

**Munna Vs. State**

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**Court :** Allahabad

**Decided On :** Feb-17-1993

**Reported in :** 1993CriLJ3719

**Judge :** Palok Basu and ;Surya Prasad, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 149, 302, 307 and 396

**Appeal No. :** Criminal Appeal No. 1588 of 1981

**Appellant :** Munna

**Respondent :** State

**Advocate for Def. :** D.G.A.

**Advocate for Pet/Ap. :** Apul Misra, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Palok Basu, J.**

1. This appeal has been filed by Munna against his conviction under Section 302/149, I.P.C. for committing murders of Samokhan Singh, Smt. Katori Devi and Laiq Singh under Section 307/149, I.P.C. for causing fire-arm injuries to Pheru Singh and Phirangi Lal (informant), and under Section 396, I.P.C. For committing

dacoity at the houses of Samokhan Singh and Chakrapan during the course of which murders of Suraj Mukhi and Pappu (wife and son of Lik Singh) were committed and sentences of imprisonment for life, five years' R.I. and again imprisonment for life respectively under the aforesaid three counts were awarded by the 1st Addl. Sessions Judge, Mainpuri on 30-3-1981 in Sessions Trial No. 273 of 1979.

2. Sri Apul Misra, learned Counsel for the appellant has argued the matter with ability as Amicus curiae and has placed the entire evidence and has taken the court through the record. Sri Jagdish Tewari, learned A.G.A. has been heard on behalf of the State.

3. The prosecution case is that the deceased Smt. Katori Devi was married to one Amit Singh and after the death of Amit Singh she started living with Amit Singh's younger brother Ramasi then giving birth to Anar Singh who is mentioned in the F.I.R. as an accused in the instant case along with other named accused Zorawar Singh. However, the relationship between Smt. Katori Devi and Ramasi went bad and she deserted him and later on was taken as wife by Samokhan Singh, deceased, giving birth to Laiq Singh. In turn Laiq Singh was married to Suraj Mukhi out of which wed-lock Pappu, deceased was born.

4. The further case of prosecution is that on the day and time of the incident, i.e. 25-10-1978 at 4 p.m. Samokhan Singh, Smt. Katori Devi and Laiq Singh were in their fields when about 22 or 23 persons including two named accused persons Anar Singh and Zorawar Singh, came there and Anar Singh who had by then become a dacoit of notoriety accosted Samokhan Singh for having kept his mother. The three started running for their lives. At the firing of Anar Singh and Zorawar Singh and others the three died at the spot. However, P.W. 3 Phirangi Lal, Nephew of Samokhan and P.W. 6 Pheru Singh who was in the nearby field wanted to come to help their uncle, aunt and cousin but they were also not spared and Phirangi Lal, P.W. 3 received several fire-arm injuries at his chest and arm. After having done this, the said miscreants proceeded to village Garhi Dan Sahai and entered the house of Samokhan Singh. Phirangi Lal P.W. 3, Pheru Singh P.W. 6 ran towards their houses which adjoined Samokhan Singh's house. Nathu

Ram P.W. 5 was sitting at his Chabutara in front of his house which was next door and further case of the prosecution is that after committing the dacoity at the house of Samokhan Singh, Chakrapan's house was also looted. Inside the house of Samokhan Singh, Laiq Singh's wife Smt. Suraj Mukhi and son Pappu were also killed. Consequently P.W. 5 Nathu Ram saw all the accused committing the dacoity at the house of Samokhan Singh and at his own house.

5. An F.I.R. about this incident was lodged on 26-10-1978 at 8 a.m. by Phirangi Lal , P.W. 6. As noted above, the F.I.R. mentioned Anar Singh and Zorawar Singh as named assailants who along with 22 or 23 other persons committed the merciless attack and brutal assault on helpless citizens.

