

Man Raj Vs. State of U.P.

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Court : Allahabad

Decided On : Oct-20-1989

Reported in : 1990CriLJ782

Judge : H.C. Mital and ;M.M. Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 307; ;Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Cri. Appeal No. 2791 of 1978

Appellant : Man Raj

Respondent : State of U.P.

Advocate for Def. : Dy. G.A.

Advocate for Pet/Ap. : J.P. Singh Kashyap, Adv.

Disposition : Appeal allowed

Judgement :

H.C. Mital, J.

1. Manraj and Gorakhnath have preferred this appeal against their conviction and sentence under Section 302 read with Section 34, I.P.C. to life imprisonment passed by Sri S. N. Lal, II Additional Sessions Judge, Azamgarh on 28-9-1978.

2. The prosecution case, in brief, is that the accused had suspicion that Phoolchand, brother of Manraj, was arrested in a dacoity case at the instance of Balram, deceased. On 13-8-1977, Balram had gone to Shahganj district Jaunpur and on his way back from the market when he reached near a pond in the Siwan of village Chulpura. he was ambushed by Manraj and Gorakhnath, Manraj pressed his throat and Gorakhnath threw him down by his waist and thereafter both of them threw the deceased, Balram, in the pond. According to P.W. 1 Accheyraj, brother of the deceased, while he was in his field he heard the cry of his brother and he along with others went towards that side and witnessed the occurrence. Accheraj brought out the dead body from the pond and after handing over the body to his mother he along with others chased the accused. They succeeded in capturing them in a sugarcane field in the adjoining village Larpur.

3. Thereafter a written report (Ex. Ka-1) was lodged at the police station Pawai at a Distance of six miles from the village Chulpura at about 6.20 p.m. The occurrence had taken place at 4 p.m. On the basis of the first information report a case was registered and after usual investigation accused were charge-sheeted, committed to the Court of Session and tried. They pleaded not guilty.

4. To prove its case the prosecution in all examined eight witnesses, of whom P.W. Achheyraj is brother of the deceased and Informant; P.W. 2 Ram Surat; P.W. 3 Suryabali are the eye-witnesses of the occurrence. They corroborated the prosecution story. P.W. 8 Dr. T.N. Sinha had done autopsy on the dead body on 14-8-1977 and proved his post mortem report (Ex. Ka-11) according to which he noted the following:

'A well built male wearing dhoti, underwear, rigor morties present in lower extremities and the same passed off in upper extremities. The body was cynosed.

The following ante mortem injuries were noted on the person of the deceased,

1. Abraded contusion 2' x 1/2' on the left side of neck below thyroid cartilage.
2. Abrasion 1' x 1/2 ' on the front of neck below thyroid cartilage.

3. Abrasion 1/2' x 1/2' on the right side of neck. On internal examination Pleura, Larynx and trachea were congested. Lungs were also congested. Heart was full of. dark blood; Semi digested food was present in both the intestines.

5. According to the doctor the cause of death was Asphyxia.

6. The doctor further deposed that the death could be possible due to pressing of the neck and it might have taken place at about 4 p.m. on 13-8-1977.

7. P.W. 4 Gange Sagar Yadav S. I. and P.W. 7 S.I. Virendra Pratap Singh were two investigating officers and they deposed about the various steps taken by them during the course of the investigation.

8. P.W. 5 Raghunath Prasad, S.I. proved the copy (Ex. Ka-7) about the entry in the G.D. in the month of May 1977; and P.W. 6 Constable Siyaram Yadav had taken the dead body for post mortem.

9. C.W. 1 Krishan Chand Dubey, Head Moharrir was examined as Court witness and stated that he prepared the chik report and registered the case in the G. D. He has further stated that the special report of the case was sent next day. The accused denied their participation and alleged to have been falsely implicated. They also denied to have been apprehended on the spot. They did not adduce any evidence in defence.

10. The learned trial Judge, however, believed the prosecution evidence hence convicted and sentenced the appellants as above. In appeal it has been argued that the prosecution evidence on record was highly suspicious and not worthy of credence, therefore, the conviction and sentence of the appellants could not be sustained.

