

Mauji and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jan-29-1936

Reported in : AIR1936All388

Appellant : Mauji and ors.

Respondent : Emperor

Judgement :

1. Mauji and Sewa, sons of Bhaju, and Bhura alias Mata Din, son of Madari, have been convicted by the learned Sessions Judge of Etawah of murdering Radha Kishun on the morning of 25th May 1935 and sentenced to death. They have appealed from their convictions and the learned Sessions Judge has made a reference for confirmation of the death sentences. Radha Kishun was a resident of village Andawa. The appellants are also residents of the same village. Radha Kishun's son was suffering from small pox and he used in those days to visit a temple named Than of Mahuar Devi which is situated at a distance of one mile from the village habitation. It is abundantly proved that he was murdered at about 9 a. m. near a well which is at a distance of a few yards from the temple. Apparently he took a bath at the well and proceeded to the temple to make an offering of water to the deity. When he returned from the temple to the well and was preparing to go back to his house he was murdered. These particulars were stated in the confession of the accused Sewa which was subsequently retracted.

2. The first information report was made by Mihi Lal, son of Baldeo, chaukidar. It was therein stated that Tikola Chamar was proceeding from village Menhdipur to Andawa, and when he passed near the well which lies on the way from Menhdipur to Andawa he noticed the body of Radha Kishun lying face downwards near the well. A number of villagers arrived on the scene probably because a hue and cry was raised by Tikola. The chaukidar, Baldeo, and Tikola remained at the spot and directed Mihi Lal to make the first information report. According to Mihi Lal nobody had witnessed the crime and it was not known by whom Radha Kishun had been murdered. The officer in charge of the Police Station proceeded to the spot and took up the investigation. Suspicion fell on the appellants because Bhaju, the father of the appellants, Mauji and Sewa, had been murdered two years before the present occurrence and certain Kumhars were prosecuted and convicted in connexion therewith. The deceased, Radha Kishun, had also been accused but the police did not prosecute him. The family of the appellants who are Danukh by caste cherished a grievance against Radha Kishun whom they believed to be at the bottom of the murder of Bhaju. The suggestion is that Mauji and Sewa, whose father had been murdered, and Bhura, who is the nephew of Bhaju, conspired to murder Radha Kishun in revenge. It was known to them that Radha Kishun was in the habit of going to the temple every morning, and as the temple is situated at a lonely spot near the ravines which is not frequented by passers by, they considered it to be a suitable occasion of murdering Radha Kishun without being noticed by anyone.

3. The appellant, Sewa, was arrested on 28th May 1935 at his residence in village Ritor which is at a considerable distance from village Andawa. The record does not enable us to say precisely the distance between these two villages. We have however referred to the map of the district of Etawah and calculated the distance to be about 9 or 10 miles. Sewa had migrated to village Ritor for certain reasons which it is not material to mention and was living with a relative of his at Ritor. The other two appellants continued to reside in their ancestral house at Andawa. After his arrest Sewa made a statement to the investigating officer who forwarded him to the Sub-divisional Magistrate with the request that his confession be recorded. Sewa was sent to jail on the 29th when he arrived at the headquarters, and he was placed before the Magistrate on 30th May 1935 for his confession being

recorded. He made a confession in which he implicated the other two appellants and himself and stated that all three of them had murdered Radha Kishun in revenge for the murder of Bhaju. We shall deal with this confession in detail presently. Soon after the arrest of Sewa his house was searched and a lathi alleged to have bloodstains was taken possession of and sent to the Chemical Examiner.

4. The latter expressed the opinion that it had marks of blood on it. The Imperial Serologist to whom the lathi or the scrapings of bloodstains thereon were sent for examination however declared that he was not in a position to say whether there were marks of human blood on the lathi. In the course of the investigation several witnesses were forthcoming who stated that they had witnessed the assault on the deceased by the three appellants. They were Tikola who was the first to notice the dead body of Radha Kishun, Bare Lal and Puta, barber. They were examined as witnesses at the trial. Besides these, two other persons, Deo Prag and Benarsi Lal, are mentioned in the charge sheet as eyewitnesses. They were not however examined as witnesses either in the Court of the committing Magistrate or before the Sessions Judge. Shiam Lal and Onkar Singh gave some information to the police which was considered to be corroborative of the confession and of the evidence given by the eye-witnesses. According to Shiam Lal who is a lorry driver the appellant, Sewa, got into the lorry which was proceeding to Etawah and paid the full fare to that place but alighted at an intermediate place called Barari.

