

Moral Majhi Vs. the State

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Court : Kolkata

Decided On : Mar-26-1958

Reported in : AIR1958Cal616,1958CriLJ1390

Judge : S.N. Guha Ray and ;B.K. Bhattacharya, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297, 342, 342A, 342(2) and 342(3); ;[Evidence Act, 1872](#) - Section 3

Appeal No. : Criminal Appeal No. 152 of 1956

Appellant : Moral Majhi

Respondent : The State

Advocate for Def. : Harideb Chatterjee, Adv.

Advocate for Pet/Ap. : Kishore Mukherjee, Adv.

Disposition : Appeal dismissed

Judgement :

S.N. Guha Ray, J.

1. The appellant Moral Majhi along with 17 thers was put on his trial on different charges. Moral Majhi and Gurai Majhi were charged under Section 304/34, I. P. C., and the rest were charged under Section 304/149. I.P C., for having killed

Budhu Majhi, Moral Majhi was charged under Section 326, I. P. C., for having caused grievous hurt to the cheek of Thatu Majhi with a cutting weapon, viz., a tabla. Gurai Majhi was also charged with having caused such a hurt to Thatu Majhi with a cutting instrument. All the accused were further charged under Section 147, I. P. C. The jury by 5 : 2 found the appellant Moral Majhi guilty only under Section 326, I. P. C., for having caused grievous hurt to Thatu Majhi with a cutting instrument and they unanimously found all the accused not guilty on the other counts. The learned Judge accepted the majority verdict as against Moral Majhi, convicted him under Section 326, I. P. C., and sentenced him to four years' rigorous imprisonment. He also accepted the unanimous verdict in favour of the rest of the accused and also in favour of Moral Majhi on the other counts and acquitted them of those charges.

2. The case for the prosecution briefly is that C. Section Plot 314 of mouza Singarpara was recorded in the record-of-right as appertaining to a mokrari raiyati belonging to four persons, namely, Nuna Majhi and Leda Majhi, sons of Nukaram Majhi, Matla, son of Ganesh Majhi and Dhana Majhi, sou of Kanka Majhi. This raiyati mokrari they held under the Kars. It appears that subsequently the interest of the Kars devolved on the Bengal Coal Company so that they became the owners of the superior interest. It further appears from the lease executed by Indra Narayan Kar, Kedar Nath Kar and Pran Krishna Kar in favour of Mahindi Roy and Jogendra Roy. Ext. 7, as far back as the 7-3-1933 in respect of C. S. Plot No. 314 and a number of other plots that these plots were wrongly recorded as appertaining to the mokrari raiyati of Nuna Majhi and that there was a title suit which ended in a compromise. That compromise accepted Nuna Majhi and others as tenants in respect of a part of the holding but as those tenants fell into arrears there was a rent suit, namely Rent Suit No, 1610 of 1929 against them in the second court of the Munsif at Bankura and in execution of the decree obtained by the Kars against those tenants ^ namely, Execution Case No, 417/623 of 1932, as appears from the Sale Certificate, Ext. 2, the landlords obtained symbolical possession through court on 19-10-1932 & it is alleged in that Patta that they were in khas possession since then. They were in khas possession of a part of the plots mentioned in the schedule and the area in their khas possession was 4.45 acres. This they were leasing out to two persons, namely, Mahindi Roy and Jogendra

