

Munna Vs. State

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Court : Allahabad

Decided On : Oct-12-1981

Reported in : 1982CriLJ389

Judge : P.N. Bakshi and ; M.M. Gupta, JJ.

Appellant : Munna

Respondent : State

Judgement :

M.M. Gupta, J.

1. Munna alias Pratap Singh and Jhallu appeal against their conviction under, S. 302 read with Section 34, IP.C. and sentence of imprisonment for life.

2. According to the prosecution case one Deshraj Singh Bhadoria, who was a reader to Judicial Magistrate, Orai, had gone on 23rd March, 1979 to Tahsil Pukhrayan in District Kanpur. After his work in Tahsil Pukhrayan he was returning to Orai by 106 Kanpur Jhansi Passenger holding a valid railway ticket. The train reached Kalpi station at about quarter to nine in the night but it was detained at Kalpi as another train from the opposite side had to cross it. Deshraj Singh Bhadoria who was travelling in this train got down at the platform during that interval. The train steamed off at 9-28 P. M. The passengers started getting inside the compartment. Deshraj Singh Bhadoria was also trying to enter the

compartment. While he was on the footboard he was stabbed by some one in the abdomen and he fell down inside the compartment. He was also stabbed by two other persons. The train stopped after the chain was pulled for a few minutes. Deshraj Singh Bhadoria was taken down at the platform and the train again steamed off. The information of the occurrence was communicated to Sri K. R. Varamjani, Assistant Station Master on duty. He sent a memorandum to the Station Officer, G.R.P, at Kalpi mentioning that one passenger named Deshraj Singh Bhadoria, Reader to Judicial Magistrate, Orai, holding ticket No. 74481 II O.X. PHN to Orai was stabbed by some one in the right side of abdomen by 106 Up, first aid rendered and sent to M.O. Kalpi with G.R.P. constable on duty for treatment and for necessary action. This communication was sent at 9-30 P. M.

2A. Deshraj Singh Bhadoria was taken to Kalpi Hospital where his injures were examined by Dr. L. R. Quraishi on 23-3-1979 at 10-15 P.M. He found the following injury on his person:-

1. Incised wound over right side of abdomen 19 cm away from the umbilicus size 5 1/2 cm. x 1 1/2 cm. probe not done, with swelling on the post aspect of the wound size 4 x 3 cm.

3. The injury was kept under observation and X-ray was advised. The injury was fresh at the time of the examination.

4. Sri K. S. Varma, Station Officer G.R.P. Jhansi was passing through Kalpi on 24-3-1979 at 6 A. M. by Jhansi-Lucknow Passenger. He was on his way to Moradabad via Lucknow but when he got the information of this occurrence he postponed his departure for Moradabad and took up the investigation of this case. He was handed over the papers of this case by the authorities of police out-post G.R.P. Kalpi. He proceeded to Kalpi Hospital where Deshraj Singh Bhadoria was admitted. Deshraj Singh Bhadoria handed over the written report of the case to him in which he had mentioned the names of the appellants and Kalloo among his assailants. This report was scribed by Gopal Singh Advocate. Sri K. S, Varma, Investigating Officer, further recorded the statement of Sri Deshraj Singh Bhadoria Under Section 161, Cr. P. C. Thereafter he proceeded to Kalpi railway station where he inspected the scene of occurrence and prepared the site-plan.

He also examined the witnesses. He did not find any blood lying on the platform. Thereafter, he left for Jhansi where he got the case registered at G.R.P. Jhansi.

5. Deshraj Singh Bhadoria was sent for further treatment to Medical College Jhansi where he was admitted and surgical aid was given to him. On 30th March, 1979 the dying declaration of Deshraj Singh Bhadoria was recorded by Sri Avadh Saran, S.D.M. Deshraj Singh Bhadoria succumbed to his injuries on 6-4-1979 at 6-30 P. M. in Medical College, Jhansi.

6. The inquest report relating to Deshraj Singh Bhadoria was prepared by Prakash Narain, Sub-Inspector of Police Nawababad on 6th April, 1979. The body was duly sealed and sent for autopsy.

