

Munna Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-05-2008

Reported in : RLW2008(4)Raj2938

Judge : Shiv Kumar Sharma and; M.C. Bhagwati, JJ.

Appellant : Munna

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

M.C. Bhagwati, J.

1. This order governs an adjudication of criminal appeal directed against the judgment and order dated 4.2.2005 passed by the Additional Sessions Judge (Fast Track), Kaurali whereby he has convicted and sentenced the accused appellant Munna as under:

under Section 302 IPC:

Imprisonment for life and fine of Rs. 5,000/- and in default of payment of fine to further undergo simple imprisonment for six months;under Section 323 IPC:

Rigorous Imprisonment of six months;under Section 324 IPC:

Rigorous Imprisonment of two years. All the sentences were ordered to run concurrently.

3. It is further alleged that Pappu Ram and deceased Radhey Shyam were immediately taken to Sapotara Hospital for their treatment. The deceased was referred to S.M.S., Hospital and the complainant Pappu was discharged after having given him first-aid. As per the statement of Pappu Lal, police and the Doctor of Sapotara Hospital did not take any action till 25.11.2002 and aggrieved with their inactive attitude, the complainant Pappu Lal filed a complaint Ex. P/6 in the Court of Additional Judicial Magistrate, Kaurali who sent it for investigation under Section 156(3) of Cr.P.C. The police registered the case and commenced investigation.

4. During the course of investigation, the Investigating Officer prepared site-plan Ex. P/7, recorded the statements of the witnesses acquainted with the facts and circumstances of the case under Section 161 Cr.P.C. During investigation, injured Radhey Shyam succumbed to his injuries and Section 302 I.P.C., was added. The Autopsy on the dead body was performed, necessary memos were prepared and after usual investigation, the charge-sheet was filed in the Court of Additional Judicial Magistrate, Kaurali who in turn committed the case for trial of accused persons Munna, Ramheth and Hemraj. At the end of trial, the accused persons Hemraj and Ramheth were acquitted of the charges under Section 302, 323, 447 and 324/34 IPC and the accused Munna was convicted in the aforesaid offences who has preferred this appeal.

5. Heard the arguments advanced by learned Counsel for the appellant and the learned Public Prosecutor for the State and perused the impugned judgment as also the relevant material available on record.

6. The learned Counsel for the accused appellant has vehemently argued that the prosecution has not put up a true case before the Court and has suppressed the admission of deceased Radhey Shyam recorded vide Ex. P/2 by DW/1 Bhagirath Singh, Head Constable of Police Station, Sapotara. It is he who immediately went to Community Health Centre, Sapotara on the call of Medical Officer given vide Memo Ex. P/1 and recorded Parcha Bayan Ex. P/2 of Radhey Shyam. The

learned Counsel has further argued that as per the Parchabayan of deceased Radhey Shyam, he along with complainant Pappu were in the Kuie (Well) and the chain and pulley fell on his head, as a result of which he received the injury. With a view to suppress this truth, the prosecution did not examine Shri Bhagirath Singh and suppressed the Roznamcha report wherein Bhagirath Singh made an entry and proceeded to C.H.C., Sapotara for recording the Parchabayan of deceased Radhey Shyam. Shri Singh, learned Counsel -for the appellant has also contended that after 10 days of the occurrence, the complainant Pappu Lal having consulted his advocate, filed the private complaint in the Court of Additional Judicial Magistrate which is proved to be concocted, manipulated and coloured in narration. The prosecution has not given any satisfactory explanation of this delay which proves fatal to the prosecution in the instant case. Shri Singh has also urged that the complainant endeavored to rope in all the members of the family out of whom 5 persons were not charge sheeted by the police and two accused persons namely Ramheth and Hem Raj were not found guilty of charges and thus acquitted by the Court. Thus, the judgment of the lower Court is totally against the facts and the material available on record which deserves to be quashed.

7. Per contra, the learned Public Prosecutor Shri Ashivini Sharma appearing for the State has duly supported the findings of the trial Court and has contended that the testimony of PW. 3 Pappu, PW. 4 Jagnoo, PW. 5 Ghanshyam, PW. 6 Ramkumar, PW. 7 Rajanti, PW. 8 Raju, PW. 10 Kaluram, PW. 11 Ramphal, and PW. 16 Sudhir Kumar is worthy of credence which gets duly supported by the evidence of PW. 2 Dr. Vinay Atre, and the learned trial Court has rightly based the conviction of accused-appellant Munna thereupon. In view of the prosecution evidence, the conviction and sentence of accused appellant Munna deserves to be sustained.

8. We have reflected over the rival submissions made at the Bar and scanned both the prosecution and defence evidence and the relevant material available on record.

