

Mansa Ram Vs. State

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Court : Allahabad

Decided On : Mar-24-1975

Reported in : 1975CriLJ1772

Judge : B.N. Katju and ;M.P. Saxena, JJ.

Appellant : Mansa Ram

Respondent : State

Judgement :

M.P. Saxena, J.

1. This is an appeal by Mansa Ram against the judgment and order dated 22-3-1971 passed by the First Temporary Civil and Sessions Judge, Meerut, convicting him under Sections 302 and 307, I.P.C. and sentencing him to imprisonment for life and five years' R. I, respectively.

2. The prosecution case briefly stated is that Daya Ram, father of the appellant, carries on a grocer's shop in the market of Qasba Tatiri, P. S. Baghpat, district Meerut. In February 1970, Ranjeet deceased and Jai Bir (P.W. 2) were students of Mithili College which lies at a distance of one and a half miles from Tatiri. On 13-2-1970 at about 12-30 P. M. they visited the shop of the appellant for purchasing certain -articles. An altercation followed by exchange of abuses took place between Ranjeet and the appellant and the latter delivered a knife blow on the

former's chest with intent or knowledge to cause his death. When Jai Bir tried to intervene he was also given a knife blow in an attempt to commit his murder. On receiving injuries both the victims of the offence ran away but Ranjeet fell down at a distance of about 8 or 10 paces and became unconscious. Jai Bir went towards his village but on account of giddiness he fell down in a field and remained there upto 2.30 or 3 P. M. The occurrence was witnessed by Brij Mohan, Gaibu and Bhupal. Attempt was made to apprehend the appellant but he managed to escape with the knife. The witnesses went near Ranjeet and bandaged his wound with a Chadar. He was taken to the police outpost Tatiri and then to P. S. Baghpat where Rampal (P.W. 1) lodged the first information report (E. Ka-2) at 1 P. M. Ranjeet was immediately taken to Baghpat hospital where his injury was examined by Dr. N. D, Garg at 1.15 P.M. The following injury was found on his body:

Stab wound 1-1/8' X 1/2' X front of upper part of left chest cavity 4-1/2' above left nipple.

3. The injured was unconscious and his pulse was imperceptible. The injury was grievous and was caused by some sharp-edged pointed weapon like a knife. Duration was fresh. The injury report is Ex. Ka-22. As the condition of Ranjeet was serious it was advised that he may be removed to the district hospital.

4. Jai Bir (P.W. 2) was also examined by the same doctor at 4.30 P. M. and the following injury was found on his body:

Incised wound with clear-cut margins 1-5/8 X 7/8 X 1-1/2' cutting the muscles underneath over front and top surface of middle part of left side of upper part of back of body.

5. The injury was caused by some sharp-edged pointed weapon and was fresh. X-Ray examination was advised. His injury report is Ex. Ka-21. A constable brought Ranjeet to the district hospital, Meerut, where Dr. Nagar performed an operation in the presence of Dr. G. A. George (P.W. 6) in order to give necessary treatment. Ranjeet was admitted in the hospital where he died on 14-2-1970 at 5.05 A.M.

6. Post-mortem examination on the dead body of Ranjeet was conducted, by Dr. R. N. Pathak on 14-2-1970 at 4.45 P.M. The following ante-mortem injuries were found on the dead body:

1. Stitched wound 7.5 cm. placed obliquely across the upper part of left side chest-medial and upper end near the sternoclavicular junction. There were eight stitches. On cutting the stitches the muscle layer was stitched separately and the wound was cavity deep.

2. Stitched wound 2.5 cm. on the left side chest 2.5 cm. below injury No. 1. There were four stitches. On opening, the wound was found to be cavity deep.

3. Stitched wound 3 cm. long. There were two stitches in space of burn. On cutting the stitches, the wound was found cutting the trachea.

4. Stitched wound 3 cm. There were four stitches on left side chest in post axillary line placed vertically. On cutting the stitches the wound was found to be muscle-deep.

