rule of practice and prudence to accept his evidence in the absence of any corroboration. I would deal with the first question first.

7. It is true that in the first information report, which had been made only fifteen minutes after the incident, Chhotelal had mentioned the appellant by name. In his evidence, however, he admitted that, after the incident he had met the police guard and told them that he knew the assailant. Nonetheless, he never mentioned his name to them. Chhotelal admits that he knew the appellant from the latter's childhood, that he also knew his father and also that the latter was a respectable man in the locality. He presumably knew the appellant's name also. If this is a fact, it is highly surprising that he should not have mentioned the same to the police

guard whom he had met soon after the incident. The Kotwali is at a distance of over a mile from the scene of the occurrence. He was taken by the guard from that place to the Kotwali. Indeed, one may expect that the interval of fifteen minutes that had elapsed prior to the making of the report had been mostly occupied in Chhotelal's covering the distance upto the police station along with the police guard. I cannot imagine that, knowing his assailant from his childhood and knowing something about his father and status also, he should not have given the least indication of his assailant's identity to the police all the time he was with them, until he reached the Kotwali. This is consistent only with the position that Chhotelal had not the slightest idea as to who had attacked him and that the idea of naming this particular man at the police station, occurred to him immediately before he lodged the report. Chhotelal knew that the appellant was connected with the Muslim League Office and was, in fact, living there. The period then was one of extreme communal tension. It is quite conceivable that not knowing his assailant in fact, he named the appellant under an honest impulse born of a shrewd suspicion against the appellant, because of his association with a body for which he did not entertain any respect whatsoever.

8. Further, I find that, while Chhotelal stated that he was only at a distance of five or six paces in front of Jagannath, the latter deposed that Chhotelal was going 50 or 60 paces ahead of him. Both the statements could not be true at the same time. Apart from this contradiction, affecting the evidence of Jagannath, which, as I have already pointed out, was wholly useless on the point of the identity of Chhotelal's assailant, it also damaged the evidence of Chhotelal himself at least on the point of the relative position of these two men from each other, when they were proceeding on the road that particular evening. Chhotelal may not have spoken the truth.

9. Again Mr. Niaz Ullah Khan, Magistrate, P.W. 1, stated that, when he had gone to the appellant's house and called him, the latter came out at once and that he (the Magistrate) did not notice any confusion or disturbance on his face. This statement positively negated the version given by Chhotelal that the appellant had been actually dragged out by the police from his house and not merely called out, when the Magistrate went to call him. This also shows that Chhotelal was

anxious to introduce an element of exaggeration and if necessary, even of falsehood into the case. All these factors have tended to influence my mind against the veracity of the evidence given by Chhotelal, and I do not think it safe to rely upon it in this communal case.

10. On the second question the position is fairly clear. It cannot be denied that, as a pure legal proposition, a Court can convict a person even on the uncorroborated testimony of a single witness, just as it can convict him on such testimony of an accomplice. In England, no doubt, this rule has not been followed in certain classes of criminal proceedings, for instance, in cases of perjury. But in India the rule is well settled that a Court can legally base the conviction of an accused on the statement of a single witness, even though he may not be corroborated by any other evidence. Nonetheless, even in India, Courts of Justice have always insisted on the corroboration of the evidence of the only witness examined to prove the charge, whatever be the material affording that corroboration. This has been done not as a matter of law but purely as a matter of practice and prudence. Although it has been said that 'evidence has to be weighed and not counted' so as to require at least two witnesses to support the charge, in actual practice it has been laid down that corroboration must always be sought to justify the conviction of an accused on the basis of the testimony of a single person. This position was clearly indicated by their Lordships of the Privy Council in *Mohamed Sugul Essa Mamasan Rer Alalah v. The King* A.I.R. (33) 1946 P.C. 3, in which inter alia the following observation was made:

It is a sound rule in practice not to act on the uncorroborated evidence of a child whether sworn or unsworn, but this is a rule of prudence and not of law.

11. The points, which I have mentioned as affecting the credibility of the evidence of Chhotelal, would make it eminently desirable in the present case that his statement, not being corroborated by any other material, should not be accepted. Even if that evidence was not open to challenge, I would have been loath to affirm the conviction of the appellant only on its basis in the absence of any corroboration thereof.

12. For all these reasons, I am not satisfied that the conviction of the appellant by the Court below was correct and I, therefore, allow the appeal, set aside the conviction and sentence passed on the appellant and acquit him. The appellant is on bail, He need not surrender.

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