

Mohru Vs. State

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Court : Rajasthan

Decided On : Dec-15-1976

Reported in : 1976WLN768

Judge : V.P. Tyagi, Actg. C.J. and; P.D. Kudal, J.

Appeal No. : D.B. Cr. Appeal No. 393 of 1972

Appellant : Mohru

Respondent : State

Disposition : Appeal dismissed

Judgement :

V.P. Tyagi, Actg. C.J.

1. The appellant Mohru has filed this appeal against the judgment of the learned Sessions Judge, Bharatpur dated 24th April, 1972, whereby the appellant has been convicted for an offence under Section 302 IPC. and sentenced to imprisonment for life.

2. The prosecution case is as follows: On 14th May, 1971 Mohru with his two companions Bhogi Kachchi and Amarsingh Kachchi came to the house of Jagannath at about 6 P.M. Mohru was armed with a sword, whereas the other two persons had 'barchhi' and 'kulhari'. PW/6 Ram Baboo was anteing outside the

house of Jagannath. It is alleged that Mohru threatened Jagannath to kill him because the latter had named the former to Head Constable as one of the gamblers of that area. On hearing this threat, Jagannath did not speak out anything. Mst. Kanta, who was the neighbor of Jagannath was standing outside her house. The allegations made by Mohru against Jagannath were, however, contradicted by Mst. Kanta and she stated that it was absolutely a wrong information that Mohru's name was enrolled as a gambler by the Head Constable. On hearing this answer from Mst. Kanta, Mohru directed himself towards her and extended a threat to kill her. Whereupon Mst. Kanta retorted:

rqg eq>s D;k ekjsxk rq tSlS xwtj xYys ks;rs gS

On hearing this retort from Mst. Kanta, Mohru took out his sword from the sheath and aimed the blow at the head of Mst. Kanta. Mst. Kanta tried to ward off the attack by extending her hand and it is said that she sustained two injuries on her hand. Mst. Anjani, the mother of Mst. Kanta, was sitting nearby. She immediately intervened and caught hold of the hand of the accused. But the accused pushed her aside and twisted her hand and thereafter a second stroke was given with the sword at the neck of Mst. Kanta resulting in her instantaneous death. Mohru tried to run away from that place with the sword in his hand. But PW/6 Ram Baboo, brother of Mst. Kanta, caught him by the back and threw him on the ground. Jagannath immediately rushed to Mohru and snatched the sword from his hand. After some time one Pyare Thakur came to the scene of occurrence and entreated Ram Baboo to leave Mohru assuring him that Mohru would not run away. On this assurance Mohru was left by Ram Baboo and it is said that thereafter Mohru went away from that place. It is said that Mohru's companion Amarsingh, who was holding a dagger in his hand left his dagger while running away from that place.

3. The First Information Report was immediately lodged at the Police Station, Roophas by Ram Baboo PW/6. This report is exhibit P/4 and according to the time mentioned therein it was recorded at 7.30 P.M. This report contains the name of Mohru as the killer of Mst. Kanta. After recording the FIR, the Police authorities came to the place of occurrence where various documents were prepared by Chokhalal, Head Constable PW/8. The sword Article 1, which was snatched by

Jagannath from the hands of Mohru was handed over to the Head Constable who prepared the recovery memo exhibit P/9. In this document, it is mentioned that the sword was found to be bloodstained. The post mortem examination of the dead body of Mst. Kanta was performed by Dr. V.D. Kashyap, who found the following three injuries on the dead body:

1. Incised wound 5' x 3', on the left side of the neck cutting of the structures, namely; trachea, larynx, esophagus and all large blood vessels. The left cornu of hyoid bone, the platyama and the membrane of the left cornu of the neck, right down to the spine.
2. Incised wound 2' x 1' 1' over the lateral side of the lower third left hand.
3. Incised wound 7' x 3' over the third of the posterior surface of the left forearm cutting left ulna and radius bones and all the intervening structures and muscles. The fore-arm was hanging by a piece of skin.

According to the doctor, Mst. Kanta died of heart failure due to shock and excessive hemorrhage, in his opinion, the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause death.

4. The sword was sent for the chemical examination, but it was found negative for blood. After the investigation, a challan was put up against Mohru under Section 302 I.P.C. in the court of Munsiff Magistrate, Bayana, who after taking committal proceedings, committed Mohru to the Court of Sessions to stand his trial for the said offence.