9. As per the injury report Ex. P.3, prepared by PW. 1 Dr. Pooran Mal Verma on 18th November, 2002 at 4.35 P.M., the deceased Radhey Shyam had sustained

the following wound injury:

(i) Lacerated wound .15' x 1 cm x bony deep, Fresh clotted blood. Present Semi-circular Horizontal wound, Over mid fronto parietal region of skull. X-ray was advised for this injury.

10. As per injury report Ex. P/4 prepared by PW/1 Dr. Pooran Mal Verma on 18.11.2002 at 5.05 PM., the injured Pappu Lal sustained the two following injuries:

(i) Lacerated oblique wound fresh clotted blood present, 3-1/2 cm x 1/2 cm x 1/2 cm. On left fronto parietal region;

(ii) Incised wound regular margin 8 cm x 1/2 cm x 1/2 cm. on left arm laterally 8 cm above elbow joint.

11. Both the injuries were found to be simple in nature. Injury No. 1 caused by blunt object and injury No. 2 caused by a sharp weapon. Later on Radhey Shyam succumbed to sole injury and his autopsy was performed by PW/2 Dr. Vinay Atrey on 3rd December, 2002. As per the opinion of PW.2 Dr. Vinay Atrey, the cause of death of Radhey Shyam was Coma brought about as a result of ante mortem head injury as per post mortem findings mentioned in the post mortem report which was sufficient to cause death in ordinary course of nature.

12. It is pertinent to point out that with regard to the incident of the instant case, two parallel stories have emerged. Firstly, the occurrence of this case is alleged to have taken place on 18.11.2002 at 3.00 P.M. in the field of complainant Pappu Lal resident of village Chhoti Daabar. Secondly, the statement of PW. 1 Dr. Puran Mal Verma and the memo Ex. P. 1 unequivocally evinces that both the injured Pappu Lal and deceased Radhey Shyam were brought to Community Health Centre, Sapotra on 18th November, 2002 for their treatment. Dr. Pooran Mal Verma informed the S.H.O., P.S. Sapotra vide Memo Ex. P/1 about Radhey Shyam S/o Ram Kumar having come for treatment of his head injury. After receiving this information, Shri Bhagirath Singh, Head Constable reached the C.H.C., Sapotra and recorded the Parchabayan Ex. P/2 of Radhey Shyam wherein the deceased Radhey Shyam admitted that on 18.11.2002 at about 12.00 -1.00 P.M., he and his

brother Pappu were watering their field, Meanwhile, the electric motor stopped and he and his brother Pappu both went down the well with the help of 'Kohed'. Soon after this 'kohad' made of wood broke down and fell upon him, as a result of which he sustained the injuries on his head. Radhey Shyam further stated that his brother Pappu also sustained injuries on his head. Both of them cried from the well whereupon his brother Ghanshyam, other villagers, Raju, Ramesh and others came there and brought them out from the well, and thereafter took him to hospital at Sapotra. The Parchabayan (Ex. P/2) does not contain any element with regard to the commission of an offence having committed by the accused Munna and his associates. It is very relevant to note that injured Pappu was discharged from the hospital on that very day after giving the first-aid and injured Radhey Shyam who had sustained the grievous injury on his head, was referred to S.M.S., Hospital for treatment who ultimately died on 3rd December, 2002 at 6.30 P.M., in S.M.S., Hospital.

But the prosecution case is altogether different from Parchabayan Ex. P.2, which has emerged from complaint Ex. P/6 wherein the accused persons namely Ramheth, Shiv Ram, Hemraj, Phool Bai, Shankar Bai, Bhanwar Bai and Jalbai armed with Axe, Gandasi and clubs are alleged to have surrounded or encircled the complainant Pappu Lal and deceased Radhey Shyam. The accused Munna is alleged to have inflicted an injury with Axe on the head of Radhey Shyam who finally succumbed to death. From the perusal of Parchabayan (Ex. P/2), it is found that no action was taken by the police on Parchabayan Ex. P/2 and it did not reveal any commission of offence. The investigation came in motion on a private complaint Ex. P/6 which was sent under Section 156(3) of Cr.P.C., by the Additional Judicial Magistrate, Kaurali, PW.16 Sudhir Kumar also showed his verve and over-zeal in investigation when Radhey Shyam died on 3rd December 2002 on account of his head injury which was described to be sufficient to cause death in ordinary course of nature by PW.2 Dr. Vinay Atre who performed the autopsy on his dead body.

