

Makhan Lal Vs. State of U.P.

Makhan Lal Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/488729

Court : Allahabad

Decided On : Apr-24-2000

Reported in : 2000CriLJ3895

Judge : J.C. Gupta and ;S.K. Agarwal, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 313 and 374(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 300, 302 and 304

Appeal No. : Criminal Appeal No. 784 of 1987

Appellant : Makhan Lal

Respondent : State of U.P.

Advocate for Def. : A.K. Jain, A.G.A.

Advocate for Pet/Ap. : G.S. Chaturvedi and ;G.R. Jain, Advs.

Judgement :

J.C. Gupta, J.

1. By means of this appeal under Section 374(2) of the Criminal Procedure Code appellant Makhan Lal alias Narain Dass has challenged the judgment and order dated 17-1-1987 passed by the then IV Additional Sessions Judge Meerut in Session Trial No. 330 of 1985 whereby the appellant has been convicted under

Section 302 I.P.C. and sentenced to life imprisonment.

2. The deceased of the present case was one Ramaiyya Chowkidar who was supervising the construction work being carried on in the Medical College Campus, Meerut. The work was being got done on contract by contractor Anand Prakash Bansal P.W. 1. Appellant Makhanlal, Ganga Ram P.W. 2 and Baley Ram P.W. 3 were engaged as labours and were doing the work under the supervision of the deceased Ramaiyya. On the date of occurrence i.e. 3-10-1984. Sri A. P. Bansal P.W. 1 was present in the Meerut Court Compound where he was supervising some other work of tubewell there he got information at about 4.15 P.M. from Junior Engineer Ajay Kumar Garg P.W. 4 that there had occurred some scuffle between Makhan Lal and Ramaiyya and during the course of some altercation appellant Makhan Lal struck blows from the blunt side of 'Phawra' (spade) on Ramaiyya. Ajay Kumar Garg, Junior Engineer took Ramaiyya to Medical College, Meerut and got him admitted in the emergency ward, where he succumbed to his injuries.

3. After getting the aforesaid information, P.W. 1 A.P. Bansal came to the site of his construction work in the Medical College Campus and made inquiries from Ganga Ram and Baley Ram and thereafter he himself wrote down the report Ex. Ka. 1 and lodged the same at police station Medical College, Meerut on the same evening at 6.15 P.M. On the basis of the same, check F.I.R. Ex. Kal3 was prepared by P.W. 9 Head Constable Salek Chand and case was registered in the general diary of the police station at serial No. 43, copy of which has been proved as Ex. Ka. 14. S.I. Mahendra Singh P.W.6 was present at the police station when the case was registered. Investigation was entrusted to him. He went to Medical College, Meerut and completed inquest proceedings and then got sent dead body of Ramaiyya for post mortem examination. Dr. B.P. Verma P.W. 7 conducted autopsy on the dead body of Ramaiyya and found following ante-mortem injuries :

1. Lacerated wound 6 cm. x 3 cm. x bone deep, on the right side of head 4 cm above the right ear.

2. Lacerated wound 1.5 cm. x 1/2 cm. x bone deep on the head, 1 cm. above injury No. 1.

3. Lacerated wound 5 cm. x 2 cm. x brain cavity deep on the right side head, 6 cm. behind right ear.
4. Lacerated wound 5 cm. x 1 cm. x bone deep, on the back of right ear, with lacerated pinna.
5. Multiple constusions in an area of 8 cm. x 3 cm. on left side of forehead.
6. Abrasion in an area of 4 cm. x 3 cm. on the back of right shoulder.
7. Cut open mark on the left side ankle with one stitch.

4. In the internal examination depressed fracture of both parital, temporal bone were found and occipital bone on right side was also fractured and was found embedded in the brain. Brain was also lacerated and punctured anterior right middle and posterior cranial fossa was also found fractured. In the opinion of the doctor cause of death was 'Coma' as a result of ante-mortem head injuries.

5. Investigating officer during the course of investigation also recorded the statement of first informant A. P. Bansal and Ganga Ram P.W. 2 on 4-10-1984, and made inspection of the scene of occurrence at their instance and prepared site plan Ex. Ka. 8 He also collected blood from the place of occurrence through memo Ex. Ka.2. One spade Ex. 1 which was stained with blood was also found lying at the place of occurrence and the same was taken into possession through memo Ex. Ka. 9. Investigation was then transferred to Station Officer Yash Pal Singh and on his transfer the investigation was completed by S.I. Rajvir Singh Raghav P.W. 8 who arrested the accused and recorded the statements of other witnesses and submitted charge sheet Ex. Ka. 11 against the accused.