5. Multiple abrasion on 8 cm. X 2 cm. area front of left knee.

6. Multiple abrasion in 6 cm. X 3 cm. area right knee front.

7. On internal examination left pleura was found punctured. Left lung was also punctured. Death was due to haemorrhage and shock. The post-mortem examination report is Ex. Ka-23. In his statement the doctor gave out that the injury found on the lung of the deceased was sufficient in the ordinary course of nature to cause death.

8. The appellant denied the said charges and gave out that he was implicated in this case by Jai Bir (P.W. 2) in order to save himself. According to him, there were rival factions among the boys in Mithili College. Ranjeet deceased and Jai Bir belonged to rival factions and had delivered knife blows to each other on that day.

9. The prosecution examined five witnesses of fact, namely, Rampal Singh (P.W. 1), Jai Bir (P.W. 2), Brij Mohan (P W. 3), Gajbu (P. W. 4) and Sabeeb Singh (P. W. 5). The appellant did not adduce any oral evidence.

10. After going through the evidence on the record the learned trial court believed the prosecution story and convicted and sentenced the appellant as mentioned above.

11. There is no controversy about the factum of the occurrence and that Ranjeet deceased and Jai Bir (P.W. 2) had received knife blows in that occurrence. There is also no controversy that Ranjeet died as a result of injury caused on his chest and it was sufficient in the ordinary course of nature to cause death. So far as the time and place of occurrence are concerned, the prosecution examined the aforesaid five witnesses to prove that the unfortunate incident had taken place at the shop of the appellant at about 12.30 P.M. on 13-2-70. Jai Bir (P.W. 2) who is one of the victims of the offence had narrated the entire story. He gave out that on that day at about 12.30 P.M. Ranjeet and he were in the market of Tatiri. He wanted to purchase sugar while Ranjeet wanted to purchase salt and chillies. After visiting several shops and enquiring rates of sugar, salt and chillies they reached the shop of the appellant. He enquired about the rate at which he was selling sugar. The appellant gave out that its rate was Rs. 1.70 per kilogram. When he (Jai Bir) gave out that the other shopkeepers were selling it at 1.60 per kilogram the appellant sarcastically remarked that he had come to make purchases without having any money in his pocket. On it Ranjeet became angry and asked Mm not to misbehave which resulted in altercation and ultimately in exchange of abuses. The appellant delivered a knife blow on the chest of Ranjeet. When he tried to save him, the appellant gave a knife blow on his shoulder also. As a result of the injury Ranjeet fell down at a distance of 8 or 10 paces. He proceeded towards his house but fell down in a field. He also gave out that this occurrence was witnessed by his cousin Brij Mohan, Sabab Singh and Gajbu. He was cross-examined fairly at length but nothing useful was elicited. He bears no enmity with the appellant and there is no reason why he should have tried to implicate him in a false case. It is clear from his statement that the entire incident had taken place at the shop of the appellant. He was corroborated by Ram Pal Singh (PW 1), Brij Mohan (P.W. 3), Gajbu (P. W. 4) and Sabeab Singh (P. W. 5). They have also no accounts to settle with the appellant. At that time Ram Pal Singh was purchasing vegetables on a nearby shop. The remaining witnesses were on a cloth shop at a short distance. Ram Pal Singh saw altercation and exchange of abuses going on between the

appellant and Ranjeet and delivery of knife blows to the two victims. Brij Mohan, Gajbu and Saheb Singh deposed only about altercation but all of them had seen the appellant delivering knife blows to Ranjeet and Jai Bir. Their presence in the market of Tatiri at that time cannot be doubted and the statements regarding the occurrence at that place deserved to be accepted. The learned Counsel for the appellant has tried to discredit their testimony on certain grounds. Firstly, it is urged that there are certain contradictions in their statements. We have examined their statements very carefully and find that the alleged contradictions are of a very trifling nature. It is needless to say that unimportant verbal contradictions and discrepancies do not go to discredit the testimony of the eye-witnesses whose presence at the scene of the occurrence cannot be doubted particularly when the incident took place in the day time.