11. The fact that the death of Balram was homicidal and he died on 13-8-77 as noted by P.W. 8 Doctor T.N. Singha on 14th August 1977 due to asphyxia, cannot be doubted in view of his testimony and the same has also neither been denied nor challenged on behalf of the appellants in this appeal. The main question which arises for decision is whether these appellants were the murderers of the deceased (Balram).

12. The prosecution evidence on the point is that of P.W.1 Achheyraj, P.W. 2 Ram Surat and P.W. 3 Suryabali. The same therefore has got to be closely scrutinised. P.W. 1 Achheyraj is the brother of the deceased, Balram. He has deposed that on 13-8-77 Balram had gone to the Shahganj Market. When he was coming back at about 4 p.m. and was near a pond in the Siwan of the village Chulpura he heard his cries 'BHAIYA DAURO MUJHE MARNE KE LIYA GHERE HAI'. Achheyraj has further stated that at that time he was applying 'Urea' in his field which was at a distance of 100-150 paces from there and on hearing the cries of his brother he went towards the pond. He saw that appellant Manraj was throttling his brother and appellant Gorakh had thrown him down by his waist and when his brother Balram fell down Manraj sat over him and continued to press his neck while Gorakh was pressing his waist. He himself raised an alarm thereupon the appellants picked up Balram and dropped him and drowned him in the pond and thereafter they fled towards north. Hearing his cries and that of Balram witnesses including Indrajeet, Ram Nath, Daya Ram, Daann Bahadur and many others from the village arrived and all chased the appellants. He has further stated that he himself took out the body of Balram from the pond and found him dead. On hearing the alarm his mother Sukha had also arrived there and he left the dead body in her custody and went after the appellants, who were apprehended, after covering a distance of one mile, from inside a sugarcane field in village Larpur. That villagers carried the appellants to the place where the dead body was lying and he himself left for lodging the report. That in Pawai Market he purchased the paper, scribed the report and submitted it at the police station which was Ext. Ka-1. He has further stated that the Investigating Officer immediately left for the scene of occurrence. He had accompanied him to the scene of occurrence and Panchayatnama was prepared. He also stated that the appellants had a motive as their family members thought that Balram deceased had falsely implicated Phul Chand in a Dacoity case and they had also extended threat to Balram. In his cross-examination he stated that the appellants were apprehended from the field of Ram Pratap Singh resident of village Larpur. He has further admitted that both in the east and west of that, field there were sugarcane crops and in the north, there were sugarcane crops. He could not say to whom the same belonged. He further stated that he himself and Suraj Bali had first caught both the appellants

alongwith 7-8 other persons who were in the field; that the appellants were about 100 yards ahead of all the persons who were pursuing them. That the appellants were not beaten when they were apprehended but he subsequently changed his statement and stated that 2-4 Danda blows were given when the appellants were caught. He, however, could not explain how in the F.I.R. and in his statement under Section 161, Cr. P.C. he had stated that after beating the appellants they were caught in the sugarcane field. He has further stated that the persons who had caught the appellants had given 2 to 4 lathi blows to each of them. He has admitted that he had not mentioned the fact that he was spreading 'Urea' in the field when he heard cries of his brother, in the F.I.R. as well as in his statement under Section 161, Cr. P.C. He had shown that plot to the Investigating Officer and that has been shown in the site plan and the distance to the scene of occurrence is mentioned about 100 yards. He has also stated that Suraj Bali and Ram Surat were also at a distance of 100 yards from there.

13. P.W. 2 Ram Surat has also stated that he had witnessed the occurrence from a distance of 100 yards. According to his statement :

'MANRAM AUR GORKHA NATH MULJIMAN HAJIR ADALAT BALRAM KO MAAR RAHE THE. MANRAJ UNKA GALA PAKRE THEE'. He further stated that he had pursued them and returned to the place where the dead body of Balram was lying. That Achhayraj had taken out the dead body of Balram and thereafter Achhayraj had pursued the appellants. He has not stated that he had also apprehended the appellants along with other persons. In his cross-examination he further stated that he had heard 'GHON GHON' sound of Balram and had not heard his cry. He, however, denied to have stated the following statement which was made to the Investigating Officer; 'MAINE TALAB KE PASS PAHUCH KAR DEKHA KI MANRAJ GORAKH NATH BALRAM KO TALAB KE PASS GHERE HUYE HAI BALRAM CHHILAYA TO MAI DAURA HUN.'

