

State of M.P. Vs. Munna Alias Narayan

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Court : Madhya Pradesh

Decided On : Jul-19-2004

Reported in : 2004(3)MPHT539; 2004(3)MPLJ635

Judge : S.S. Jha and ;A.K. Gohil, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 45, 60, 142, 154 and 156

Appeal No. : Criminal Appeal No. 245/90

Appellant : State of M.P.

Respondent : Munna Alias Narayan

Advocate for Def. : D.R. Sharma and ;Mayank Bajpai, Advs.

Advocate for Pet/Ap. : M.P.S. Bhadoria, Public Prosecutor

Disposition : Appeal allowed

Judgement :

S.S. Jha, J.

1. This appeal is filed by the appellant/Slate against acquittal of respondent for an offence under Section 302, IPC by the Court of Shri S.L. Jain, 2nd Additional Sessions Judge, Gwalior in Sessions Trial No. 8/86, decided on 16-8-1988.

2. Brief facts of the case are that, there was previous enmity between deceased Mangaram and Bheekharam (father of respondent Munna) and Brij Kishore, (brother of respondent Munna). It is alleged that Ashok son of Sitaram has shot Dayanand Pathak over a dispute of a house at Morena. Dayanand was brother of respondent Munna. After the incident, Sitaram and his son Ashok were absconding. Sitaram and deceased Mangaram are brothers. According to the prosecution, Kedar (P.W. 9), deceased Mangaram and one Badri Baghele were going on their bicycles towards Morar. Mangaram was going to Lashkar for moving application for the release of Ashok on bail. Near Sohna, a bus of M.P. State Road Transport Corporation was seen by Kedar (P.W. 9) coming from the side of Morar. Kedar was on the bicycle followed by Mangaram and Badri on their respective bicycles. Kedar (P.W. 9) saw that the bus was driven by respondent Munna. When Munna saw Kedar (P.W. 9) he exhorted that today he has come before him and he moved his bus with an intention to run the vehicle over him. Kedar moved away from the street on the pavement to avoid the accident. Respondent Munna raised the speed of the vehicle and dashed Mangaram which resulted into breaking of his bicycle. Mangaram fell on the ground and wheels of the vehicle ran over his legs. Mangaram suffered injuries on his legs, hands and head. He started bleeding from nose and mouth and died on the spot.

3. After investigation police filed challan in the Court of Judicial Magistrate, First Class. After committing of the case to the Court of Sessions Judge, charges were framed against the respondent. Respondent denied the charges. Trial Court recorded evidence and acquitted the respondent.

4. Counsel for appellant submitted that there is overwhelming evidence on record to convict respondent Munna. He submitted that the evidence of Kedar (P.W. 9) is trustworthy and prosecution case is established beyond reasonable doubt that Munna with an intention to cause death has ran his vehicle over Mangaram which resulted into his death. Counsel for appellant then submitted that apart from the evidence of Kedar (P.W. 9) there is evidence of extra judicial confession by respondent before Kailash Narain (P.W. 6). Counsel for appellant submitted that even in the absence of any cross-examination on the question of extra judicial confession by respondent, Trial Court committed grave error in acquitting

respondent. On the other hand, Counsel for respondent supported the judgment of the Trial Court and submitted that evidence regarding extra judicial confession is not reliable and trustworthy. The circumstances under which it is alleged that respondent made extra judicial confession itself is suspicious. Therefore, no reliance can be placed upon the said extra judicial confession before Kailash Narain (P.W. 6). Counsel for respondent further submitted that evidence of Kedar (P.W. 9) is not trustworthy. His evidence is wholly unreliable. Therefore Trial Court has not committed any error in acquitting respondent.

5. This case is based upon two types of evidence. First is eye-witness account of Kedar (P.W. 9) and other evidence is that of Kailash Narain (P.W. 6), who has deposed that respondent had admitted before him that he has murdered Mangaram by running the bus over him.