6. The prosecution case further is that the appellant Munna was arrested by P.W. 4 Ram Swarup Nim, Sub. Inspector, who was posted then as such at police station, Shikohabad, on 7-12-1978 at 11 a.m. Immediately after his arrest he has been made Bapurdah. As such, this witness came to know the complicity of the appellant in the instant case. He has proved general diary entries relating to taking of the appellant Munna to the said police station at 3.15 a.m. vide general diary entry No. 4. A copy of the general diary entry No. 4 wherein the above fact of entry of the appellant in the lock-up was mentioned at 3.15 a.m. has been proved as Ext. Ka-29 which was originally made by Moharrir Gur Dayal whose hadwriting has been proved by this witness. It has been said by this witness that the appellant was kept Bapurdah (covered face) so long as he remained in custody. As he was to be put up for test identification parade. The general diary entry No. 2 indicates that on 8/9-12-1978 (mid night) at 12.30 the appellant was forwarded for jail custody through constables Brijtam Singh and Phulan Singh. Its copy has been proved as Ext. Ka. 30.

7. In the cross-examination the only suggestion given to this witness is that the appellant was not kept at the police station Bapurdah and was shown to the witnesses at the police station. The further suggestion given to this witness that the appellant was arrested on 7-12-1978 at Girhi Dan Sahai market has been denied by this witness.

8. P.W. 2 G. C. Saxena, Executive Magistrate has proved the fact that on 29-1-1979 he conducted a test identification parade in district jail, Manipuri. From the proceedings proved by him it appears that the witnesses Phirangi Lal , Than Singh, Nathu Ram and Pheru Singh were called for identifying the appellant. Phirangi Lal and similarly Nathu Ram had identified the appellant Munna correctly whereas Pheru Singh, P.W. 6 though correctly identified the appellant Munna, committed a mistake with regard to the test identification parade of Shiv Raj. Nothing has been brought out in the cross-examination of the said Magistrate (sic) (to) show that all necessary precautions for holding the test identification parade were not taken. The minute examination of the identification memos reveals that the Magistrate had in fact taken the precautions and had conducted the test identification parade after taking all safeguards.

9. After thus being satisfied about the complicity of the appellant, the Investigating Officer filed the charge-sheet against him in the court as a result of which the aforesaid trial, conviction and sentence was held and passed against the appellant. Hence this appeal.

10. From the cross-examination of the witnesses, namely, P.W. 3, Phirangi Lal , P.W. 5 Nathu Ram and P.W. 6 Pheru Singh it is apparent that the incident itself was not challenged at all. Consequently, it has to be held that their statements about the details and manner of the assault as deposed to by these witnesses remained unchallenged and, therefore, rightly proved by the trial Judge.

11. Sri Misra vehemently argued that the test identification parade evidence available against the appellant is not sufficient in the eye of law. In this regard he advanced two arguments:-

(i) The appellant having been allegedly arrested on 7-12-1978 should have been put up for identification parade much earlier than 29-1-1979 and this delay of about Wi months should be taken to be fatal to the prosecution. In this regard he placed reliance on the decision of Hon'ble Supreme Court reported in Subash v. State of U.P., 1987 All Cri C 507: (1987 Cri LJ 991). The learned counsel emphasised the following paragraph:-'Apart from this infirmity we further find that Shiv Shanker was not put up for test identification parade promptly. The

identification parade has been held three weeks after his arrest and no explanation has been offered for the delay in holding the test identification parade.'

Learned counsel for the appellant argued that the time limit of three weeks as observed by Hon'ble Supreme Court should be deadline so far as reliance on identification parades are concerned. It is difficult to accept the argument as advanced. In that very case the next paragraph is worth mentioning wherein the Hon'ble Supreme Court has further observed as under:-

'Over and above all these things there remains the fact that a sufficiently long interval of time had elapsed between the date of occurrence when the witnesses had seen Shiv Shanker for a few minutes and the date of the test identification parade. It is no doubt true that all the three witnesses had correctly identified Shiv Shanker at the identification parade but it has to be borne in mind that nearly four months had elapsed during the interval. It is relevant to mention here that neither in Ext. Kha 1 nor in their statement during investigation, the eye witnesses have given any descriptive particulars of Shiv Shanker.'