He, however, could not explain how the Investigating Officer had written that statement. He also could not state why the Investigating Officer had not written in his statement that he had seen Manraj pressing the neck of Balram. He has further stated that he told all these things to the witnesses Achhayraj, Suraj Bali and

others, that when he had seen Manraj pressing neck of Balram he was at a distance of 100 yards towards south. He has further stated that when Balram died the appellants Manraj and Gorakh dropped him in the pond. He has admitted that Balram had been an accused in a murder case as well as in a case under Section 307, I.P.C.

14. P.W. 3 Surya Bali had stated that he was returning from his field to his house then he saw that Manraj was pressing the neck of Balram and Gorakh had dropped him by his waist. That Balram was shouting and then Gorakh and Manraj carried him to the pond and dropped him there. That he and other persons had chased the appellants for about a mile and apprehended them from the sugar-cane field of Ram Pratap Singh in village Larpur. That when the appellants tried to escape they were also given Lathi blows and then they were brought to the place where dead body was lying. He also admitted that Achhayraj was also 'AHIR' by caste. He has further admitted that when Achhayraj had taken out the dead body from the pond and gave it to his mother he was also there and thereafter had chased the appellants. He however, could not explain how the Investigating Officer had written 'ACHHYRAJ BHI PEECHE SE AAYA AUR WAHI SE THANE PAR REPORT LIKHANE CH-HALA GAAYA.'. He could not say why Investigating Officer had not written that Achheyraj was among the pursurers. He subsequently admitted that he had made the following statement to the Investigating Officer.

'MAY SHOR KARTA HUWA MULJI-MAN KA PEECHA KIYA MERE AALWA GAON KE RAMNATH, DAYA RAM MADHAI, CHANDRABHAN, MEERA, DAAN BAGADUR BHI PEECHA KIYA. AUR HUM LOG GRAM LARPUR KE DAAKHIN SEEWAN MEIN GANNE KE KHET MEIN GHER MAAR KAR PAKAR LIYA ACHHAYRAJ BHI PEECHHE SE AAYA AUR WAHI SE THANE PAR REPORT LIKHANE CHALA GAYA.'

He has further stated that Manraj and Gorakh were tied with a rope and were taken in the same condition and handed over to the Investigating Officer.

15. The above testimony of the witnesses has been challenged and it has been rightly contended that, prima facie, it appears highly improbable that the informant Achhayraj P.W. 1 and Suraj Bali, P.W. 3 could apprehend the appellants as

deposed by them. It is the version of both these witnesses that when they had heard cry of deceased they were at a distance of 100 to 150 paces. Generally the witnesses do not give exaggerated distance but try to reduce it so that they could reach there. Hence if the distance of 150 paces is taken to be correct then the distance would come to about 100 yards. At the same time according to all these witnesses, even after the appellants had thrown Balram deceased in the pond, they remained at a distance of at least 100 yards when they started chasing the appellants. The appellants had run towards north where there were sugarcane fields also and it is further alleged that from the sugar-cane field of Ram Pratap after a chase for a mile the appellants were apprehended. This further appears highly suspicious particularly because Ram Pratap Singh from whose field appellants (were caught) or anyone of village Larpur, who were also present there, has not been examined to corroborate the version of these witnesses.

16. That apart, the prosecution has not produced copy of the entry in the G. D. when the appellants were taken to the police station and their injuries were noted therein. It is natural that when the assailants are arrested in such a manner they would have received injuries and presence of injuries on their person, would have corroborated their apprehension as alleged; that apart, P.W. 4, S. O. Ganga Sagar and others who had subsequently taken up. the investigation on 13-8-1977 after the inquest report was prepared has stated that he had taken the appellants into custody after interrogating them and on the same night and he sent them to Thana Pawai. In para 3 of his cross-examination he also stated that when he reached the spot S. I. Virendra Pratap Singh was there and the appellants were in his custody. He has, however, further stated that he did not make any entry in the case diary to that effect. P.W. 7 S.I. Virendra Pratap Singh has not stated in his examination-in-chief that when he reached the scene of occurrence he found the appellants in the custody of the villagers. In his cross-examination, however, in para 2 he stated that when he reached the scene of occurrence he found the villagers holding the appellants and he took them in the custody. He has further stated that he did not send them to the police station on the same night as there was not sufficient force. He also admitted that he did not make any observation in the case diary and also admitted that the S.O. also did not make mention in the case diary regarding the despatch of the appellants to the police station. Both P.W. 7 S.I. Virendra Pratap

