

Manni Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-14-2001

Reported in : 2002CriLJ1510

Judge : G.P. Mathur and ;U.S. Tripathi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 2736 of 1980

Appellant : Manni

Respondent : State of U.P.

Advocate for Def. : D.G.A.

Advocate for Pet/Ap. : C.P. Dikshit, Adv.

Disposition : Appeal dismissed

Judgement :

G.P. Mathur, J.

1. Criminal Appeal No. 2736 of 1980 has been preferred by Manni and Criminal Appeal No. 61 of 1988 has been preferred by Buddhu against the judgment and order dated 24-10-1980 of IVth Additional Sessions Judge, Kanpur by which in

S.T. No. 258 of 1979 and S.T. No. 267 of 1979 were decided. By the impugned judgment and order, Buddhu has been convicted under Section 302, I.P.C. while Manni has been convicted under Section 302 read with Section 34, I.P.C. They were both sentenced to imprisonment for life.

2. The case of the prosecution as set forth in the F.I.R. and as unfolded in the evidence is that the appellants Manni and Buddhu are real brothers. About a month before the present incident, the wife of Buddhu had eloped with someone. Buddhu suspected that she had eloped with Jagannath and that Chhotkan alias Ram Prasad (deceased) who was his friend had helped him in enticing' away his wife. The incident took place at about 12 a.m. on 4-5-1979 when the deceased Chhotkan was talking to his brother PW-1 Ram Bihari while they were sitting on a 'munderi' at the corner of their sahan. Buddhu accused armed with tabal and Manni accused armed with spear came there and Buddhu gave a blow to Chhotkan who fell down. Thereafter, he gave another blow to him on which Ram Bihari raised an alarm and tried to save him. Manni then wielded his spear upon Ram Bihari but as he moved backwards the spear did not hit him. On the alarm raised PW-2 Rajju and Kamlakant arrived on the scene of the occurrence. PW-3 Raj Rani wife of Ram Bihari was also sitting in front of the door of the house and she also witnessed the occurrence. A written F.I.R. of the occurrence was lodged by Ram Bihari at 2 p.m. on 4-5-1979 at P.S. Ghatampur which is 5 kms. from the place of occurrence.

3. At the time of lodging of the F.I.R. PW-5 Rishi Pal Singh, Station Officer was present at the police station. He immediately proceeded for the place of the occurrence along with Shanker Bux Singh, S.I. and some other police personnel. He recovered plain and blood-stained earth from the spot where the body was lying and prepared its recovery memo. Shanker Bux Singh, S.I. prepared other documents in connection with post mortem examination of the body of the deceased. The body was sealed and was sent for post-mortem examination through constable Bhanu Pratap Singh and the chowkidar of the village. After recording statements of the witnesses and completing other formalities, he submitted charge-sheet against the accused on 27-5-1979.

4. Cognizance of the offence was taken by the C.J.M. and he committed the case to the Court of Session. The learned IVth Addl. Sessions Judge framed charge under Section 302, I.P.C. against Buddhu and charge under Section 302/34, I.P.C. against Manni accused. Both the accused pleaded not guilty and claimed to be tried.

5. The prosecution, in support of its case, examined seven witnesses including three eye-witnesses. The accused in their statements denied the prosecution case and alleged their false implication on account of enmity. Manni accused further stated that he lived separately from Buddhu. The learned Sessions Judge believed the case of the prosecution and convicted and sentenced the appellants as stated earlier.

6. We have heard Sri G.P. Dikshit for the appellants, learned A.G.A. for the State and have gone through the entire record.

7. Before advertng to the testimony of eye-witnesses, it will be convenient to first refer to the medical evidence on record. PW-4 Dr. B.D. Mishra conducted post-mortem examination on the body of the deceased Chhotkan alias Ram Prasad at 3.15 p.m. on 5-5-1979 and found the following antemortem injuries upon the same :

1. Incised wound 8 cm. x 2 cm. x brain deep vertically on left temporal parietal region. Brain matter flowing out 1 1/2cm. in front of above Lt.

2. Incised wound 8 1/2 cm. x 1 cm. x brain deep, vertically Brain matter coming out behind Lt. Ear from injury No. 1.

3. Incised wound 1 cm. x through & through left ear.

The internal examination showed that bones underneath injuries Nos. 1 and 2 had been fractured and the broken pieces were almost separated. Brain matter was coming out from injuries Nos. 1 and 2. The witness stated that the injuries could have been caused at about 12 a.m. on 4-5-1979 by a sharp edged weapon like tabal. In the opinion of the doctor, the injuries were sufficient in the ordinary course of nature to cause death. PW-4 has proved the post-mortem report prepared by

him which is Ex. Ka. 2 on the record.

