

Manchida Vs. State

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Court : Rajasthan

Decided On : Oct-05-1972

Reported in : 1972WLN867

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Appeal No. 48 of 1972

Appellant : Manchida

Respondent : State

Disposition : Appeal dismissed

Judgement :

L.S. Mehta, J.

1. The prosecution version, in brief, is that at about 9.30 a.m., on Sept. 29, 1971, accused Manchida went to PW3 Nahar Singh's house, situate in Jodhpur City and told him that he was wanted by his friend Raj Kumar at Bajrang Hotel, near the Railway Loco Running Shed. Nahar Singh accompanied Manchida and both of them reached the vicinity of the above Hotel. To his utter surprise Nahar Singh saw accused Shankaria, Mohania, Kishnia and some 9 or 10 other persons standing nearby. Accused Shankaria, had a slip in his hand, Mohania was armed with some lethal weapon and 3 or 4 other persons were equipped with 'lathis'.

Some time later Raj Kumar (P.W. 4.) also reached the spot after having visited his uncle. On seeing Raj Kumar, Manchida cried that he should be restrained from proceeding ahead and should be subjected to beating. Shankaria then attacked Raj Kumar and inflicted clip injuries to him. 6 or 7 other persons also thrashed Raj Kumar with hockey sticks. The victim fell down after having received certain injuries on his person. In the meantime Manchida took out his knife (Ex. 3) from his pant-pocket. He inflicted a knife injury to Nahar Singh's abdomen. Nahar Singh fell down, as a result of the wound sustained by him. Manchida then rushed towards Raj Kumar and he kicked him also and then he returned towards Nahar Singh. Chetan Ram (P.W 2) and Ram Kishore (P.W 9), who were sitting inside Bajrang Hotel, hastened their approach towards Nahar Singh and rescued him. Thereafter accused Manchida and his party-men took to their heels. Ram Kishore went to the police station, Sardarpura, Jodhpur, and lodged first information report, marked Ex P. 2. The police registered a case and, took over investigation After the completion of the investigation a challan was presented to the Court of Addl. Munsiff Magistrate No. (sic1), Jodhpur against Manchida, Shankarlal & Achluram. Learned Addl. Munsif Magistrate No. 1, Jodhpur, conducted preliminary inquiry and committed accused Manchida, Shankar Lal and Achluram to the court of Sessions Judge, Jodhpur. The case was tried by the Additional Sessions Judge No. 2, Jodhpur. Accused Manchida and others were charged under Sections 307, 326 and 149, I.P.C., to which they pleaded not guilty. In support of its case the prosecution examined 14 witnesses. Manchida in his statement, recorded under Section 342, Cr. P.C., pleaded not guilty. In support of its case the prosecution examined 14 witnesses. Manchida in his statement, recorded under Section 342, Cr. P.C., pleaded ignorance of the prosecution allegations. He also deposed that the prosecution witnesses had resorted to falsehood and that their statements should not be relied upon because of their harbouring an animosity against him. In defence be examined one witness Hussain Khan. The trial court convicted accused Manchida under Section 326, I.P.C. and sentenced him to three years' rigorous imprisonment plus a fine of RSection 200/-, or with three months' rigorous imprisonment in default of payment of fine, for the injuries caused to Nahar Singh. He has also been held guilty under Section 323, I.P.C for causing simple injuries to Raj Kumar and sentenced to three months' rigorous imprisonment and to pay a

fine of Rs 50/-or with fifteen days' rigorous imprisonment in default of payment of fine. The substantive sentences have been made concurrent. The court acquitted Achlu Ram It, however, convicted Shankaria under Section 323, I.P.C., but because he was below 21 years of age, benefit of the provisions of the Probation of Offenders Act was extended to him after due admonition.

2. Dissatisfied by the above verdict, accused Manchida has taken this appeal. The contention of learned Counsel for the appellant is that the medical, evidence given in the case by three doctors, namely. Dr. P.L. Bafna (P.W. 10), Dr. D.L. Kanwar (P.W. 7) and Medical Jurist Dr. S.K. Pathak (P.W. 11), is unworthy of credence. The testimony of all these three Doctors is variegated and, therefore, its benefit should go in favour of the appellant. Learned Counsel's further argument is that according to the prosecution evidence the occurrence is alleged to have taken place in front of Bajrang Hotel at the place marked 4 in the site-plan, Ex. P. 12. It is also in the prosecution evidence that blood was found at the Railway Hospital Road at the place marked 15 in the above document. The presence of blood at the place marked 5, according to the learned Counsel gives an indication that the fight did not take place as revealed by the prosecution witnesses at the place marked 4 in the plan, The benefit of this inconsistency, counsel urges, should accrue to the accused. Learned Counsel, in the end. argued that the trial court went wrong in placing faith on the testimony of Nahar Singh (PW. 3) and Raj Kumar (P.W 4). He pointed out some inconsistencies and contradictions in their statements. Learned Counsel then told the court that the fight in fact took place between some 'Muslims' and Nahar Singh and as there was animosity between Nahar Singh and Manchida, the latter has been falsely implicated in the case.