7. The autopsy was performed on 7th April, 1979 at 4-30 P. M. by Dr. R. K. Gurdeo. According to him the deceased was aged about 40. He found the following ante-mortem injuries on his body:-

1. Stitched wound in midline of abdomen 10 cm. long, gaping, intestines peeping.
2. Stitched wound 11 cm. x 3 cm. oblique on right side of abdomen in hypochondriac region, gaping.
3. Abrasion 6 cm. x 4 cm. on the right lateral wall of abdomen in continuation with injury No. 2, clotted blood was present.
4. Oblique incised wound 3 cm. x 2 cm. in right iliac fosse, drainage tube point.
5. Stitched wound on right side of chest 1.5 cm. long, 7 cm. above nipple.
6. Stitched wound 2 cm. x 1 cm. on medial aspect of right leg 2 cm. above medial malleolus.
7. Abrasion 1 cm. x 0.5 cm, on left leg, 5 cm. below knee.
8. Abrasion 3 cm. x 1 cm. on left Lumbar region.

8. The stomach contained 4 ozs. of brownish fluid. The death, in his opinion, was due to shock and haemorrhage and toximia secondary to intestinal gangrene.

9. After completing the investigation the charge-sheet was submitted against the appellants and one Kalloo, whose case was not before the learned Sessions Judge. His trial was separated.

10. The appellants denied having committed the murder of Deshraj Singh Bhadoria. They could not assign any reason for the dying declaration given by the deceased in which they were mentioned as assailants of the deceased. They claimed that the witnesses were inimical to them. Appellant Munna alias Pratap Singh claimed that he was not Munna but his name was Pratap Singh.

11. The prosecution in support of its case relied on the report Ext. Ka-3 submitted by the deceased to the Investigating Officer, the statement of the deceased recorded Under Section 161 Cr. P. C by the Investigating Officer Ext. Ka-11 and the dying declaration of the deceased Ext. Ka-16 recorded by the Magistrate Avadh Saran. The prosecution also examined in evidence Sri K. R. Varam-jani, Assistant Station Master, Kalpi, P.W. 1 and Gopal Singh P.W. 3 an eyewitness and scribe of the report submitted by Deshraj Singh Bhadoria to the Investigating Officer, Dr. L. R. Quraishi C.W. 1 had examined the injuries of the deceased, Dr. R. K. Gurdeo P.W. 5 had performed the autopsy on the body of the deceased. Dr. V. K. Agrawal P.W. 2 gave the certificate of the mental state of the deceased about his making the dying declaration before Sri Avadh Saran. Sri K. S. Varma P.W. 7 is the Investigating Officer, Sri Avadh Saran P.W. 8 is the Magistrate, who recorded the dying declaration. Two other doctors C.W. 2 Dr. Mohan Singh and R. Ravikant Shukla P.W. 4 were also examined, P.W. 6 Pra-kash Narain had prepared the inquest report of the deceased.

12. The learned Sessions Judge discarded the testimony of P.W. 3 Gopal Singh. He did not believe his presence on the scene of occurrence at the time of occurrence. The learned Sessions Judge, however, relied on the three statements of the deceased namely his report submitted to the Investigating Officer, his statement Under Section 161, Cr. P. C. recorded by the Investigating Officer and the dying declaration recorded by the Magistrate.

13. The learned Counsel for the appellants contends that the reliance could not be placed on the aforementioned three statements of the deceased. We have,

therefore, to examine in this case whether the conviction of the appellants can be based on these statements as all these three statements are admissible in evidence Under Section 32 Clause 1 of the Evidence Act.

14. The test for placing reliance on the dying declaration was laid down in 'Khushal Rao v. State of Bombay' : 1958 CriLJ106 in which it was held that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects and testing its veracity has come to the conclusion that it is not reliable by itself and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction.

15. We have, therefore, to judge these statements in the light of the law laid down by the Supreme Court in the above case and followed since then in a number of cases including, 'Kusa v. State of Orissa' AIR 1930 SC 559 : 1980 Cri LJ 408.