13. A perusal of the impugned judgment reveals that the learned trial Court based the conviction of accused appellant Munna on the statement of PW.3 Pappu, PW.4 Jagnore, PW. 5 Ghanshyam, PW. 6 Ram Kumar, PW. 7 Rajanti, PW. 10

Kalu Ram, PW. 11 Ramphal, PW. 15 Abdul Hakim, PW. 16 Sudhir Kumar, and PW. 2 Dr. Vinay Atre, but at the same time, the learned lower Court completely ignored the contents of Parchabayan (Ex. P/2) of deceased Radhey Shyam which was recorded by Bhagirath, Head constable who immediately went to Hospital on the call of PW. 1 Dr. Pooran Mal Verma. The learned trial Judge is found to have abandoned the Parchabayan Ex. P/2 for the reason that this Parchabayan was not recorded by the Head Constable in the presence of PW/1 Dr. Pooran Mal Verma who has simply stated on oath that he merely verified the statement of Radhey Shyam. The learned trial Judge is also not found to have taken note of the fact of delay in F.I.R. The learned trial Judge has basically relied upon the testimony of PW.3 Pappu, PW. 4 Jagnore, PW. 5 Ghanshyam, PW. 6 Ram Kumar, PW. 7 Rajanti, PW. 10 Kalu Ram, PW. 11 Ramphal, PW. 15 Abdul Hakim, PW. 16 Sudhir Kumar, and PW. 2 Dr. Vinay Atre, and given his finding of the accused Munna having found guilty of the offence under Section 302 IPC. The reason Parchabayan Ex. P/2 having been abandoned by the trial Judge is far away from the true fact scribbled therein. Memo Ex.P/1 unequivocally reveals that Bhagirath, Head Constable of Police Station, Sapotara went to the hospital on the call of PW. 1 Dr. Pooran Mal Verma. Secondly, Parchabayan (Ex. P/2) leads us to believe that it bears the signature of deceased Radhey Shyam and verification certificate of PW. 1 Dr. Pooran Mai Verma, Medical Officer of C.S.C., Sapotara. This Parchabayan does not disclose any such fact that it was not recorded in the presence of the Medical Officer. The verification made by the Medical Officer leads us to believe that it was recorded by Shri Bhagwan Singh, Head Constable in his presence only. To the utter surprise of this Court, the prosecution withheld the material evidence of scribe of Parchabayan, Raju and Ramesh named as witnesses in Ex. P/2 and this scribe DW/1 Bhagirath and DW/3 Ramesh have been put in defence by the accused-appellant. Shri Bhagirath Singh has deposed that he recorded the statement of Radhey Shyam in Surgical Ward No. 2 which was duly verified by the Medical Officer PW/1 Dr. Pooran Mal Verma. The deceased Radhey Shyam also put his thumb impression on Ex. P/2 after reading the same. The prosecution has also not endeavored to place the Roznamcha report of 18.11.2002 in evidence which could throw more light on the veracity of DW/1 Bhagirath Singh. DW/3 Ramesh has corroborated the contents of Ex. P/2.

We do not find any reason to jettison the testimony both of DW/1 Bhagirath Singh and DW/3 Ramesh and abandon the Parchabayan (Ex. P/2) in the above scenario.

14. Secondly, the complainant PW/ 3 Pappu Ram is found to have filed the complaint Ex. P/6 in the Court of Additional Judicial Magistrate on 26.11.2002 after 8 days of the occurrence. He has stated in the cross-examination that he never remained admitted in the hospital and he was discharged on the same day after first-aid albeit he has efforted to explain this 8 days delay in filing the complaint by saying that he was getting treatment. A serious question arises as to what trammled the complainant not to lodge the report till 26.11.2002 in the police station, Sapotra whereas he was discharged the same day after first aid and no action was taken by the police on 18.11.2002 and 19.11.2002 and thereafter, till 26.11.2002. Further, what refrained him from going to Senior Police Officers and filing the report before them. The complainant has not furnished any reasonable and satisfactory explanation of this delay.

15. In the case of Thulia Kali v. State of Tamil Nadu : 1972 CriLJ1296 , the Hon'ble Apex Court has held:

First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be over-estimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

16. In the above case, the occurrence was not reported for more than 20 hours. The delay was found to be fatal to the prosecution and to base conviction upon such evidence was held to be unsafe. But, in the instant case, the complaint Ex. P/6 has been filed in the Court after 8-10 days of the occurrence and the prosecution has miserably failed to furnish satisfactory and reasonable explanation of this delay which, to our firm view, is found to be fatal to the prosecution.

17. Banthem has said that the witnesses are 'the eyes and ears of justice' system in the importance and primacy of trial process. If the witness himself is incapacitated from going as eyes and ears of justice, the trial gets putrefied and paralyzed and no longer can constitute the fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons being imposed to speak the truth to the Court or due to some corrupt collusion. Albeit the maxim 'falsus in Uno and falsus in Omnibus' has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. However, it has to be appraised in each case as to what extent the evidence is worthy of acceptance.