6. We have considered the evidence of Kedar (P.W. 9) eye-witness of the incident. Kedar (P.W. 9) has deposed that the bus was driven by respondent Munna. When bus reached near him then Munna abused him in a filthy language and told him that he will see him. Respondent then raised the speed of the vehicle and ran the vehicle over his father, deceased Mangaram. He admitted that on account of previous enmity respondent has murdered his father. He admitted that on account of fear of life he moved on the pavement from the road. In Para 4 of the cross-examination this witness admitted that the actual place of accident was on 'ghura ' (a place where rubbish is collected) and bus ran over the deceased on the 'ghura '. His father along with bicycle fell on the said 'ghura'. The evidence of this witness Kedar was rejected by Trial Court on the following grounds:--

(I) Trial Court in Para 11 of the judgment held that Ramswaroop (P.W. 12) and Parasram (P.W. 13) have not supported the case of prosecution. According to prosecution, Kalyan Prasad Sharma (P.W. 1) was the conductor of the offending bus. This witness has admitted that the bus was driven by respondent Narain Singh alias Munna and he has deposed that the bus has not met with any accident. Trial Court has relied upon evidence of Lalta Prasad (P.W. 14) who has deposed that he was holding the post of Checker in the State Road Transport Corporation. He has deposed that when the bus passed through Village Sohsa he

was informed that vehicle has met with an accident. However, this witness has denied that accident occurred near or on the 'ghura'. The evidence of Kedar (P.W. 9) is rejected on the ground that since Badri (P.W. 2) has denied the accident therefore evidence of Kedar is suspicious. Kedar (P.W. 9) has deposed that he fell from the bicycle and has suffered minor injuries but in the absence of medical report his evidence is not reliable.

(II) Further the evidence of independent police officer has not deposed about injuries of Kedar (P.W. 9). Kedar (P.W. 9) has admitted the incident was witnessed by some other person, who were working in their respective agricultural fields. In Para 16 of the judgment Trial Court has held that Kedar (P.W. 9) has tried to distort his evidence. Trial Court further held that conduct of this witness is not reliable as he has not called for help from neighbouring agriculturists who were working in their respective agricultural fields.

(III) Trial Court has held that Kailash Narain (P.W. 6) is hostile witness.

7. We have gone through the evidence of Kedar, son of the deceased. If there are exaggerations in the evidence of this witness those exaggerations are should be overlooked. It may be useful to note that the evidence of this witness was recorded one and half years after the incident. Evidence was recorded on 2-2-1987 whereas incident took place on 10-6-1985. Thus, the evidence was recorded long time after the date of incident. This witness has clearly stated in his deposition that respondent had abused him and with an intention to take revenge he tried to crush him under the bus but he saved himself and speed of vehicle was raised by respondent and ran over the bus over deceased Mangaram. FIR (Ex. P-7) was lodged by this witness and statement made by this witness is in conformity with FIR. His evidence is corroborated by the medical evidence. Post-mortem report is proved by Doctor D.S. Badkur (P.W. 7), who has performed the post-mortem. During post-mortem he has found following injuries:--

(1) Irregular abrasion 4 x 3 cm on the right forehead above eye-brow.

(2) Lacerated wound 2.5 x 2 cm skin deep on right eye-brow.

- (3) Abrasion 0.5 x 2 cm on left upper eye lid.
- (4) Abrasion 0.5 x 2 cm transverse on nasal spine, nasal bones fractured.
- (5) Abrasion 2 x 0.5 cm vertical on lateral aspect of right shoulder joint.
- (6) Swelling 10 x 5 cm present on lower end of right forearm and wrist joint. Lower ends of both bones of forearm are fractured.
- (7) Abrasion 4 x 0.5 cm transverse on anterior aspect of lower end of right thigh, 4 cm above the upper margin of patella.
- (8) Abrasion 2 x 1 cm on lower margin of right patella. .
- (9) Abrasion 6 x 0.5 cm on lateral aspect of lower end of right leg and ankle joint.
- (10) Shaft of right femur fractured at lower 1/3 and upper 2/3. Muscles ecchymosed heavily.

Doctor found fractures on the right temporal bones from 3 to 9th in mid clavicular side and on right side 3, 4, 7, 8 and 9th fractured in mid clavicular and anterior axillary line. Doctor opined that the death was due to shock and haemorrhage as a result of multiple injuries.

8. Kailash Narayan (P.W. 6), on a leading question permitted by the Trial Court has deposed that respondent Munna has told him that he has finished Mangaram by running the bus over him and therefore it is the day of joy. Thus, on going through entire evidence of Kedar (P.W. 9) his evidence is wholly reliable and it can not be discarded merely on the ground that medical report of this witness was not produced by the prosecution. Any irregularity by the investigation agency will not be sufficient to discard the evidence of this witness. This witness has categorically stated that respondent has abused him and tried to run the vehicle over him but he saved himself by moving the bicycle away from the street. Thereafter vehicle was dashed against his father. This evidence is to be seen alongwith the spot map (Ex. P-8). If we see the position of the bus which was travelling from the western side towards the eastern side we find that the bus was on the right side and was not on the road but outside the right side of road on pavement where accident was

occurred. Prosecution has also produced the photographs of the road on record which are Ex. P-3 and P-4. It is clear that the vehicle driven by respondent was not on the road but was on the right side away from the road. Thus vehicle was not driven on the left side or on the road but accident occurred outside the road on the right side which corroborates the evidence of Kedar (P.W. 9). Trial Court has wrongly held that Kailash Narain (P.W. 6) was declared hostile.

