

Munna Vs. the State

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Court : Allahabad

Decided On : Mar-18-1985

Reported in : 1985CriLJ1925

Judge : N.N. Sharma, J.

Appellant : Munna

Respondent : The State

Judgement :

ORDER

N.N. Sharma, J.

1. This revision is directed against order dt. A 15-2-1982 recorded by Sri M. P. Mathur, learned Sessions Judge, Meerut who dismissed Criminal Appeal No. 8 of 1982 and affirmed the conviction of revisionist under Section 392 of I.P.C. and sentence of one year rigorous imprisonment as recorded by learned Judicial Magistrate 1st Class, Meerut on 23-1-1982 in Criminal Case No. 617 of 1980.

2. Revisionist Munna is son of Khairati, resident of Mitandpur, Police Station Kithaur, District Meerut.

3. Prosecution story briefly stated was that on 6-1-1980, at about 11.00 a.m., informant Behari (P.W. 1) had gone to his sugarcane field to cut the sugarcane

along with his minor son Pappu (P.W.) aged about 11 years and Pyare (P.W. 3). He left the buffalo cart near the junction of the way leading to village Mitanandpur and Fatehpur in custody of the child, namely Pappu. It was at about 11.00 a.m. that the revisionist along with his associates reached there and threatened Pappu and carried the buffalo cart to his village. On return, Pappu informed his father about this robbery. Behari and Pappu went to the village of revisionist but could not trace out the buffalo or the cart.

4. Written report, Ext. Ka. 1, was submitted at Police Station Kithaur by Behari Lal in the same afternoon at 2.15 p.m. Distance of police station from the place of occurrence is about 2 kms. F.I.R. was drawn and on the basis of the report, case was registered in general diary.

5. Prosecution examined three witnesses in support of their case.

6. Revisionist denied his participation in the occurrence and alleged his implication to ill-will with local police.

7. The learned Magistrate convicted and sentenced the revisionist which was upheld in appeal.

8. I have heard learned Counsel for parties and perused the record.

9. On behalf of revisionist, it was pointed out that Pappu was a minor child aged about 11 years and his testimony was uncorroborated. Without such corroboration, the testimony of child witness was not reliable. It is well established that Courts must be careful to examine the evidence of a child witness to exclude the possibility of any tutoring vide : AIR 1960 AP490 . It is also true that the evidence of a child witness is notoriously dangerous unless immediately available and unless received before any possibility of coaching is eliminated. In Raj Ram v. State 1959 All LJ 736, it was held that the evidence of a child witness has to be accepted with great caution. It is correct that legally there is no bar accepting the uncorroborated testimony of a child witness yet prudence requires that courts should not act on the uncorroborated evidence of a child whether sworn or unsworn as was held by their Lordships of the Supreme Court in Rameshwar

Kalyan Singh v. State of Rajasthan : 1952 CriLJ547 . Their Lordships based their decision on Mohammed Sugal Esa Mamasan Rer Alalah v. King AIR 1946 PC 3.

10. In the aforesaid authorities, reliance was placed upon the observations of Lord Reading in the well known case of King v. Baskerville (1916) 2 KB 658 wherein it was impressed that independent evidence from which corroboration was to be sought should be there. Corroboration should not be only about the factum of crime but must also reasonably connect the accused with the same. A similar view was reiterated in Ram Hazoor Pandey v. State : AIR1959 All409 . Following principles have to be kept in mind while seeking for such corroboration:

(1) It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the child witness, should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the child witness is true and it is reasonably safe to act upon it.

(2) The independent evidence must not only make it safe to believe that the crime was committed but it must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the child witness that the accused committed the crime.

(3) The corroboration must come from independent sources and thus ordinarily the testimony of one child witness would not be sufficient to corroborate that of another, but of course, the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal.

(4) The corroboration need not be by direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime, Sanatan Bindhani v. State (1972) 38 Cut LT 428.

11. In the instant case, I find that the aforesaid principles have been ignored and rule of prudence was overlooked by the courts below.

12. Learned A. G. A; pointed out that there is no legal infirmity and the conviction of the accused is based on a finding of fact. Since the judgments were recorded by the courts below unmindful of the said principles which were to be borne in mind by them impressing the need of corroboration, the conviction in this case is not sustainable. There is nothing in the judgments to show that necessity of such corroboration as a matter of prudence was present in the minds of the Courts below while appreciating the testimony of the child witness. They gave no reasons for dispensing with the same.

13. In the instant case, it is obvious that Pappu (P.W. 2) did not accompany his father when he went to lodge the report. The report gives a full description regarding the residence and paternity of Munna revisionist. It is in the statement of Pappu (P.W. 2) that he did not know Munna from before. He claimed to have learnt the name of Munna on that date. It is further significant to note that Pappu was not taken to village Mitandpur by the revisionist at the time of robbery. Pappu was not sent up to identify Munna in any test identification parade. His father Behari and Pyare were not present at the time of alleged robbery. Their only source of information was Pappu who did not know the address of Munna nor had any occasion to know the name of Munna. It appears that the name of Munna has been supplied by some external agency. All these glaring facts have been omitted by learned trial Magistrate as well as appellate Judge. Such misreading of evidence has resulted in failure of justice in this case. There are significant variations in the statement of Pappu recorded by learned trial Court and interrogation by investigator who was even not...examined to bring them out in the case. Under such circumstances it is obvious that Pappu appears to have been tutored for the purposes of this case.

14. Revisionist alleged his ill-will with local police. Under the circumstances when neither the buffalo nor the cart has been traced to the possession of revisionist, he is well entitled to the benefit of reasonable doubt which is extended to him.

15. In the result, the revision is allowed. Conviction and sentence of revisionist are set aside and the revisionist is acquitted. He is on bail. He need not surrender to his bonds which are discharged.