Roy. Gobardhan, son of Mahindi Hoy sold to Thatu Majhi by Ext. 5 (c) dated 29-12-1952 his one-half share of this leasehold interest. The other half of the leasehold was sold by Fakir Roy, who claimed to have inherited this one-half share from his maternal uncle Jogendra Roy, to Ramkalpa Patra by Ext. 5 (b), dated 19-4-1944 and Ramkalpa Patra sold this to Thatu Majhi by Ext. 5 (a) dated 19-6-1950. Thus Thatu Majhi by the two sale deeds acquired the entire leasehold interest of Mahindi and Jogendra Roy and as far as one can judge from the documents referred to, these leasehold interests represented a half of the plots mentioned in Ext. 7 and as there is nothing to show to the contrary it is more than probable that this one-half share of the plots was an undivided share. It is, however, the case of the prosecution that Thatu Majhi acquired the whole of Plot No. 314 as part of this leasehold. How far that is so it is difficult to say from the materials on the record. It is, however, the prosecution case that the whole of that plot was in the possession of Thatu Majhi ever since he acquired the leasehold interest of Mahindi and Jogendra Roy. But Moral Majhi, who according to the prosecution is a son of the wife of Turu Majhi by her second husband Rubu Majhi, started asserting his interest in the disputed plot for sometime and there were cases between them. On 28-10-1954 Moral Majhi together with a large number of other persons came to C. S. Plot No. 314 and began to reap the paddy which Thatu Majhi had grown thereon. Thatu Majhi, his son Budhu as also two other sons of his, namely, Shambhu Majhi, P. W. No. 6, and Ram Majhi, P. W. No. 5, went to the land to protest. Budhu was armed with a bow and arrows, Sam him was armed with a Katari and a bow and arrows, Thatu was armed with a lathi and Ram was also armed with a lathi. As they found the unripe paddy grown by them on the land was being reaped they protested. As a result of the quarrel that ensued, Guraf & Hopna shot two arrows at Thatu's party. Some of the persons on the side of the accused also threw stones at them and some others shot arrows and some tried to encircle them. Budhu shot arrows at the men on the side of the accused after they had shot arrows at them and then one fair complexioned Goon da came forward towards the complainant's men and encouraged others not to fall back. That fair complexioned man had an open umbrella in one hand and a sword in the other and used this open umbrella as a shield. This man struck Budhu on the head with his sword. Budhu struck him back on the arm with the sword that he had. That

man fell down. Then another man came forward and clasped Budhu on one side and then Gurai, Moral, Gafra and others came and began to hit Budhu with swords and Tablas. Shambhu then struck Gafra with Katari and Gafra struck on Shambhu's right ear with a Tabla. Budhu fell down on being struck by his assailants. Dasarathi and Murhia struck Thatu Majhi on the left arm with a Gupti. Duia and another man named Kiran struck him on the head with lathi and Thatu fell down on the ground. After he had fallen down on the ground Moral Majhi struck him on his left cheek with a Tabla. Ram and Shambhu fled before he had been so struck by Moral Majhi. Budhu died on the spot. The local Chowkidar and the local Dafadar came to the scene on obtaining information from a cow boy. They saw what had happened and heard of what had happened from Thatu and others. The Dafadar then went to the Thana and reported the occurrence there at 9 P. M, The time of the occurrence was about mid-day and the police station was about 12 miles from the place of occurrence. The present appellant and 17 others were sent up in charge-sheet and tried with results already indicated.

3. The defence of the appellant was that he was, in fact, the son of Turu Majhi whose interest in the holding had not passed as a result of the rent execution sale because Turu was not made a party either to the rent suit or to the rent execution case and he was, in fact, in possession of the disputed land. It is further his case that there was a mutual fight between the parties as the result of Thatu's attempt to take forcible possession of the land.

4. The learned Judge at page 164 of the paper-book after having said to the Jury that if they were not satisfied about Thatu Majhi's possession of the land at all there would be no unlawful assembly whatsoever. But so far as the other charges, namely the charge under Section 304 read with Section 34 of the Indian Penal Code and the two charges under Section 326 of the Indian Penal Code are concerned the question of possession of the land is immaterial. This, in our opinion, is a serious misdirection. It is obvious that on the facts sought to be made out by the prosecution and the defence the question of possession is a most material question. If the prosecution succeeded in proving that the land was completely in the possession of Thatu Majhi there would be no question of any right of private defence on the part of the accused. If, on the other hand, the Jury

found that the disputed land was partly in the possession of Thatu and partly also in the possession of Moral Majhi then the question would be which party took the aggressive or, in other words, whether the portion of the land on which paddy was being reaped before the fight began was in the occupation of Thatu or Moral and if it was not in the occupation of Thatu Maihi the defence might have had a right of private defence and then the question would be how far the right of private defence was exceeded. The question of right of private defence would affect not merely the charge under Section 147 of the Indian Penal Code and the charge under Section 304 read with Section 149 of the Indian Penal Code but also the charge under Section 304 read with Section 34 and Section 326 of the Indian Penal Code. The learned Judge also lost sight of the fact that in such a case it was his duty to place before the Jury the law as to the right of private defence and how long that right continues. As he did not do so we had to go through the evidence for ourselves.