18. In the case of State of U.P. v. Shanker AIR 1991 SC 897, the Hon'ble Apex Court held:

But the mere fact that the witness had not told the truth in court to a peripheral matter would not justify a whole rejection of the evidence. Time and again, this Court has pointed out that in this country, it is rare to come across the testimony of a witness which does not have a fringe or embroidery of untruth. Although his evidence may be true in the main it is a function of the court to separate the grain from the chaff and accept what appears to be true and reject the rest. It is only where the testimony of a witness is tainted to the core, the falsehood and the truth being inextricably interwined, that the court should discard his evidence in toto.

19. In the background of memo Ex. P/1, parchabayan of deceased Radhey Shyam (Ex. P/2) the statements of PW/1 Dr. Pooran Chand Verma and DW/I Bhagirath and the chequered version of the prosecution, the duty is cast upon the court to sift the evidence and scan the documents with utmost care and caution. In the instance case, two parallel stories ran with regard to the incident of 18th

November, 2002. In the beginning the police remained dormant for the reason that Ex. P/2 did not disclose any commission of offence but after 28.11.2002 when the investigation ensued on a complaint Ex. P/6, the verve was shown by the Investigating Officer and when the injured Radhey Shyam died on 3.11.2002, the Investigating Officer became over-zealous in discharging the functions. The learned trial Court also unmindful of his act routinely relied upon the statements of prosecution witnesses (partisan witnesses) who are family members and relatives of each other and at the same time jettisoned the Parchabayan Ex. P/2 and the testimony of DW/1 Bhagirath Singh and PW/1 Dr. Pooran Mal Verma without assigning any good reason.

20. The function of the court in a criminal trial is to find whether the person arraigned before it, as the accused, is guilty of the offence with which he is charged. For this purpose, the court scans the material on record to find whether there is any reliable and trustworthy evidence upon the basis of which it is possible to find the conviction of the accused and to hold that he is guilty of the offence with which he is charged. If in a case, the prosecution leads two sets of evidence, each one of which contradicts and strikes at the other and shows it to be unreliable, the result would necessarily be that the Court would be left with no reliable and trustworthy evidence upon which the conviction of the accused might be based. Inevitably the accused would have the benefit of such a situation.

21. In the case *Kali Ram v. State of Himachal Pradesh* : 1974 CriLJ1 , the Hon'ble Apex Court has observed.

that another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case; one pointing to the guilt of the accused and the other to his innocence, then the view which is favourable to the accused should be adopted.

22. Now, in the backdrop of the above chequered narration available on record, we find no reason to abandon the Parchabayan Ex. P/2 of Radhey Shyam which was recorded soon after the occurrence on 18.11.2002 in the presence of PW/1 Dr. Pooran Mai Verma, by DW/1 Bagirath Singh. We also do not find any good reason to jettison the testimony of DW-1 Bhagirath Singh who immediately

reached at Community Health Center, Sapotra on the call of Dr. P.M. Verma to record the statement of deceased Radhey Shyam. However, the Parchabayan Ex. P/2 and the testimony of Dr. P.M. Verma PW/1 and Bhagirath Singh DW/1 to this effect have remained unassailed. Moreover, the prosecution has not satisfactorily explained the delay of filing the report, after eight days of occurrence. There was full scope for the complainant Pappu to deliberate, consult, concoct and embellish the story. Thus this unexplained delay in filing the complaint in the court is found to be fatal to the prosecution.

23. The statement of PW.3 Pappu Lal, PW/4 Jagnoo, PW. 5 Ghanshyam, PW. 6 Ram Kumar, PW. 7 Rajanti and PW. 10 Kalu Ram, do not inspire any confidence and their testimony in view of the above results incredible in toto.

24. The learned trial judge has based the conviction of accused-appellant solely on the testimony of prosecution witnesses namely Pappu and others ignoring the evidence of PW. 1 Dr. P.M. Verma, DW/1 Bhagirath Singh, DW/3 Ramesh, DW/4 Shrichand and DW/5 Kamlesh which evinces to be of vital importance. The prosecution evidence suffers from inherent improbabilities and is vague.

25. In view of the aforesaid scanning of prosecution and defence evidence and other relevant material, corpus delicti is not found to be proved in this case. Hence the impugned judgment of the trial Court is not found to be sustainable and the same deserves to be set aside.

26. For these reasons, we allow the appeal and set aside the impugned judgment dated February 4, 2005 of learned Additional Sessions Judge (Fast Track) Karauli.

27. We acquit the appellant Munna of the charges under Sections 302, 323 and 324 IPC. Appellant Munna, who is in jail, shall be set at liberty forthwith, if he not required to be detained in any other case.