8. PW-1 Ram Bihari in his statement narrated about prosecution version of the incident. He stated that Jagannath had good relations with his brother Chhotkan alias Ram Prasad. About a month prior to the incident, the wife of Buddha had eloped with somebody. Buddha suspected that she had eloped with Jagannath who was a barber and the deceased Chhotkan had helped him in this matter. Regarding the main incident, he stated that at about 12 a.m. he along with his brother Chhotkan were sitting on the 'munderi' at the corner of the sahan of their house and were talking to each other. His wife PW-3 Raj Rani was sitting in front of the door of the house. Buddha armed with a tabal and Manni armed with a spear came there and Buddha gave a blow by tabal to Chhotkan who fell down after receiving the injuries. He raised an alarm but meanwhile Buddha gave another blow to the deceased. The witness tried to save him on which Manni accused wielded his spear but as he moved backwards, the spear did not hit him. On the alarm raised by him PW-2 Rajju and Kamlakant also arrived there. In cross-examination, he stated that both of them were sitting on a 'munderi' (small wall which was two feet high). In cross-examination, a suggestion was given that the witness did not want his brother Chhotkan to be married so that he could inherit the entire property. Another question was put to him that in fact Raj Rani was not his married wife but both he and his brother Chhotkan had jointly purchased her and as he was not prepared to carry on the aforesaid arrangement, the relations between the brothers had become strained. The witness emphatically denied the defence suggestions. Another suggestion was given to the witness that there was enmity between him and the accused and he had not seen the occurrence. The witness replied that there was no enmity between him and the accused. He further stated that he had seen the occurrence.

9. PW-3 Raj Rani is the wife of PW-1 Ram Bihari. She has stated that she was sitting in front of the door of her house and from there she saw the occurrence. She has further stated that the wife of Buddha had eloped about a month before the occurrence and Buddha suspected that Jagannath was responsible for the same. The deceased Chhotkan was friendly to Jagannath.

10. PW 2 Rajju deposed that at about 12 a.m. on the date of the occurrence, he was coming from the side of the pond in the village where he had taken his buffalo for the purpose of drinking water. The pond is at a distance of 35-40 paces from the house of the deceased. He saw Ram Bihari and the deceased Chhotkan sitting on the 'munderi' in front of their house and talking to each other. Meanwhile Buddha armed with tabal and Manni armed with spear came there. Buddha gave a blow on the head of Chhotkan who fell down in the sahan. Buddha gave another blow on the head of Chhotkan after he fell down. An alarm was raised by Ram Bihari who rushed forward to save his brother but Manni wielded his spear on him. However, as Ram Bihari moved backwards, the spear did not hit him. He has also deposed that the wife of Buddha had eloped for which he suspected the hands of Jagannath.

11. PW-7 Arjun chowikdar of the village has deposed that he along with Bhanu Pratap Singh, constable had brought the body of the deceased from the village to mortuary PW-6 Veerpal Singh, constable has deposed that he had taken the sealed bundles to Chemical Examiner, Agra on 12-11-1979 and had brought the result of the chemical analysis in a sealed envelope on 16-11-1979. PW-5 Rishi Pal Singh, S.O. of P.S. Ghatampur is the Investigating Officer of the case. In his statement, he has given the details of the steps taken by him during the course of investigation of the case.

12. The accused led no evidence, oral or documentary in their defence.

13. So far as the motive is concerned, it is fully established that the wife of accused Buddha had eloped with someone about a month before the occurrence. He believed that she had eloped with Jagannath and that the deceased Chhotkan being friendly to him had helped him in this affair. It has also come in the testimony of PW-1 and PW-3 that 4 or 5 days before the occurrence when Jagannath was cutting the hairs of Chhotkan, both the accused had come there and had abused Jagannath. Chhotkan had strongly objected to the abuses being given at his house and thereafter the accused had gone back. Both the accused have admitted in their statement under Section 313, Cr.P.C. that the wife of Buddha had eloped with someone about a month before the occurrence. The evidence further shows

that the deceased Chhotkan had good relations with Jagannath. It appears that the appellant Buddhu believed that Chhotkan had helped Jagannath in enticing away his wife. The motive suggested by the prosecution for commission of the crime appears to be quite probable.