3. I first take up the medical evidence. The prosecution examined three doctors, namely. Dr. S.K. Pathak, Medical Jurist, M.G. Hospital, Jodhpur (P.W. 11), Dr. P.L.Bafna (PW. 10), Lecturer in surgery, S.N. Medical College, Jodhpur (PW. 10), and Dr. D.L. Kanwar, Reader in Surgery, S.N. Medical College. Jodhpur (PW. 7) Dr. S.K. Pathak, examined injured Nahar Singh on the very day of the incident. He found the following injury on his person:

Punctured wound 2 Cm. X cm. X abdomen cavity deep placed obliquely on the right lateral aspect of abdominal portion of amendum coming out of this wound. Marginal wound clean cut. The wound is 12 cm. lateral to medial line

In the opinion of Dr. Pathak the nature of the injury was simple and was caused by a sharp edged weapon. Its duration was fresh. The injury report is marked Ex. P. 8 SHO. Sardarpura, again referred the case to him. Thereupon Dr. Pathak issued a supplementary injury report on the basis of the operation notes of the surgeons. Therein it was mentioned that the kidney being injured the wound was grievous. Dr. Pathak further opined that the injury could have endangered the life of the patient if proper treatment had not been given to him. The supplementary report is marked Ex P. 9. Dr. Pathak also examined Raj Kumar on September 30, 1971 and he found 12 injuries on his person as set out in his statement. All the injuries, except No. 8, were simple in nature. On an inquiry made by the Station House Officer, Sardarpura, and keeping in view the second operation notes, Dr. Pathak issued second supplementary injury report in respect of Nahar Singh. It is marked Ex. P. 11. Therein the Doctor gave a positive finding that in view of the injury had the patient not been given proper medical aid, he could have died.

4. Learned Counsel for the appellant attacked the above evidence of Dr. Pathak with be-wildering asperity. He submits that when Dr. Pathak had already concluded that the punctured wound, found on the parson of Nahar Singh, was simple in nature, he could not have, at the instance of the police, drastically modified his views at a subsequent stage. He according to him, had been influenced by the operation notes.

5. On the point raised it may be stated that the evidence of an expert-witness is to be tested by the same rules that are applied to the testimony of other witnesses and its weight and value are for the court to determine. The Court should give it such weight as it appears to be entitled to under the circumstances of the case and may reject it if it is convinced that it is not credible. See Wharton's Criminal Evidence, Vol. 2, Twelfth Edition, page 360-361, It has also been observed by Underhill in his valuable treatise, Criminal Evidence, Vol. 2, Fifth Edition, Page 774, that the determination of the weight of the expert testimony should be by the

same rules used by the Court in determining the weight of other testimony Expert opinions may be viewed by the court as advisory and should be weighed in connection with all other evidence and they may even be disregarded, if the court is convinced that they are not correct. Ultimate facts directly in issue are for the determination of the court, and not for an expert witness. It has also been given by Underhill in his Criminal Evidence (supra), at P 778, that expert opinion based upon hearsay testimony, or in part upon his understanding of the testimony of another expert witness, is to be properly excluded. Wills in his monumental work, Circumstantial Evidence, Seventh Edition. P. 177, writes;

It is scarcely necessary to add that scientific evidence, being generally matter of opinion, can seldom be implicitly adopted.

Dr. Pathak, as has been observed above, gave different opinions at different stages and his final reaction of the mind's based upon the operation notes prepared by Dr. D.L. Kanwar, Reader in Surgery. His opinion, therefore, cannot be said to have been based on his personal observation and as such it can properly be excluded.