Singh as well as P.W. 4 S.O. Ganga Sagar have also not stated that the appellants had injuries on their person when they were taken into custody. Hence in the absence of any proof that when the appellants were apprehended and reached the police station, they had injuries which could corroborate their alleged apprehension by the prosecution evidence, the prosecution case that these appellants were chased and apprehended immediately after the occurrence after chasing them for a mile appears highly doubtful.

17. It was next contended that the witnesses could have hardly seen the assailants who had caught hold of the deceased and as alleged. It was pointed out that P.W. 1 Achhayraj himself has admitted in his cross-examination on page 14 of the paper book that when he saw towards the appellants for the first time no sound from the mouth of Balram was coming out. P.W. 2 Ram Surat has also not stated that he heard any cry of Balram. He has also admitted that he was at a distance of hundred yards. He has, however, further stated that when he ran up towards there he heard 'GHON GHON' sound when Balram appellant was pressing the neck. Under the circumstances it appears highly doubtful that the witnesses at a distance of at least hundred paces could have at all witnessed the alleged manner of killing Balram by the assailants when the same was done in a field.

18. Lastly, according to the post mortem report the following ante mortem injuries were noted on the person of the deceased, Balram:

1. Abraded contusion 2' x 2' on the left side of neck below thyroid cartilage.
2. Abrasion 1' x 1/2' on the front of neck below thyroid cartilage.
3. Abrasion 1/2' x 1/2' on the right side of neck.

19. The prosecution case is that appellant Manraj had pressed the neck of the deceased. The abraded contusion 2' x 2' on the left side of neck and the other two abrasions on the front of the neck under the circumstances could not have been caused to the deceased. According to Dr. T. N. Sinha P.W. 8 the death was due to Asphyxia and he has further stated that the injuries could be caused while pressing the neck. He has, however, not stated on being pressed with hands such

injuries could be caused.

20. According to Modi's Medical Jurisprudence 'Strangulation' is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. It is called threading when constriction is produced by the pressure of the fingers and palms upon the throat. Strangulation may also be brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substance. This is known as mugging (strangle hold)'.

He has further observed that appearances on the neck vary according to the means used. Ligature Mark is a well defined and slightly depressed mark corresponding roughly to the breadth of the ligature. The marks are multiple if the ligature is twisted several times round the neck. If the fingers are used (throttling) marks of pressure by the thumb and finger tips are usually found on either side of the windpipe. When both hands are used to grasp and compress the throat, thumb marks of one hand and the finger marks of the other hand are usually found on either side of the throat. Sometime, both thumb marks are found on one side and several fingers marks on the opposite side. If the throat is compressed between two hands, one being applied to the front and the other to the neck, bruises and abrasions may be found on the front of the neck, as well as on its back. Besides these marks there may be abrasions and bruises on the mouth, nose, cheeks, forehead, lower jaw or any other part of the body, if there has been a struggle. Similarly fractures of the ribs and injuries to the thoracic and abdominal organs may be present, if the assailant kneels on the chest or abdomen of his victim while pressing his throat.

21. In the present case, there is also statement of P. W. 1 Achhayraj that appellant Manraj had sat on the chest of the deceased and then pressed his neck even then any of the aforesaid injuries were not found in the postmortem report and that further belies his testimony.

22. On a conspectus of the above facts and circumstances of the case the prosecution evidence that these appellants were responsible for having committed the murder of Balram deceased is not free from suspicion and therefore it would

not be safe to sustain their convictions. They are entitled to be given the benefit of doubt. In the result, the appeal is allowed. Conviction and sentences of both the appellants, namely, Manraj and Gorakh Nath under Section 302 read with Section 34 I.P.C to life imprisonment are set aside. They stand acquitted. They are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.

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