Before the trial Court nine witnesses were examined on behalf of the prosecution namely P.W. 1 A.P. Bansal, P.W. 2 Ganga Ram, P.W. 3 Bale Ram, P.W. 4 Junior Engineer A. K. Garg, P.W. 5 Babu Khan, a witness of memo of blood and blood-stained spade, P. W. 6 S.I. Mahendra Singh who did initial investigation, P.W.7 Dr. B.P. Verma who conducted post mortem examination, P.W. 8 S.I. R. S. Raghav who completed investigation and submitted charge sheet and P.W. 9 Head Constable Salek Chand who prepared F.I.R. and registered the case at the police

station.

6. In his statement recorded Under Section 313 Cr. P.C. accused admitted that on 3-10-1984 Anand Prakash Bansal was getting construction work done in the Medical College Campus on theka and on that day floor in a room was laid in the first storey. However he denied that he himself was working there as a labour. He further denied other allegations of the prosecution. He stated that on the date of occurrence he had left the place of occurrence at about 10 in the morning. He further stated that his name has been introduced at the instance of police. Accused produced no witness in defence.

7. On a consideration of evidence the learned Sessions Judge has found that it was accused Makhan Lal who had assaulted the deceased and the prosecution case against him has been proved beyond doubt and accordingly the appellant has been convicted under Section 302 I.P.C. and sentenced to imprisonment for life.

8. We have heard Sri G.S. Chaturvedi, Senior Advocate for the appellant and Sri A. K. Jain learned A.G.A. for the State.

9. Learned counsel for the appellant submitted before the Court that neither A.P. Bansal P.W. 1 nor any other witness tried to find out the reason why altercation ensued between the deceased and the appellant and who initiated the fight nor any of the witnesses has stated in what circumstances the appellant assaulted the deceased from the blunt side of spade and the evidence adduced at the trial is only to the effect that the appellant was seen running away from the spot. In short it was argued that the circumstances appearing in the case clearly indicated that the accused appellant had no intention to cause the death of the deceased and the possibility of his acting under grave and sudden provocation is not ruled out.

10. The factum of death of Ramaiyya, Chowkidar on account of injuries sustained on his head has neither been challenged nor disputed by the appellant's counsel. It is fully borne out from the evidence on record and from the statement of doctor B.P. Verma P.W. 7 that Ramaiyya, Chowkidar died a homicidal death on account of ante mortem head injuries which were caused by some blunt object. According

to the prosecution case the said injuries were caused by the appellant from the blunt side of spade Ex. 1 which was recovered on the scene of occurrence by the investigating officer when he made spot inspection. P.W. 1 A.P. Bansal is admittedly not a witness of actual occurrence. He was at the relevant time present in the Court compound where at about 4.15 P.M. He got information about the incident in question from the junior Engineer A. K. Garg. He thereafter lodged the F.I.R. on the same evening at 6.15 P.M. on the basis of facts coming to his knowledge from Junior Engineer Ajay Kumar Garg and other witnesses. He stated that he first went to Emergency Ward, Meerut Medical College and found the dead body of Ramaiyya kept in the verandah of Emergency ward. In cross examination he stated that Ramaiyya was a mate and was engaged for supervising the work though at times he himself used to do meson's work. He also admitted that he did not try to find out as to for what reason the fight took place between Ramaiyya and the accused. Since he was not present at the time of occurrence he pleaded ignorance, if ' at the time of occurrence Ramaiyya first tried to assault Makhan Lal accused by 'Basuli' and accused inflicted blows in self-defence. P. W. 2 Ganga Ram stated before the Court that on the date of occurrence he Bale Ram P.W. 3, accused Makhan Lal and deceased Ramaiyya were working on the first floor in the Medical College Campus where construction work was being carried on. Ramaiyya was supervising the work as 'Head Mistri'. At about 4 P.M. some cleaning work was being done in the room in the first floor where the deceased was assaulted Makhan Lal, appellant at that time was having a spade for cleaning the debris and waste material. Ganga Ram P.W. 2 further stated that when deceased was assaulted by the accused at that particular moment he was on the roof with a basket of debris for throwing the same from the window and when he came back to the room where cleaning work was going on, he found Ramaiyya lying on the floor with injuries. Only Baley Ram witness was present there but not the appellant Makhan Lal whom he saw running and by the time the witness came down in the ground floor the appellant had already crossed the boundary wall. He further admitted that Junior Engineer Ajay Kumar Garg had also arrived at the scene of occurrence and he inquired from him as to who had injured Ramaiyya whereupon the witness told him that he has been assaulted by Makhan Lal appellant. This witness had absolutely no grudge or animosity against the