As mentioned above in the instant case the date of the incident is 25-10-1978 and the test identification parade had been conducted on 29-1-1979. Two accused are mentioned by name in the F.I.R. and sufficiently long time had been consumed by the appellant in committing dacoity. The evidence discloses that the entire Gang operated for nearly 214 hours to complete the assault and dacoity. Consequently, the availability of the time and opportunity to the witnesses was much more than what was probably available to the witnesses in the cited case. The witnesses had thus identified the appellant in the test identification parade without any mistake.

12. In view of the aforesaid discussion it must be held that the test identification parade is well corroborating the testimony of the eye-witnesses as recorded by the trial Court wherein they have identified the appellant.

(ii) The argument in this regard is that Nathu Ram's statement should be discarded because he has made the following statement in the cross-examination (Translation in English by the Court).

'It is wrong to say that the man whom I had gone to identify in Jail was noticed by me coming to my village. I had seen him coming to Phirangi Singh's house. Seeing was done before dacoity.'

'Yah kahna galat hai kin jis aadmi ko meine jail men shanakht kiya tha usko gaon men aate jatte dekha tha. Isko Phirangi Singh ke ghar meine aate jaate dekha tha. Dacoity se pahle dekha tha.'

The emphasis was laid that if the appellant was already known to the witness Nathuram Singh P.W. 5 from before the dacoity, the identification parade becomes farce so far as he is concerned.

13. The argument is fallacious for several reasons and the most important of them is that in re-examination a direct question was put up to this witness to clarify as to which of the two statements is correct. For actual appraisal of the said statement the question and answer as put in re-examination (or cross-examination) is quoted here:-

'Prashn:- Tumne apne upar vyan men kaha hai ki tumne jis badmash ko jail men shanakht kiya tha usey pahley nahi dekha aur usey pahley se nahi jante the jabki tumney jirah men bataya ki tumney is mulzim ko apney gaon men Phirangi ke ghar aate jaate dekha tha. Donon mein kon si baat sahi hai.'

Uttar:- Merey pahli baat sahi hai.'

Yah baat mein galti se kah gayaki meine mulzim ko phirangi ke ghar aate jaate dekha tha.'

This leaves no room for doubt that the witness has fully clarified his statement that he did not know this appellant from before. Moreover, he had no opportunity to make a false identification in the test parade in jail conducted by the Magistrate who had taken full precautions.

14. In this very connection it was rightly emphasised by the Govt. Advocate that the said P.W. 5 Nathuram was a victim of the dacoity and was having his house next to the house of Samokhan and, therefore, had much more than normal

opportunity to see the assault and the dacoity for nearly 2 1/2 hours and that too at 4.00 p.m. on 21-10-1978. Therefore, it was not a momentary glimpse. It was a prolonged scene, as a result of which it was very easy for the witnesses to recognise the appellant. It was rightly emphasised that the test identification parade was held within 1 Vi months of the arrest of the appellant and that too within about 3 months of the incident. Consequently, Nathuram's evidence of identification is wholly reliable which stands fully corroborated by his rightly identifying the appellant in the test identification parade.

15. The trial Judge has further added the reason that the named accused are notorious dacoits and are already absconding. This finding has been commented upon by the Govt. Advocate and he has suggested that some threats may have been extended to this witness. However, be that as it may, it is not necessary to go into this issue. On the basis of the evidence existing on the record the testimony of P.W. 3, Phirangi Lal , P.W. 6 Pheru Singh, an injured witness, and P.W. 5 Nathuram who is the victim of the incident, have been rightly relied upon by the trial Court so far as the identification of Munna appellant is concerned.

16. Consequently, no other point survives for determination in this appeal and the conviction and sentence recorded by the trial Judge is upheld.

17. The appeal is dismissed. The appellant is in jail and he will serve out the sentences awarded to him.

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