6. Learned Counsel for the appellant then referred to the medical evidence given by Dr. P.L. Bafna, P.W. 10, Lecturer in Surgery, S.N. Medical College, Jodhpur. In his examination in chief, he has said that he examined Nahar Singh on September 30, 1971. His condition was fairly well. There was a wound on the right lumbar region through which a part of the momentum was coming out. He was operated by him during the night intervening September 29 and 30, 1971 He prepared the operation notes Ex. P. 6. On opening the abdomen he found that there were blood clots. Cavity was full of blood and clots. There was some injury to omentum, where from blood was oozing out. He tied omentum and cleaned the peritoneal cavity, but could not detect any other injury to my other viscera at that time. Learned Counsel for the appellant submits that had the kidney of the victim been injured or damaged, there was no reason why the same could not have been noticed by Dr. Bafna. The answer to this serious query is furnished by Dr. Bafna himself. In the cross-examination he says:

I could not detect any injury to the kidney of the patient but on the next morning, when the patient passed urine and blood clots were found in the urine I suspected the damage to the kidney. The patient was not x-rayed for the kidney because there was no such necessity.

From this statement it appears that Dr. Bafna's first examination of the patient was cursory and he could not discover any injury on the kidney on September 30, 1971, He, however, suspected damage to the kidney the next day when the patient passed urine and the blood clots were found therein. The word 'suspect' has been used by Dr. Bafna. It is defined in Chamber's Twentieth Century Dictionary. It means 'to doubt' to be ready to believe; to incline to believe the existence.' Here the word 'suspect' has not been used in the sense of doubt, but it has obviously been used in the sense that the medical expert was inclined to believe the existence of damage on the kidney. The Doctor has also explicated thus:

It is not possible to injure the kidney by the Doctor operating on exploration of the abdomen, by the knife of the surgeon, because in the operation of exploration the knife is only used on the anterior abdominal wall and as soon as the peritonium is opened, the knife is kept aside

In the light of such an exposition, it is difficult to conclude from the evidence of Dr. Bafna that at the time of the first operation performed by him Nahar Singh's kidney had not in fact been damaged.

7. The second operation of the kidney was performed by a senior medical officer, Dr. Kanwar, Reader in Surgery, S.N. Medical Collage, Jodhpur, P.W,7. He performed the operation on October 8, 1971 After exposing the kidney it was separated from all sides. The kidney, according to him, was grossly enlarged and dark in colour. There was a big rent in the mid and antro lateral part of kidney. At the time of operating the kidney there was no possibility of its being damaged. The Doctor removed the blood clots from the Kidney as also the kidney itself and the area around it. There were clots over the rent & around it. The Doctor further told the Court that Nahar Singh's kidney was not diseased but it was rather an injured kidney.

8. Learned Counsel for the appellant challenged the testimony of Dr. D.L. Kanwar on the ground that his evidence was based upon the operation notes, which had not been signed by him. In this connection it may be pointed out that the real testimony is that of Dr. D.L. Kanwar before the trial court on oath. The operation notes are only a corroborative piece of evidence or at any rate they are documents which can be utilised by a doctor for refreshing his memory. A surgeon who performs an operations is entitled to express an expert opinion before the court as to the nature and cause of a wound or injury; as to the probable cause and effects of a wound and whether or not a wound was of recent infliction: see Whartons Criminal Evidence Vol. 2 Twelfth Edition P. 406 407. As has been stated by Taylor on Evidence, Vol. 2, Twelfth Edition, P. 904 905;

In all cases where skilled witnesses are called to pronounce their opinions on some scientific question, they may refresh their memory by referring to professional treatises, tables, calculations etc.

Keeping in view this authority Dr. D.L. Kanwar could have made use of the operation notes, dictated by him to his junior soon after the operation was performed, irrespective of the fact whether the notes bore his signature or not: vide Section 159, Evidence Act. The trial court, which recorded the testimony of Dr. D.L. Kanwar, relied upon his evidence. Its decisive finding is:

Dr. Kanwar has further stated that it was not a diseased kidney rather it was an injured kidney From the statements of these two surgeons, it is evident that the kidney was injured and was removed by operation.

To my mind, the conclusion, reached by the trial court, appears to be correct.

9. Learned Counsel for the appellant then submitted that according to the prosecution story the occurrence took place just in front of Bajrang Hotel, at the place, marked 4 in the site plan Ex P. 12. It is in the evidence of Gopal Singh, Sub-Inspector of Police, Sardarpura, that he had detected blood on the Railway Hospital Road at place marked 5 in the site plan. If the occurrence, according to learned Counsel, took piece at place marked 4, how the blood had been located at the place marked 5 in the site plan? The prosecution witnesses have categorically

stated that the fight took place in front of Bajrang Hotel. The place marked 5 in the site-plan is not far away from the place marked 4. Both the places are strikingly juxtaposed. It cannot, therefore, be said that the prosecution story, as it stands, is unrealistic simply on the ground that some blood stains had been found at place marked 5 in the site-plan and not at the place, marked 4 in Ex P. 12. Even the defence witness Hussian Khan (P.W. 1) has said that he saw the incident while sitting at about 10 'Paundas' away from the place of the incident in Jagoo's Hotel. The trial court, under the circumstances of the case, could not have scrapped the prosecution version with scepticism on the ground stressed by learned Counsel for the appellant.

