

**Munna Vs. State of Rajasthan**

**Munna Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/770304](http://sooperkanoon.com/770304)

**Court :** Rajasthan

**Decided On :** May-10-2007

**Reported in :** RLW2008(1)Raj923

**Judge :** Shiv Kumar Sharma and; Guman Singh, JJ.

**Appellant :** Munna

**Respondent :** State of Rajasthan

**Judgement :**

**Guman Singh, J.**

1. This appeal has been preferred against the Judgment dated 25.9.2004 passed by Additional Sessions Judge (Fast Track), Karauli, in Sessions Case No. 16/2004 State of Rajasthan v. Munna, whereby the appellant was convicted and sentenced for offence Under Section 302 of the Indian Penal Code and to suffer imprisonment for life with a fine of Rs. 2000/- in default to further undergo simple imprisonment for three months.

2. It is the prosecution case that informant Hari reached Police Sapotara at about 3 p.m. on 10.8.2000 and submitted a written report (Ex. P. 1) to the effect that on the date of incident at about 9 a.m. he along with his brother Ramli alias Ram Lal and Ramkesh were grazing their bufallows in the pasture land of Gazupura. Then Munna, Gulab, Kanhaiya, Ramdayal, Prathvi and Giriraj Meena, all residents of

Gazupura, armed with lathi and Kulhari (axe) came abusing and asked as to why they were grazing bufallows in the pasture land. In the attack, Munna inflicted a lathi blow on the head of Ramli alias Ram Lal who fell down and became unconscious. When informant Hari and his brother Ramkesh tried to save Ramli, Gulab inflicted lathi blow on the head of Ramdayal and Prithvi inflicted one blow on the back of the informant Hari. Like wise all these persons of Ramkesh. They all fell on the ground and cried for help so they were saved by Roop Chand, Shriphool, who were nearby grazing their bufal lows. Ramli alias Ram Lal was then taken to hospital at Sapotara for treatment but he succumbed to the injuries in the hospital. On that report case Under Sections 147, 148, 149, 323, 302 IPC was registered and investigation commenced. After usual investigation charge-sheet was filed. In due course the case came up for trial before the Sessions Judge, Karoli. Charges Under Sections 302, 323 IPC were framed against the accused Munna, who denied the charges and claimed trial.

3. The prosecution examined as many as ten witnesses. In the explanation Under Section 313 Cr.P.C. the appellant claimed innocence. In defence one witness was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

4. We have heard the submissions of learned Counsel for the appellant and learned Public Prosecutor and with their assistance scanned the material on record.

5. It appears from the record that death of Ramli alias Ram Lal was homicidal in nature. Vide Post Mortem Report (Ex.P.15) following ante mortem injury was found on the person of the deceased:

(1) Contusion obliquely 8.5 cm x 2.25 cm with irregular Haematoma (Swelling on the middle of (Lt.) parietal Bone of skull with fracture of (Lt.) & (Rt.) both Parietal Bones. The nature of injury grievous caused by blunt object. In the opinion of Dr. Ram Swaroop Meena (P.W.7), the cause of death was intra cranial brain haemorrhage due to severe nature of Head Injury No. 1 and Comma.

6. Injured Hari (P.W.I) vide Injury Report (Ex.P.3), received following injuries:

(1) Lacerated wound, irregular margin with slight blood 8 cm x 2 cm x skin muscle up to bone deep at the tip of the head.

(2) Contusion with swelling obliquely with tenderness 5 cm x 2 cm oblique at Rt. Elbow joint laterally.

(3) Contusion with tenderness swelling 4 cm x 2 cm at Lt. Wrist joint.

(4) Contusion with Reddish around two in number 6.5 cm x 2 cm all back at lumber region.

7. Injured Ramkesh (P.W.2) vide Injury Report (Ex.P.6), received following injuries:

(1) Lacerated Wound with bleeding 6 cm x 2 cm x skin muscle up to bone depth upper part of Rt. Side of occipital bone and skull.

(2) Confusion with irregular swelling 5.5.cm x 2 cm Lt. Side of occipital bone and skull.

8. On reappraisal of the evidence led by the prosecution, it is revealed that the alleged assault on the person of deceased Ramli alias Ram Lal and his two brothers (P.W. 1) Hari and (P.W. 2) Ramkesh was made by the assailants including the appellant Munna, at the time when they were grazing bufallows at the pasture land of village Gazupura. The presence of P.W. 1 Hari and P.W. 2 Ramkesh, at the time of occurrence is beyond doubt as they themselves were injured. P.W. 1 Hari, the informant in the case, deposed that six persons namely Gulab, Munna, Kanhaiya, Dayal, Giriraj and Prathvi came armed with lathies and enquired as to why the deceased along with his two brothers were grazing their bufallows in the pasture land and then inflicted injuries to the person of deceased and his two brothers.