12. Secondly, the contention is that according to the witnesses, a number of shops are situate in the market of Tatiri but none of these shop-keepers came forward to support the prosecution story, which is fatal to the prosecution case. In the circumstances of this case we are reluctant to attach much weight to this argument. It is in the statements of the witnesses that the shop-keepers were sitting inside their shops and were busy with their customers. Besides it, only two blows were delivered in quick succession to Ranjeet and Jaibir. The altercation and exchange of abuses did not last long and did not attract the attention of these shop-keepers, The delivery of two blows took place in the twinkling of an eye which only the persons transacting business at the shops or passing on the road could have seen. Hence much, capital cannot be made out of the absence of the shop-keepers and more so when the witnesses examined were wholly independent. The appellant gave no evidence to prove that the incident had taken place somewhere else than in front of his shop. Besides a mere bald suggestion, there is no material to establish that there were party factions in Mithili College and the deceased and Jaibir fell out with each other and inflicted injuries. Lastly, it is urged that if Brij Mohan, P.W. 3, was there, he would have rushed to help his relation Jaibir but instead of doing so he alleges to have remained near Ranjeet with whom he had no concern. The witness offered a plausible explanation for it. He gave out that Jaibir had run away from the spot but Ranjeet had fallen down unconscious. Therefore, he went near the latter with a view to help him. There is

no reason to doubt the worth of his testimony, We are, therefore, in agreement that the unfortunate incident had taken place at the shop of the appellant at about 12.30 P.M. on that date.

13. Jaibir, P.W. deposed about the cause of the incident also. He gave out that on that day he wanted to purchase 2 1/2 Kg. sugar while Ranjeet wanted to purchase salt and chillies. They reached the shop of the appellant enquiring rates of these commodities at other shops. When he asked him', the rate of sugar he (the appellant) gave out that he was selling it at Rs. 1.70 per kilo. When he (Jaibir) told him that other shop-keepers were selling it at ten paise less, the appellant retorted that his pockets were empty and he had come to make purchases. Ranjeet few enraged and there was an altercation and exchange of abuses between them and the latter immediately delivered a knife blow on the chest of the former. When he tried to intervene he was also given a knife blow. Other witnesses corroborated him and no infirmity has been pointed out in their testimony. In this manner the cause of the incident was also established.

14. There remains the question of the nature of crime committed by the appellant and the sentence which should be imposed Learned Counsel for the appellant contends that on the evidence this is a case of culpable homicide not amounting to murder and falls within Exception I of Section 300 of the Indian Penal Code which reads as follows:

Culpable homicide is not murder if the offender whilst deprived of the power of control, by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident,

x x x

Explanation.- Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

15. An accused person claiming the benefit of this Exception must prove-

(1) That he received provocation, (2) which was grave and, (3) sudden. (4) that he was deprived of the power of control and (5) while still in that state of mind before he cooled down caused the death of the person who provoked him. In *Mahmood v. State* : AIR1961 All538 this Court held that the Explanation at the end of the Exception is very important for it enjoins that the question whether the provocation was grave and sudden enough to prevent the offence from being murder should not be treated as a question of law but one of fact and decided like any other question of fact.

16. It follows, therefore, that each case must be considered according to its own facts and the court must decide on the particular circumstances of that case whether the provocation was grave and sudden, enough to permit an indulgent view of the crime committed by the accused. No abstract rule of reasonableness can be laid down by the application of the doctrine of 'grave and sudden provocation'. What a reasonable man, i.e. a normal person will do in certain circumstances depends upon the cultural, social and emotional background of the society to which the accused belongs. However, the court must consider the reaction not of the normal man in the abstract but the normal man whose impulses are conditioned by the same environment as the accused. This being the test we may examine the circumstances in which the appellant in this case delivered the knife blow to Ranjeet. There is no denying the fact that the entire incident took place suddenly. In his examination-in-chief Rampal Singh (F.W. 1) referred simply to exchange of words (too too main main). But in cross-examination he gave out that exchange of abuses had also taken place between the accused and Ranjeet deceased. He tried to suppress the truth by stating that the accused abused Ranjeet and Jaibir and the latter did not abuse the former. His own statement made in examination-in-chief shows that abuses were hurled from both sides. This conclusion is further borne out from the statement of Jaibir who stated in his examination-in-chief:

Wahan par Mansa Ram key saath ham loqon ki saudey bazi key barey men too too main main wa gali galauj hogai.