10. The counsel then submitted that the evidence of the two eye-witnesses Nahar Singh PW 3 and Raj Kumar P. W 4(both injured) is unworthy of belief. His argument is that when admittedly there was no good relation between Nahar Singh and accused Manchida, he could not have accompanied him at his behest. Nahar Singh has elucidated in his statement that he accompanied Manchida as he had been told that his friend Raj Kumar had desired to meet him. The witness was then faced with a question in the course of his cross-examination as to whether a day before the occurrence he had beaten some Muslims To this grill his answer was in the negative. Witness Nahar Singh has unequivocally stated that it was Manchida who thrust his knife towards the right hand side of his abdomen. His testimony is corroborated by PW. 4 Raj Kumar. It is true that contrary to the statement of Nahar Singh witness Raj Kumar had said that Manchida was standing near Nahar Singh when he was called on the spot. It is equally correct that the witness had wrongly stated in the first information report that first blows were given on his mouth. Inconsistencies and contradictions found in the statement of P W. 4 Raj Kumar do not adversely affect the main incident. It has been aptly stated by His Lordship Reddy J., in a recent judgment of the Supreme Court, reported in Sohrab v. State of M.P. : 1972 CriLJ1302 that in most cases, the witnesses when asked about details venture to give some answer, not necessarily true or relevant for fear that their evidence may not be accepted in respect of the main incident which they have witnessed but that is not to say that their evidence as to the salient features of the case after cautious scrutiny cannot be considered, though where the substratum of the prosecution case or material part of the

evidence is unbelievable it will not be permissible for the Court to reconstruct a story of its own out of the rest. The trial court, which recorded the testimony of the two eye-witnesses, has pointedly said:

from the statements of Nahar Singh and Raj Kumar, as supported by the medical evidence, and their names being there in the F.I.R. and in the reply to the further inquiry, the case against them is well proved.

The appellate court should not ordinarily interfere with the trial court's opinion as to the credibility of a witness as the trial Judge alone knows the demeanour of the witness; he alone can appreciate the manner in which the questions are answered, whether with honest candour or with doubtful plausibility; vide *Valarahak v. Standard Coal Co.* AIR 1943 PC 159. Keeping in view the above principle and after scrutinising the evidence of the two eye-witnesses with meticulous care, I am convinced that the trial court rightly relied upon the testimony of the two injured witnesses.

11. Lastly, learned Counsel for the appellant argued that the defence of accused Manchida that some Muslim miscreants had given beating to Nahar Singh and because of the animosity between Nahar Singh and Manchida that the accused has been falsely implicated. Learned Counsel then says that the trial court should have placed reliance upon the statement of D.W.1 Hussian Khan. Learned Deputy Government Advocate has urged that the defence taken by the accused is an after thought and it does find place in his statement recorded under Section 342, Cr. P.C. It is true that this aspect of the matter had been put to the prosecution witnesses in the course of their cross-examination but in a criminal charge where accused falsely denies several relevant facts, which had been conclusively established, the court would be justified in drawing an adverse inference from this against the accused: see *Pershadi v. U.P. State* : 1957 CriLJ328 . Had this defence of the accused carried some stability, he would have raised it without hesitation in his statement before the trial court. I have also gone into the evidence of Hussain Khan, D.W 1. He has. no doubt, in his examination-in-chief landed support to the defence theory. But in the cross-examination he has said;

I did not state to the police of what had happened with Nahar Singh.... After the incident I went away to Barmer where from I returned after a month and came to know that Manchida had been arrested on account of his quarrel with Nahar Singh.... In spite of this fact I did not inform either the police or the Magistrate that Manchida had not struck knife blow to Nahar Singh. On the other hand it was struck by Rashid and his party.

Admittedly Hussain Khan had a long and cordial relation with Manchida. If Manchida was falsely implicated in the case, it was expected of the witness to have approached the police or other authorities & told them that it was not he who was responsible for the infliction of the injury to Nahar Singh. His secretive manner or reluctance to speak and his leaving for Barmer soon after the event demonstrate that his evidence is not reliable. His subsequent behaviour appears to me to be an impossible conduct. The trial court, therefore, rightly rejected his testimony.

12. In the result, this appeal having no force stands dismissed.

13. Learned Counsel for the appellant prays for leave to appeal to the Supreme Court. The case has been mostly decided on facts and well established principles of law. I do not think that it is a fit case for grant of such leave The prayer is rejected.

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