9. We have gone through the evidence of Kailash Narain (P.W. 6) and we do not find that prosecution has prayed that this witness be declared hostile. It is true that the leading question can not be asked in the examination in chief. However, Court may permit leading question if not objected by other side under Section 142 of the Evidence Act. It is provided that the leading questions must not, if objected to by the adverse party, be asked in the examination-in-chief, or in a re-examination, except with the permission of the Court. In this case the prosecution has sought permission to ask leading question and Trial Court has granted permission to ask leading question without any objection from defence. There was no prayer to declare this witness hostile by the prosecution. The procedure under Section 154 of Evidence Act was not followed. If the witness was declared as hostile then procedure under Section 154 of Evidence Act should have been followed. Under Section 154 it is provided that Court may, in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. Thus, under Section 154 of the Evidence Act, the Court may permit the party to ask the question which can be asked in the cross-examination. However, under Section 142 of the Evidence Act Court may permit leading question in the examination-in-chief, if it is not objected by adverse party. Thus, Trial Court has wrongly held that Kailash Narain was declared hostile. Even otherwise, it is settled law that evidence of hostile witness can be relied upon to the extent to which it supports the prosecution version as held in the case of *Koti Laxmi Bai v. State of Gujarat*, AIR 2000 SC 210. Even in the absence of any prayer by the prosecution that the witness be declared hostile, the permission by the Trial Court to ask leading question will not lead to inference that the witness was hostile. Trial Court has erroneously held that this witness was declared hostile by the prosecution ignoring the provisions laid down under Sections 142 and 154 of Evidence Act. This fact is not disputed that the vehicle was driven by

respondent. Evidence of Kedar (P. W. 9) itself is clear and specific that respondent has caused death by running the bus over the deceased Mangaram. This witness has categorically deposed that respondent has shouted that now he has come before his vehicle and he will settle score with him. It shows that there was an intention on the part of respondent to take revenge and he has taken his vehicle not only on the right side of the road but has taken the vehicle outside the road on the right side and dashed against deceased Mangaram. Evidence of Kedar is, therefore, trustworthy and reliable. Failure of other witnesses who have not supported the case of prosecution will not render evidence of Kedar (P.W. 9) unreliable. Evidence of Kedar is wholly reliable and trustworthy coupled with extra judicial confession of respondent. The factum of accident is also proved by Lalta Prasad (P.W. 14).

10. We have considered the facts and evidence on record. We hold that the evidence of Kedar (P.W. 9) is wholly reliable and trustworthy. The vehicle was driven outside the road and had dashed against the bicycle itself demonstrate that there was an intention to cause death and respondent has committed murder of deceased Mangaram. Trial Court has committed grave error in acquitting respondent on misleading of evidence. Finding is contrary to evidence on record. None of the witnesses were declared hostile. Trial Court has not recorded any finding that since witness is not supporting the case of prosecution therefore prosecution is permitted to ask leading question. Thus Trial Court has committed grave error in holding that all the witnesses were hostile. Even otherwise evidence of Kedar (P.W. 9) coupled with evidence of Kailash Narain (P.W. 6), offence of respondent is proved beyond reasonable doubt. It may be further mentioned that Kailash Narain (P.W. 6) in Para 4 of his deposition has categorically deposed about the extra-judicial confession by respondent before him that he has finished Mangaram by running the bus over him and it is a day of joy. On this evidence there was no cross-examination by the defence. In the absence of cross-examination on the question of extra-judicial confession, we hold that the defence has not denied the extra-judicial confession and accepted the statement. The judgment of the Trial Court is based upon misreading of evidence and findings are perverse. Therefore, the judgment of acquittal is set aside.

11. In the result, the judgment of acquittal passed by Trial Court is set aside and respondent is convicted for an offence under Section 302, IPC and sentenced to life imprisonment. Respondent is directed to surrender before the Chief Judicial Magistrate, Gwalior within one month, failing which warrant of arrest be issued against respondent for undergoing the sentence. Appeal succeeds and is allowed.

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