5. The witness Onkar Singh is a cleaner and was also on the lorry and gave the same evidence as Shiam Lal. Bishambhar Dayal, mukhia of a neighbouring village, was able to say that he had seen the appellants Mauji and Sewa on the morning of 25th May 1935 near the village Andawa.

6. The statements of all these witnesses were recorded before the committing Magistrate. The appellant Sewa, when examined as an accused, retracted his confession and alleged that he had been tormented by the police to extort the confession which he made on 30th May 1935. At the trial in the Court of Session all these witnesses were examined. The learned Sessions Judge considered that the confession of Sewa was voluntary. He did not consider it safe to accept the

evidence of the so-called eyewitnesses, Tikola and Bare Lal, but he saw no reason to disbelieve the evidence of the third eye-witness, Puta. He also accepted the evidence of the lorry driver, Shiam Lal, and cleaner, Onkar Singh. The learned Judge likewise believed Bishambhar Dayal. On the whole the learned Judge found the case against all the three appellants established by the aforesaid evidence. The assessors were of opinion that the accused have not been proved to be guilty of the offence with which they had been charged.

7. We have been taken through the entire evidence and the judgment of the learned Sessions Judge and find that the case largely rests on the evidence of Puta and the retracted confession of Sewa. The corroborative evidence given by the lorry driver, Shiam Lal, the cleaner, Onkar Singh, and the mukhia, Bishambhar Dayal, is of no avail if Puta is not believed and the retracted confession of Sewa is discarded. Having given our careful consideration to the circumstances in which Sewa made his confession and to the confession itself, we are not satisfied that it is of much evidential value, specially against the appellants Mauji and Bhura. There is absolutely no evidence to show in what circumstances Sewa showed his willingness to the investigating officer to make a confession. He was in the jail lock-up for about 24 hours before his confession was actually recorded by Mr. Sri Dhar, the Magistrate before whom the preliminary enquiry was subsequently made. It does not appear who brought him from jail to Mr. Sri Dhar's house where the confession was recorded. The questions put by the Magistrate to satisfy himself as to whether the confession was voluntarily made are all of a stereotyped character. There are internal indications in the confession which suggest that the confession was not the outcome of Sewa's own desire to state what he knew. He was at pains to mention facts in respect of which it was proposed to examine other witnesses.

8. The object clearly was to elicit from him facts in respect of which it was proposed to offer corroborative evidence. We are unable to believe that Sewa, left to himself, would have made it a point to state facts which were likely to be deposed to by other witnesses. For instance, he mentioned that a certain person whom he did not recognize was riding a white mare and rode towards village Mahewa. We find that the witness, Tikola, made a similar statement when he was

examined by the police. His statement has since been brought on the record under Section 162, Criminal P.C. One or two other witnesses have mentioned this incident. Eventually no one supposed to be riding a white mare was examined as a witness. It is however clear that it was then in contemplation that a certain person riding a white mare also saw the occurrence and would give evidence. Again, Sewa stated in his confession that he did not see if there was any one in the vicinity. Some witnesses state that they were behind the bushes and had seen the occurrence but out of fear did not come out. Sewa went on to state in his confession that he got into a green lorry which was proceeding from Mahewa and got down at Ritor. This was to be the substance of the evidence of the lorry driver, Shiam Lal, and the cleaner, Onkar Singh. Lastly it is stated in the confession that the other two accused came to Ritor on foot. This is stated by a prosecution witness named Manna Lal who was expected to state that Mauji and Bhura were seen by him at the well in front of his house and that both of them had lathis in their hands. We have reasons to suspect that the confession was made by Sewa at the instance of the police who had a hand in shaping it. As already stated, the confession is of little value against Mauji and Bhura in any case. For the reasons already stated, we are not inclined to attach much importance to it even against Sewa who made it.