5. The prosecution examined three eye-witnesses viz. Mst. Anjani Devi PW/1, Mst. Mahadevi PW/2 and Ram Baboo PW/6. The statement of Jagannath was also recorded in the committing court, as he had witnessed the occurrence, but before he could be produced in the Court of Session he died. Therefore, his statement of the committing court was tendered in evidence under Section 3 of the Evidence Act. Mst. Mahadevi PW/2 turned hostile because she introduced an element that before the accused gave sword blow to the deceased, both the accused and the deceased were quarrelling among themselves. However, at the request of the

Public Prosecutor, the witness was branded hostile and was allowed to be cross-examined. In her cross examination, she admitted that the blows were inflicted with the sword by Mohru on the person of the Mst Kanta. Both Mst. Anjani PW (1), mother of the deceased and Ram Baboo PW/6, brother of the deceased, supported the prosecution story in full. The presence of Mst. Anjani is established because the doctor examined her on the next day and he found that her hand was twisted. This statement of the Medical Officer corroborates the statement of Mst. Anjani that when she tried to intervene and caught hold the hand of Mohru when he was to give a second blow, she was pushed by the accused and her hand was twisted.

6. Learned Counsel for the appellant argued that the eye-witnesses examined in this case are the near relations of the deceased and, therefore, no reliance could be placed on their testimony, unless the statements find corroboration from independent source. He further urged that not only the statements of the eye-witnesses do not find any corroboration from the medical evidence, the statement of the doctor definitely contradicts the version given by the eye-witnesses, inasmuch as the doctor says that three injuries sustained by Mst. Kanta could be caused only when three blows were given to the deceased. According to Mr. Thanchand, all the eye-witnesses have categorically stated that Mohru gave only two sword blows to Mst. Kanta. This discrepancy between the statements of the eye-witnesses and the opinion given by the doctor, according to him, makes the testimony of the eye-witnesses very doubtful. It was also pointed out that the sword blows with which Mohru is said to have dealt sword blows on the person of Mst. Kanta was snatched away from his hands by Jagannath when he was caught by Ram Baboo and fell him down on the ground & that very sword was handed over to the Hand Constable when he came to the scene of occurrence that very day, but the sword, on chemical examination, was found to be negative for blood. The story that Mohru dealt sword blows with the sword Article 1 to the deceased according to Mr. Thanchand has been concocted by the eye witnesses. It was also urged in the alternative that if it is believed that Mohru gave the sword blows to Mst. Kanta, then he accused had a right to take a plea that he was provoked by Mst. Kanta by making a report that how he (Mohru) could kill her (Mst. Kanta), as many such Goojars have, been seen by her loitering in the lanes. The argument of

Mr. Thanchand's that Mst. Kanta was a prostitute, a lady of no status, and, therefore, if such a report came from a lady like Mst. Kanta, it was likely to cause provocation to Mohru and if Mohru under that provocation dealt the fatal blows on the person of Mst. Kanta, then his case falls within the purview of exceptions one and four to Section 300 I.P.C.

7. All these arguments were advanced before the learned Sessions Judge and be discarded them for the reasons mentioned In the judgment. We also propose to deal with these arguments one by one.

8. It is evident from the post-mortem report and the statement of PW/7 Dr. V.D. Kashyap that three incised wounds were detected on the dead body of Mst. Kanta when the post-mortem examination was conducted by him. The doctor when asked to express his opinion, categorically stated that these there wounds could be caused by three blows. It is in statements of the eyewitnesses PW/1 Mst. Anjanidevi and PW/6 Ram Baboo that only two blows were given by Mohru to Mst. Kanta. Jagannath also corroborates this story of the prosecution in his statement recorded by the committing court. But the argument of Mr. Thanchand it that in the light of the opinion expressed by the doctor, it is clear that the eye-witness have not seen the occurrence, otherwise they would not stated that only two blows were inflicted by the accused in the deceased by his sword. The learned Judge has very ably dealt with this point and be has discarded this argument by saying that the two injuries sustained by the deceased on her hands could result even by inflicting one blow it the position of the hand at the time when she tried to ward off the attack was such that the sword welded by the accused could ouch the hand at two places. There is nothing in the testimony of the eye-witnesses about the exact position of the hand of Mst. Kanta when the first blow was dealt by Mohru. The defence also did not try to probe into this matter by cross-examining the witnesses on this point. When Mohru tried to attack Mst. Kanta, she admittedly warded off that attack by raising her hand. According to the eye-witnesses, the blow was aimed at her head and, therefore, the hand must have been raised by Mst. Kanta to such a position which could have avoided the striking of a sword on her head. In doing so, the hand must have been not in such a manner that the sword could touch the hand at two places. One of the injuries on the hand measures 7' x 3'

while the other measures 2' x 1' which shows that the major portion of the sword must have come in contact at place where 7' long injury was caused, while the second injury 2' long was sustained where a small portion of the sword came in contact with the hand. It is true that the doctor has given his opinion that these three injuries on the person of Mst. Kanta must have been caused by three blows, but that is simply an opinion of the doctor. In the absence of any data on which such an opinion can be formed, it is difficult to accept the testimony of the doctor on this point whether two blows were given to Mst. Kanta or whether it was the result of three blows.