16. It is significant that the report Ext. Ka-3 that was handed over to the Investigating Officer K. S. Varma P.W. 7 on 24th March, 1979 at Kalpi Hospital was scribed by Gopal Singh P.W. 3. Gopal Singh P.W. 3 in that report has been mentioned as an eve-witness to the occurrence. The learned Sessions Judge has not believed that Gopal Singh P.W. 3, who is an Advocate, was present on the scene of occurrence or had witnessed the occurrence. His presence is mentioned not only in the report but also in the statement recorded Under Section 161, Cr. P. C. by the Investigating Officer which is Ext. Ka-11 and in the dying declaration recorded by the Magistrate, We have also gone through the statement of Gopal Singh P.W. 3 and we agree with the conclusion arrived at by the learned Sessions Judge that Gopal Singh P.W. 3 could not be present on the scene of occurrence. Thus, it is obvious that the presence of Gopal Singh as mentioned in the statement of the deceased is not true and a false fact in the case has been introduced.

Besides this when the report was written and the statement Under Section 161, Cr. P. C. was recorded, Gopal Singh P.W. 3 was present with him and had also scribed the report. It is, therefore, quite probable that he was instrumental in getting the dying declaration recorded. Thus, the probability of the statement of the deceased in the report and in the statement Under Section 161, Cr. P. C. could be the results of tutoring by Gopal Singh P.W. 3 cannot be ruled out. It is also significant that the report Ext, Ka-3 and the statement Under Section 161, Cr. P. C. are the verbatim copy of each other.

17. As far as the dying declaration Ext. Ka-16 before the Magistrate Avadh Saran is concerned it was recorded a week after the occurrence. There was, therefore, ample time for the Investigating Officer as well as Gopal Singh to tutor the deceased. The relevant part of his statement in Ext. Ka-16 is as follows:-

Sarhey nau baje ke karib gadee ne seetee dee, main bhee gadee kee taraf charahane laga. Isee beach men teen char admi aye. Ek ka naam Munna putra Narain sakin Itaura, jo chaku liye thaa, dusra Jhallu jo sakin Kurara hal Kalpi uske pas bhee chaku thaa, teesra Kallu putra Ram Prasad r/o Lahariya pura, Orai, ye log mujhe jan se marne kee niyat se Shakuntala w/o Gur Narain Singh sakin Lahathiya Pura ke adesa-nusar tatha kuchh paisa dene ke bad aye. Jaise hee main gadee per chadhne laga to pahle chaku ka prahar Munna ne kiya jo mere dayen hath ke bagal pet men laga. Main chillaya. Usee ke laaatar dusra chaku Kallu ne war kiya jo mere dere ghutne ke neeche laga, teesra chaku Jhallu ne mere sir par war kiya jab main jamin par gira hua tha. Mer-ee kamiz phat gayee magar us war ko main bacha gaya. Kandhey par kameez phat gayee jo jama ho gayee. Chillana par hamare hee sathee Gopal Singh Advocate, Jaloun, Satrudan Singh Bitia Madhogarh Tahsil Jalaun wa Kunwar Bahadur W. B. N. Kalpi jo waheen ghoom rahe the, mauke par aakar hamlawaron ko lalkara tab ve log mauke se bhage.

18. There is no evidence in this case to show how Shakuntala was interested in getting the murder of the deceased committed by the appellants. Apart from it, it appears highly doubtful that when the deceased was trying to board the train and a few other passengers were also trying to board it he would be able to see and

recognize the persons, who had stabbed him. As already stated above the fact of Gopal Singh being an eye-witness has been falsely introduced in the dying declaration and it also being doubtful if the deceased could recognize his assailants, the appellants are entitled to get the benefit of doubt. We do not agree with the findings of the learned Sessions Judge.

19. The appeal is, therefore, allowed. The conviction and sentence imposed against the appellants are hereby set aside. Appellant Munna alias Pratap Singh is in jail. He shall be released unless wanted in some other crime. Appellant Jhallu was released on parole on 11-8-1981 for one month. There is no information that he had surrendered after the expiry of his parole. However, if he is in jail he shall be released forthwith unless wanted in some other crime.

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