

Mullu Vs. Emperor

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Court : Allahabad

Decided On : Mar-27-1935

Reported in : AIR1935All614

Appellant : Mullu

Respondent : Emperor

Judgement :

Kendall, J.

1. Mullu banya has been convicted by the learned Assistant Sessions Judge of Benares, of an offence under Section 307, Penal Code, and sentenced to seven years' rigorous imprisonment. The story for the prosecution, which is an unusual one, has been told by the complainant, Chamroo teli, a boy of about 17 years of age. The date of the occurrence is 11th May 1934, and Chamroo made statements on various occasions as follows. On the 14th May, he made a report, at the thana, and on the same day he made a statement, to a Magistrate in hospital at a time apparently when it was believed that he might die. More than three months later he made a complaint to a Magistrate on the 28th August, and subsequently he made a statement in the Court of Session. The long delay between the report at the thana and the complaint has been eating his case, but as a matter of believed that the police were investigating his case, but as a matter of fact they did not take it up. These various statements of Chamroo differ in

certain details, but the main story is to the following effect.

2. Mullu had been acquainted with him for sometime and he told him that he wished to make 'a magic worship' with him. A few days before the report Mullu made a definite appointment, telling Chamroo to meet him on the following Sunday at noon on the pretext of going to a marriage party. The two accordingly met at noon on the day fixed, and Mullu brought a tin box with him. They proceeded for a considerable distance to a guava grove near Koilaha village, which they reached about 5 p.m. Here Mullu produced some pan from the box, and gave it to Chamroo after muttering some charms over it, and he also gave him liquor to drink which he produced from the same box. Chamroo became partially intoxicated either as a result of the pan or the liquor, and Mullu proceeded to perform certain operations on him with a dagger. The injuries that were actually caused to Chamroo have been enumerated in the evidence of the Civil Surgeon, and they were mostly skin deep, but one of them is an incised wound two inches deep down to the spine running across the base of the back of the neck from one side of the spine to the other. Chamroo, who was not, entirely unconscious, struggled and received some injuries from the dagger in his hand. He said that when he asked Mullu what he was doing, Mullu replied 'I am performing basi karan, keep quiet.' Whether Mullu actually succeeded in what he was trying to do is not quite clear. There are discrepancies in the various statements made by Chamroo, and according to the first report, Mullu appears to have been discouraged at his resistance and desisted, and afterwards accompanied him home, apologised for what he had done, gave him Sharbat, bound the wounded neck, etc. etc. This too appears to be what Chamroo told the Magistrate the same day in hospital. In the complaint made several months later several details were added. For instance, Chamroo spoke about the flash of a falling star by which he saw two or three men coming to the guava grove, on which Mullu fled away. According to this statement, Mullu did not come back and Chamroo had to make his way home alone. In Court Chamroo stated that a meteor appeared in the sky, and that two or three men also appeared in the guava grove, on seeing whom Mullu fled, but that Mullu afterwards returned and apologised bound up Chamroo's neck, gave him sharbat and took him most of the way home on an ekka.

3. According to the earlier statements made by Chamroo nobody else met either him or Mullu, but as these statements are rather short and sketchy, it is of course quite possible that; a number of details have been, left out. In the Court of Sessions some witnesses were produced whose statements, if true go some way to support Chamroo's evidence. There is a tailor named Gobardhan, who testified that Chamroo and Mullu came to his shop in order to get a shirt for Chamroo. According to Chamroo, the shirt was wanted for the wedding, but as it appears that the wedding was merely a pretext and that both Chamroo and Mullu knew that the real object: of their journey was to perform the mantras, it is not clear why a special shirt was necessary for the occasion. However that may be, the trial Court has believed Gobardhan's evidence, and it does show that Mullu and Chamroo went off together on that day. Khushi Ram, another witness who has been believed by the Court, states that he met Chamroo and Mullu as they were leaving the city in an ekka. Bechan, the ekkawala, stated that he drove the two on his ekka, that he saw blood on Chamroo's shirt and that he heard Mullu apologising to Chamroo and saw him giving him a watch. This ekkawala has also been believed by the Court, but it seems to me very unlikely that he would have been allowed to overhear this very confidential conversation, and as it was shown in cross-examination that he is not a licensed ekkawala, I do not think that much reliance can be placed upon his statement. All these witnesses are open to the objection that they were not named in the first report or in the statement made to the Magistrate shortly afterwards, and although Chamroo's explanation that he had left everything to the police may account for the fact that the witnesses were not named until a very late date, it does undoubtedly detract from the value of their evidence.

4. It does not appear, that it is necessary to depend on their evidence at all. The statement made by Chamroo himself is not one that could have been invented by a boy of his age and indeed it is not one that is likely to have been invented by any one. The injuries that have been testified to by the Civil Surgeon correspond with those which Chamroo says were caused by Mullu with his dagger. A report was made two or three days after the incident, and seeing that Chamroo was very severely injured, it is hardly to be expected that he would have been able to make a report much earlier than this. The Civil Surgeon said that the first injury namely

the incised wound across the back of the neck, would have caused Chamroo's death if it had been a little deeper, and he was. as a matter of fact kept in hospital as a patient for about three weeks.

5. The defence of Mullu was that the whole story of Chamroo was a concoction and that he must have received his injuries in some fight about a woman. He further said that the complaint had been made against him because of some enmity, but as the learned Judge has pointed out, there is no real foundation for the story of enmity. The defence therefore does not really amount to more than the usual defence where a person has been named by the victim, of a serious assault. Such a person is expected to name the right assailant, and therefore the defence is that the victim was really attacked in circumstances which he is ashamed to disclose. I have no doubt therefore that the Court was perfectly justified in believing the evidence of Chamroo in the main.

6. The question of whether the offence was one under Section 307, Penal Code, is open to doubt. It appears to be quite likely that Mullu intended to kill Chamroo or at any rate knew that he was likely to cause his death. The very nature of the first injury is an indication of this. Chamroo further has said that Mullu intended to kill him, and the Judge has remarked that it is a well-known proverb in Urdu that magic acts well on the skull of a teli. As it has been proved that the object of Mullu in taking Chamroo away was to perform, some act of magic and as Chamroo is a teli and he was attacked in a very savage manner, it appears therefore that there are some good reasons for believing that Mullu intended actually to kill Chamroo. On the other hand, it is not by any means clear why if such were his intention, he did not carry it out. Apparently there was nothing to prevent him from doing so. Yet we find that he brought Chamroo home and attended to him carefully, and in short did all in his power to make reparation for the injuries that he had caused. Either therefore he had fulfilled his purpose without killing Chamroo, or else he had lost his nerve or fallen under the influence of a sudden fit of remorse before he carried his intention further. Whichever of these explanations may be the correct one, I think it is necessary to give him the benefit of the doubt on this point at any rate, and to alter the conviction from one of attempted murder to the less serious offence of causing grievous hurt, which he undoubtedly committed and which in

the circumstances calls for a somewhat reduced sentence. I alter the conviction to one under Section 325, Penal Code, and reduce the sentence from seven years rigorous imprisonment to five years' rigorous imprisonment. As the appellant is on bail, he will surrender to his surety.

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