9. We have carefully examined the testimony of PW/1 Mst. Anjani Devi, PW/6 Ram Baboo and the statement of Jagannath tendered in evidence at the trial. All of them are unanimous on this point. No suggestion has been given to these witnesses by the defence that three blows were inflicted on the person of Mst. Kanta by the assailant. This argument is based solely on the opinion of the doctor and on that basis it is urged that the eye-witnesses were not speaking truth before the Court. We are of opinion that the eye-witnesses viz. PW/1 and PW/6 have come out with truth and their testimony was not shaken even at the anvil of the cross-examination. Ram Baboo PW/6 lodged the FIR exhibit (sic) soon after the incident when there was little chance for him to have entered into a conspiracy with anybody to involve any other person except the one who really caused murderous assault on Mst. Kanta, The first version contained in the FIR fully corroborates Ram Baboo PW/6. In these circumstances we find it difficult to accept the contention of Mr. Thanchand that the eye-witnesses cannot be believed because their testimony stands contradicted by the opinion-evidence of the doctor.

10. Exhibit P/9 is the recovery memo of the sword Article 1. The Head Constable, while preparing this memo, made a mention that the sword appears to have blood-stains on it. When the award was sent for chemical examination, the Chemical Examiner did not find blood on it. The sword was snatched away from the hand of Mohru when he fell down on the ground after he was caught by Ram Baboo PW/6. The sword was in the hands of Mohru and it was snatched away by Jagannath. This very sword Article 1 was handed over to the Head Constable PW/8. PW/6 have identified this sword to be that one which was used by Mohru in inflicting

blows to Mst. Kanta Mr. Thanchand has very Vehemently urged before us that if this very sword was used by Mohru in killing Mst. Kanta, then there was no reason why the blood was not found on it, when it was examined by the expert. It is true that the blood was not found on the sword, but it is urged by learned Public Prosecutor that in the process of snatching the sword from the hand of Mohru when he was lying on the floor, the sword might have come in con not with the ground and the blood must have been snaked by the earth. Ex P/9 shows that the sword was a rusted one. But it it not the case of the prosecution that he rust must have been responsible for absorbing the blood. However, the blood was not found on the sword but the eye witnesses have categorically stated that the sword Article 1 was that very sword which was used by Mohru when fatal blows were inflicted by him on Mst. Kanta. This possibility that during the process of snatching the sword it might have come in contact with the earth and the blood must have been snaked by the earth cannot altogether be ruled out. This discrepancy that blood was not found on the sword, in our opinion, does not discredit the witnesses, who ere found to be quite creditable. We find it difficult to discard the testimony of PW/1 Mst. Anjanidevi and PW/6 Ram Baboo simply because of this discrepancy that the sword was found negative for the blood, The witnesses have been cross-examined at length and we do not find that their testimony could be shaken by such lengthy and searching cross-examination. We therefore, feel that on this basis we cannot disbelieve the statement of the two eye-witnesses viz. PW/1 Mst. Anjanidevi and PW/2 Ram Baboo.

11. It was then urged that the case of the Mohru comes within the Exception 4 to Section 300 of the Indian Penal Code. It is contended by Mr. Thanchand that Mohru did not go to inflict any injury to Mst. Kanta as he had no grudge against her and if in a sudden fight and in the heat of passion upon a sudden quarrel, injuries were caused by the accused without any pre-meditation, then a case of murder cannot be made out against him. It is true that the injuries were caused without pre meditation, but it is difficult to read in the prosecution case that the injuries were caused to Mst. Kanta due to sudden fight or in any heat of passion which was caused due to a sudden quarrel. No doubt an attempt was made by the defence to bring an element of sudden fight through the evidence of Mst. Mahadevi PW/2, but when she was cross-examined by the prosecution itself, this element soon

evaporated. Neither there was any fight between Mst. Kanta and Mohru, nor was there any sudden quarrel between the two and, therefore, there was no reason for Mohru to have caused sword injuries to Mst. Kanta. An attempt was also made by Mr. Thanchand to bring the case of the accused under Exception 1, but he candidly admitted that though the provocation was sudden as a report came from a lady of the status of Mst. Kanta, but it could not be grave and, therefore, exception 1 could not have applied to this case. In our opinion, the case of Mohru does not either under exception 1 or exception 4 to Section 300 I.P.C. and therefore, it is a clear case of murder, because Mohru, while inflicting the injuries knew it very well that by such an act he would cause (sic) & Mst. Kanta died instantaneously on the spot on account of the injuries inflicted by the accused on her person.

12. In these circumstances, we do not find any life in this appeal and it is, therefore, dismissed.

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