appellant. He himself was a labour like the appellant and therefore, his presence at the place of incident was most natural and probable. He belonged to the same district to which appellant too belonged i.e. Hamirpur. He was very specific in stating that in the evening shift Makhan Lal appellant and Ramaiyya deceased were present at the site of construction along with him. Makhan Lal appellant was putting debris in the basket and he himself was throwing the same. According to him Ramaiyya had also come to that place and was supervising the work of cleaning and was also doing some work with his 'Kanni' (a tool with the help of which plastering and flooring work is done). He further stated that debris was being collected by Makhan Lal and he himself was throwing the same through window which was situated only at a distance of 5-6 paces. He in specific words admitted that before the date of occurrence he had never seen any 'jhagra' or altercation between Ramaiyya and Makhan Lal nor any altercation, fight or struggle between them started in his presence. He also categorically stated that he himself did not see accused inflicting blows on the deceased but only saw him running away from the scene of occurrence.

11. P.W. 3 Baley Ram stated that at the relevant time he was working on the second floor and he did not know where Makhan Lal and Ramaiyya were working. He did not see accused inflicting blows on Ramaiyya and when he heard cries he came down to the first floor where he found Ramaiyya lying unconscious on the floor and Makhan Lal appellant was not there. The witness was declared hostile and was confronted with his statement which he had given to the investigating officer.

12. P.W. 4 Junior Engineer Ajay Kumar Garg stated that on 3-10-1984 he was on training as an Apprentice and was deputed to supervise the construction work in the Medical College. At the time of incident he was sitting on the ground floor as cleaning work was being carried on the first floor by the labour. Ramaiyya deceased was supervising the work on behalf of Thekedar. He saw Makhan Lal running away from the building and thereafter he heard that Ramaiyya has been murdered by Makhan Lal. He saw that blood was oozing out from Ramaiyya and his condition was serious. On enquiry from other labourers he was told by them that some altercation had taken place between Ramaiyya and Makhan Lal and

Bale Ram and Ganga Ram further told him that Ramaiyya had been assaulted by the appellant. He went to Meerut Court and informed the contractor A.P. Bansal. In cross examination he stated that he heard shrieks coming from the first floor and people were crying that Ramaiyya has been killed. On hearing these cries he rushed to the first floor and when he had just climbed two steps, he saw that Ramaiyya was being brought down from the first floor by the labourers in their hands and Makhan Lal was running away from there. He also admitted that he along with 2-3 labourers ran behind accused Makhan to a distance of about 150-200 feet but he could not be apprehended. This witness has also no axe to grind against the accused. After examining the evidence of these two witnesses namely, P.W. 2 Ganga and P.W. 4 Junior Engineer A.K. Garg, we have no doubt in our mind that Ramaiyya was assaulted by the appellant in the room situated in the first floor of the building where work of removal of debris was being carried on by the labour under the supervision of Ramaiyya deceased.

13. The next question that arises for consideration is whether the act of the appellant in causing injuries on Ramaiyya deceased would amount to the offence of murder as defined under Section 300 I.P.C. Normally there is a motive behind every crime and that is why the investigating agency as well as the court should try to ascertain as to for what reason and in what circumstance the crime was committed. In the present case neither A.P. Bansal P.W. 1 nor other witnesses tried to find out the real reason or the cause of fight which ensued between the deceased and the accused. Even the investigating officer made no attempt to ascertain as to what actually prompted or excited the accused to commit the crime in question. It is true that it may not be possible in each and every case for the prosecution to pronounce on the question as to what exactly was the motive and what exactly triggered or sparked off the incident resulting in the death of the deceased and incident may occur even without premeditation or pre-planning in the context of a particular situation, on the spur of moment, but where there is no previous enmity between the accused and the deceased and their past relations were cordial, it becomes the duty of the Court to scrupulously examine the evidence of the witnesses and the attending circumstances appearing in the case with a view to find out as far as possible the reason which led to the happening of the incident. In the present case it is admitted to the witnesses that there was no

previous enmity or bad blood between the deceased and the accused appellant. From the First Information Report and the evidence on record it is further borne out that immediately before the incident some altercation ensued between the deceased and the accused . As per the prosecution case at the time of incident accused was collecting debris and putting the same in the baskets from a spade, which in turn was being thrown by P.W. 2 Ganga Ram who as per his own statement had gone to the roof at the time when the actual assault was made by the accused on the deceased. Undisputedly spade was having a sharp-edged blade but no blow from that side was inflicted upon the deceased. Only a brawl between the accused and the deceased is alleged by the prosecution and the exact reason behind the incident which occurred on a spur of moment has not been unveiled in the evidence brought on record of the case and the same is shrouded in mystery. On examination of record and consideration of circumstances appearing in the case, we find sufficient weight in the submission of the learned counsel for the appellant that the possibility of the case falling under Exception-I to Section 300 I.P.C. is not ruled out.