14. The evidence adduced by the prosecution shows that the incident took place at 12 a.m. on 4-5-1979 right in front of the house of the first informant Ram Bihari and the deceased Chhotkan while both of them were sitting on the munderi (small wall) at the corner of the sahan of the house. The Investigating Officer found body of the deceased in the sahan of the house right in front of the main door, The place where the body was found was at a distance of 12 paces from the main door of the house. The Investigating Officer saw the body lying there when he reached on the spot and also recovered plain and blood-stained earth from the said place. Therefore, the place of occurrence is fully fixed by the presence of the body at that spot. So far as the presence of the eye-witnesses is concerned, it may be noticed that it is the own house of PW-1 Ram Bihari and his wife PW-3 Raj Rani. The presence of these witnesses in their own house is most natural and there is absolutely any reason to discard their testimony. So far as the other eye-witness PW-2 Rajju is concerned, he has deposed that he was returning from the pond where he had taken his buffalo for the purpose of drinking water. His statement shows that pond is at a distance of about 35-40 steps from the house of the deceased. His own house is also nearby as it is situated after two houses from the house of the deceased. The way from the pond to his own house passes in front of the house of the deceased. The incident took place in the month of May which is the summer season and people do take their cattle to the pond in the afternoon for the purpose of drinking water. The testimony of PW-2 Rajju, therefore, appears to be very natural and probable. The appellants have not been able to establish any enmity with the PW-1 and PW-3. So far as PW-2 Rajju is concerned, a suggestion was given to him that he was an accused in the murder case of Chand Kesh and he was got arrested by Soni chowkidar who is father of the appellants. The witness admitted the fact that he was an accused in the murder case of Chand Kesh but denied that Soni had got him arrested and further stated that Soni was not the chowkidar of the village at that time. The appellants have led no evidence to show that their father Soni was chowkidar of the village or that he was

instrumental or had played any part in the arrest of Rajju when he was involved as an accused in the murder case of Chand Kesh. Therefore, there is nothing on record to show that PW-2 Rajju had any kind of enmity with the appellants. There is absolutely no reason not to place reliance on his testimony. A written F.I.R. of the incident was lodged within two hours at the police station which is 5 Kms. from the place of occurrence. In the F.I.R. the complete version of the incident was given. The promptness with which the F.I.R. was lodged lends assurance to the prosecution case and rules out any chances of embellishment or exaggeration or false implication of innocent person. The testimony of all the three eye witnesses namely PW 1, PW 2 and PW 3 establishes the prosecution case that Buddha accused gave tabal blows to the deceased Chhotkan alias Ram Prasad and that Manni accused had accompanied him to the spot and he also wielded his spear upon PW 1 Ram Bihari when he tried to save his brother Chhotkan.

15. The medical evidence on record fully corroborates the testimony of the eye witnesses. All the eye-witnesses have stated that Buddha gave two blows by tabal on the head of the deceased Chhotkan. The postmortem examination report shows that there were incised wounds on the head region. A specific question was put to PW-4 Dr. B.D. Mishra whether three incised wounds could be as a result of three separate blows to which he replied that he could not give any definite opinion. He also stated that it was possible that injuries No. 2 and 3 could be as a result of the blow. The doctor has opined that injuries could have been caused at 12 a.m. on 4-5-1979 by a sharp edged weapon like tabal. Thus medical evidence fully corroborates the prosecution case.

16. Coming to the participation of Manni accused, it is the consistent statement of all the three eye witnesses that he also came to the spot along with his brother Buddha and he was armed with a spear. When PW 1 Ram Bihari tried to save his brother Chhotkan, Manni accused wielded his spear which fortunately did not hit him as he moved backwards to save himself. His coming well armed along with his brother Buddha who was armed with tabal and who gave blows to the deceased shows that it was a case of premeditated murder and he shared the common intention with his brother for the commission of the crime. He would not have accompanied his brother unless he also intended the commission of the crime.

Therefore the charge under Section 302/34, IPC is fully established against Manni accused. So far as Buddhu is concerned, he gave fatal injuries by tabal on the head of the deceased. The charge under Section 302, I.P.C. levelled against him is also established beyond any shadow of doubt. We are, therefore, of the opinion that there is absolutely no ground which may warrant interference with the judgment and order of the learned Sessions Judge and the same deserves to be affirmed.

17. In the result, both the appeals are dismissed. The conviction of the appellants and also the sentence awarded to them by the learned Sessions Judge are affirmed. Both the appellants are on bail. The bail granted to the appellants is cancelled. They will surrender forthwith to undergo the sentence imposed upon them.

18. Office is directed to send a copy of this judgment to C.J.M. Kanpur Dehat who shall take all steps available in law to take the appellants into custody. He shall report compliance of this order within three months.

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