9. We agree with the learned Sessions Judge that the evidence of the so called eye-witnesses Tikola and Bare Lal is unreliable. The first information report was made by Mihi Lal, who had had a talk with Tikola. According to the first information report, Tikola had seen nothing and was not able to give any information as regards the identity of the assailants of Radha Kishun. The investigating officer examined Tikola on 25th May 1935 between 7 and 8 p. m. He did not even then name any one as the murderer of Radha Kishun. He was again examined by the police on 28th September 1935, and then for the first time stated what he eventually deposed to as a witness in the case, namely, that the appellants had killed Radha Kishun with lathis. He explained that he was afraid lest he himself should be killed, and therefore concealed the truth. It is clear that no reliance can be placed upon the evidence of Tikola. Similarly, Bare Lal has been disbelieved by the learned Sessions Judge, because on his own showing he had seen the accused murdering Radha Kishun but did not tell anyone in the village about the

occurrence, though there were several occasions when he was expected to mention what he had seen. Moreover, Bare Lal admitted facts which showed that there was ill-feeling between him and the accused.

10. Coming to the evidence of Pata, barber, who has been believed by the learned Sessions Judge, we find that his evidence is no better than that of the other two alleged eye-witnesses. He says that on the morning in question he was going from his village Mehndipura to a certain 'purwa' inhabited by Ahirs to shave people and that when he passed near the well he saw the three appellants beating Radha Kishun with lathis. He did not recognize the victim at that time, and it was subsequently that he learnt that it was Radha Kishun who had been done to death. He would have us believe that he concealed himself on account of fear and did not go to see the dead body. In fact, he says that he went back home and did not go to the hamlet Ahiron-ki-Mandaya to shave people. It is not probable that the witness would conduct himself in the manner he did according to his evidence. It was natural for him to have raised a hue and cry, if not immediately, at least after the assailants had left. He did not return to the scene even when other villagers were attracted to the spot subsequently. He admits that Ch. Hanumant Singh is his zamindar and that he (Hanumant Singh) looked after the case of the Kumhars who had been accused of the murder of Bhajua, the father of the appellants Mauji and Sewa. Hanumant Singh is taking interest in this case on behalf of the prosecution.

11. This is conceded by the learned Judge, who found Hanumant Singh on the spot when he went to inspect the locality. But the learned Judge, is of opinion that this is not sufficient reason for discrediting the evidence of Pata. Having regard to the unconvincing nature of the evidence given by Pata, and the influence which the enemies of the appellants undoubtedly have on him, we think that it is highly unsafe, to say the least of it, to accept the evidence of Pata. It is unfortunate that he was not properly cross-examined by the counsel who represented the accused in the lower Court. The cross-examination is extremely meagre, and many questions which arise from his statement were not put to him. We think that if he had been more carefully cross-examined, he would have broken down.

12. The learned Sessions Judge should have himself put questions to him as to why he left the scene of the occurrence immediately after witnessing it, why he did not mention the occurrence immediately even if he did not raise an alarm when he witnessed the assault. He has not told us, like another witness, that he was afraid lest he should himself be assaulted. He tells us that he had told Bishambhar Dayal Mukhia, on the day of murder, that he had witnessed the assault by the appellants. Bishambhar Dayal, who has been examined as a witness, does not, however, corroborate him in that respect. He was examined by the police on the 4th or 5th day after the murder. As already stated, the evidence of Pata does not inspire confidence, and we are wholly unable to act upon it.

13. The evidence of the lorry driver Shiam Lal and the cleaner Onkar Singh is of little value. All they say is that on that morning Sewa took his seat in the lorry and got down at Berari. There is nothing incriminating in the fact stated by them. Similarly, the evidence of Bishambhar Dayal Mukbia, to the effect that he had seen the appellants Sewa and Bhura going towards Andawa with lathis on their shoulders, does not in any way connect them with the crime. He stated in the Court of Session that the accused had their 'dhoties' tucked up, which he did not mention before the committing Magistrate. The object of the witness clearly was to show that the two men mentioned by him had made preparations for the commission of the murder. If that is so, the omission to state in the Court of the committing Magistrate what he did subsequently is not without significance. Having considered carefully all the evidence which found favour with the learned Sessions Judge and the retracted confession, we are unable to agree with his conclusions. Accordingly we accept the appeal, set aside the conviction and sentence and direct that the appellants be forthwith released, unless they are required in connexion with some other case.