14. Before Exception 1 can be invoked the following circumstances must be established.

1. that there was a provocation which was both grave and sudden;
2. that such provocation had deprived the accused of his power of self-control; and
3. that whilst the accused was so deprived of his power of self-control, he had caused the death of victim;

15. In the famous case of K.M. Nanavati v. State of Maharashtra A.I.R. 1962 SC 605 the Hon'ble Supreme Court has held that for purpose of Exception 1 to Section 300, the test 'grave and sudden' provocation is whether a reasonable man, belonging to the same class of society as the accused placed in the situation in which the accused was placed would be so provoked as to lose his self-control. In India, words and gestures may also, under certain circumstances, cause grave and sudden provocation to an accused so as to bring his act within the first Exception to Section 300 of the Indian Penal Code. The mental background

created by the previous act of the victim may be taken into consideration in ascertaining whether the subsequent act caused grave and sudden provocation for committing the offence. The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

In heinous offences like murder where the accused is charged for commission of the offence punishable with death or life imprisonment, it is the duty of the Court to be careful, circumspect and cautious. The Court should scrupulously examine and consider all the relevant material circumstances including the cause which sparked off the incident before coming to a definite conclusion regarding the guilt of the accused. In arriving at that conclusion the Court is to look into the evidence by the yard-stick of probabilities, its intrinsic worth and animosity of the witnesses.

16. Though the burden to bring the case within the ambit of Exception 1 to Section 300 I.P.C. like any other Exception, lies on the accused but that burden can either be discharged by adducing evidence or by bringing circumstances on record from the prosecution evidence itself which may probabilise the applicability of that Exception. It is well settled that even where accused has not pleaded Exception in his statement given before the Court benefit of that Exception cannot be denied to him if the same flows from the circumstances appearing in the evidence on record. In the case of *State of U.P. v. Lakhmi* (1998) 1 JT (SC) 679 : 1998 All LJ 680 it was laid down that the law is that burden of proving an Exception is on the accused. But the mere fact that accused adopted another alternative defence during his examination under Section 313 Cr. P.C. without referring to Exception 1 of Section 300 of I.P.C. is not enough to deny him the benefit of the Exception if the Court can cull out materials from evidences pointing to the existence of circumstances leading to that Exception. It is not the law that failure to set up such a defence would foreclose the right to rely on the exception once and for all. It is axiomatic that burden on the accused to prove any fact can be discharged either through prosecution evidence by showing a preponderance of probability or by producing evidence in defence.

17. On examination of service of the present case on the test of preponderance of probabilities, it is difficult to reach to any definite conclusion as to in what circumstances the fight between the deceased and appellant originated. There was no previous enmity between the accused and the deceased nor the accused had come at the scene of occurrence with any pre-determined mind or pre-planning and it is in evidence that the incident occurred on a spur of moment during the course of altercation which ensued between the deceased and the accused. The evidence also does not make it clear as to what exact altercation did occur between them. Its nature and precise words spoken have not been brought on record. It is also noteworthy that the spade was not used from its sharp-edged side but was used only from its blunt end during the entire incident. All these factors, if taken together, would lead to a reasonable inference that the accused may have been deprived of his self control on account of grave and sudden provocation given by the deceased. Deduction of this inference is not ruled out in the circumstances of the present case and to us the same appears to be most probable. In any view of the matter it can safely be held that accused did not intend to commit the murder of the deceased. After giving our thoughtful consideration to the facts and circumstances of the case we are of the view that the appellant's conviction under Section 302 IPC was not warranted instead he is liable to be convicted under Section 304 Part-I of the Indian Penal Code. Accordingly the order of the conviction is modified to that extent.

18. Now coming on the question of sentence, it was pointed out by the learned counsel for the appellant that the incident in question occurred on 3-10-1984, that is, almost more than 15 years ago. The appellant has already been in jail for the last more than 14 years. Having regard to the mitigating and aggravating circumstances, we think that the ends of justice would sufficiently be met if the appellant is sentenced to a period already undergone.

19. In the result, the appeal is dismissed with the modification that the conviction and sentence of life imprisonment of the appellant under Section 302 I.P.C. are set aside, instead he is convicted under Section 304 Part (I) I.P.C. and is sentenced to a period already undergone which in the present case is more than 14 years. The appellant is still in jail shall be set at liberty forthwith unless required to be detained

in connection with any other offence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com