In cross-examination he narrated the circumstances in which the exchange of abuses took place. He gave out:

Mansa Ram sey pahley maine Bura ki batchheet ki isney Rs. 1.70 p. kilo ka bhao bataya. Jab 1.70 bataya to maine leney sey mana kar diya. Mireh wa namak ka bhao nahin puncha tha. Maine ussey kaha ki 1.60 p, kilo bik raha hai adhik kiyun maangtey ho. Ispar Mansaram ney kaha ki subah subah dookan ghoomtey ho jeb men paise nahin hai. Main espar chup raha lekin Ranjeet ney kaha ki khahardar agar aisa kaha aur garm hogaya aur es baat par Mansa Ram ney usey Chhura mar diya.

It is true that neither party elicited as to who initiated abuses and what were the actual words used but it is evident from the statements of the witnesses that the appellant is aged 19 or 20 years and carries on a shop in the market of Tatiri. No shop-keeper would ordinarily behave in a manner which may affect his business and there is no reason why the appellant would have done so. On the other hand the deceased and Jaibir were students of the Mithili College. The appellant was justified in quoting his own rate of sugar and if Jaibir was not prepared to purchase it at this rate he could well have left the shop. He had no business to ask why the appellant was selling it at the rate of 10 paise per Kilo more, if the appellant remarked that they were visiting the shop with empty pockets, there was no justification for Ranjeet to get enraged and threaten the appellant. No shopkeeper of a normal mind will deliver a knife blow to his customer without sufficient cause. In the circumstances of this case when Ranjeet became enraged and also threatened the appellant, the possibility of his as well as Jaibir initiating abuses and using filthy words cannot be ruled out. As held in the case of *Nanavati v. State of Maharashtra* : AIR 1962 SC605 mere words and gestures may under certain circumstances cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300, I.P.C. If mere words or gestures can cause grave provocation, there can be no manner of doubt that its possibility will be all the more, if filthy abuses are hurled. In the instant case the quarrel was sudden. If the possibility of Ranjeet uttering filthy abuses to the appellant first cannot be ruled out, the latter could have grave provocation to deliver the knife blow to Ranjeet. We find it difficult to agree with the contention of the learned

Counsel for the State that in order to get the benefit of the first Exception the appellant should have established beyond doubt the words used in the abuses and that the abuses were first hurled by Ranjeet. In our view it is enough for the purposes of enabling an accused person to get the advantage of a general or special Exception to criminal liability if we are left in reasonable doubt based on substantial grounds where circumstances existed which could give the accused the benefit of that Exception. We are fortified in this view by the case of Parbhu v. Emperor : AIR1941 All402 and Rishi Kesh Singh v. State : AIR1970 All51 . In this view of the matter the appellant is entitled to the benefit of Exception I to Section 300, I.P.C. and the case falls within the ambit of Section 304, Part I of the Penal Code. The ends of justice will be amply met if he is awarded seven years' R. I. under this count. His conviction under Section 307, I.P.C. for inflicting injury to Jaibir was correctly recorded and the sentence awarded thereunder does not err on the side of severity.

17. The appeal is allowed in part. The conviction of the appellant Mansa Ram under Section 302, I.P.C. and the sentence of life imprisonment passed thereunder are set aside. He is instead convicted under Section 304, Part I, I.P.C. and sentenced to seven years' R. I. His conviction and sentence under Section 307 I.P.C. are upheld. Both the sentences shall run concurrently. The appellant is on bail. He shall surrender forthwith to serve out the sentences awarded to him.

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