9. Ramkesh (P.W. 2) is also the eye-witness of the incident and his presence at the time of occurrence is beyond doubt as he himself was injured along with (P.W. 1) Hari and deceased Ramli alias Ram Lal. This witness has corroborated the testimony of Hari (P.W. 1) in all material particulars and deposed that head injury to the deceased was caused by the accused appellant Munna. The prosecution

has also produced (P.W. 3) Roop Chand, (P.W. 5) Babu Lal (P.W. 6) Kamlesh, and (P.W. 8) Bhoriya as eye-wit-nesses to the occurrence but they have been declared hostile as they resiled from their earlier version though the happening of the very incident was not denied by them except (P.W. 8) Bhoriya who expressed his total ignorance.

10. It is well-settled that though ocular evidence is cogent, credible and trustworthy, minor variance, if any, with the medical evidence is not of any consequence. Their lordships of the Hon'ble Supreme Court in *Krishnan v. State* : 2003 CriLJ3705 , indicated that witnesses are the eye and ears of the justice. Eye-wit-nesses' account would require a careful independent assessment and evaluation for its credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story' consistency with the account of other witnesses held to be credit worthy; consistency with the undisputed facts, the 'credit' of the witnesses; their performance in the witness box; their power of observation etc. Then the probative value of such evidence becomes eligible to be put into the scales for cumulative evaluation.

11. In the instant case even from the cross-examination of the two eye-witnesses namely, Hari (P.W. 1) and Ramkesh (P.W. 2) nothing infirm could be elicited to caste a doubt on their testimony.

12. So far as the question of related witnesses is concerned, it is well-settled that the evidence of close relative can not be excluded solely on the ground that they were interested witnesses. In *Ram Lakhan and Ors. v. State of U.P.* : 1996 CriLJ3496 , Hon'ble the Supreme Court held that in a case where the witnesses are closely related it is the duty of the Court to scrutinise evidence of such witnesses very carefully if there is any doubt as regards their trustworthiness. It was further held that the Court may also take into consideration the fact that medical evidence is consistent with ocular evidence of these eye witnesses so as to consider this aspect.

13. In *Baitullah v. State of U.P.* : AIR 1997 SC3946 , Hon'ble Supreme Court held that evidence of interested witnesses can not be discarded merely on the ground that witnesses are interested/related, their evidence can not be brushed aside as it is normally expected that they will not leave out the real culprits and rope-in the innocent persons.

14. Counsel for the appellant has tried to convince that appellant has been falsely implicated on account of previous enmity as explained in his statement Under Section 313 Cr.P.C. This aspect has been tried to be introduced in the cross-examination of PW-2 Ramkesh but it was denied by Ramkesh that there was any such enmity though he admitted that his elder brother Jaipal was murdered but the accused Munna was not implicated as a conspirator as suggested on behalf of the accused. Ramkesh (P.W. 2) suggested on behalf of the accused. Ramkesh (P.W. 2) has categorically deposed that they had cordial relations with the accused and the accused Munna in a way belonging to their family and he could not make out even after the occurrence as to what was the reason behind the incident. This statement of the witness has also been corroborated by Hari P.W.1. Therefore, we do not find any existing cause of enmity with the accused which could drive them to implicate him falsely in a case like murder as in the instant case.

15. On advertent to the question as to what offence was committed by the accused appellant, it would be noticed that the head injury was found to be the cause of death of the deceased and as the accused appellant did not repeat the blow in the attack, therefore, the case is not covered in the first Clause of Section 299 but the matter falls Under the third part of Section 299 since there was no intention to cause the particular injury but with the knowledge that the act would likely to cause death of the victim and therefore, the accused is liable to be convicted not Under Section 302 IPC but Under Section 304 Part II IPC.

16. For these reasons, we partly allowed the appeal of appellant Munna and Instead of Section 302 we convict him Under Section 304 Part II IPC. Looking to the fact that the appellant has already undergone confinement for a period more than 6 years the ends of justice would be met in sentencing him to the period

already undergone by him in confinement. The appellant Munna, who is in jail, shall be set at liberty forthwith, if he is not required to be detained in any other case. The impugned Judgment of learned trial Court stands modified as indicated above.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**