5. It seems to us on reading the evidence that the learned Judge in his summing up did not pointedly place before the Jury the evidence as regards possession so as to enable them to come to a clear conclusion on the facts and if the Jury were properly directed as regards the evidence of possession, there are grounds to believe that good many of the accused persons would also have been convicted by the learned Judge. Although he was quite right in pointing out to the Jury that on the documentary evidence Thatu Majhi might have acquired only a half of the disputed land in his leasehold interest but as the evidence stands he must have been in possession of the whole of C. S. Plot No. 314 and indeed that is what he claims to have. But his claim alone is not sufficient to prove that fact. There is the evidence of some other witnesses also on the point and it does not appear that they had any axe to grind either in favour of Thatu or against Moral. (After discussion of prosecution evidence His Lordship proceeded).

6. As against this there is the statement of Moral Majhi in his examination under Section 342 of the Code of Criminal Procedure. This statement is as follows:

'Q. The witnesses have said that you neither have nor ever had any possession in the land in C. S. Plot No. 314 at Singargara mouza. A. Your Honour, I have.'

In other words, he stated that he was in possession of the disputed land and, as I have already stated, that is his whole defence. Mr. Mukherjee on behalf of the appellant argues that this is as good evidence as the evidence on the side of the prosecution and in support of this proposition he relies on certain observations of Bose J., in *Hati Singh, Bhagat Singh v. State of Madhya Bharat*, : AIR 1953 SC468 ; (A), These observations are as follows:

'Now the statements of an accused person recorded under Sections 208, 209 and 342, Criminal Procedure Code are among the 'most important matters to be considered at the trial'. It has to be remembered that in this country an accused person is not allowed to enter the box and speak on oath in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon of defence in the hands of an innocent man. The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness box. They have to be received in evidence and treated as evidence and be duly considered at the trial (Sections 287 and 342).

This means that they must be treated like any other piece of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him 4 Nay more. Because of the presumption of innocence in his favour even when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable and accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false. We feel that this fundamental approach has been ignored in this case.'

These observations, Mr. Mukherjee argues, really mean that what an accused person states under Section 342 of the Code of Criminal Procedure although not on oath must be treated as evidence. In my judgment, this is a wrong construction of the observations of His Lordship, for he begins, as I have already pointed out, with the observation that these are among the most important matters to be considered in the trial. What his Lordship means is that the statements of an

accused person under Section 342 of the Code of Criminal Procedure as well as under the other sections are matters before the court and they have to be duly considered. After all Section 342 even before the introduction of Section 342A itself provided an answer to the question whether or not the statement of an accused person recorded under that section could be treated as evidence or not. Evidence, as defined in Section 3 of the Evidence Act, means and includes:

'1. All statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry; such statements are called oral evidence;

2. All documents produced for the inspection of the Court; such documents are called documentary evidence.'

It is, therefore, obvious from the definition of evidence itself that unless the statement be the state-ment of a witness it is not evidence. When, therefore, the accused makes a statement in answer to questions from the Court it does not fall within the definition of the word 'evidence' as defined in the Evidence Act. Section 342 (3) of the Code of Criminal Procedure runs as follows:

'The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any Other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.'

From this sub-section itself it is quite clear that the answers given by the accused may be taken --not that they must be taken -- into consideration in such inquiry or trial. Then the next sentence, which speaks of this answer being put in evidence for or against him in any other inquiry into or trial for any other offence which the said answers may tend to show that he has committed, goes at once to show that while the answers given by the accused are not to be treated as evidence in the trial during which they arc made, they may be treated as evidence in any other trial. If that were not the meaning there is no sense in putting these two things in two different forms of expression. It is also clear that even in England under the Criminal Evidence Act of 1898 the accused has the option of examining himself as

a witness for the defence. If he does examine himself what he says on oath has to be treated as evidence like the evidence of any other witnesses. But when he does not choose to examine himself as a witness for the defence but makes an unsworn statement there is nothing to indicate that that unsworn statement has been treated even in England as evidence like the evidence of witnesses on oath. Now, if one comes to Section 342 (A) of the Code of Criminal Procedure which was enacted after the judgment of the Supreme Court referred to, it becomes clear that even in this country now it is open to an accused person to examine himself for the defence and he may, if he likes, give evidence on oath. But if he does not, and if he chooses to make an unsworn statement in answer to questions from the Court the simple fact that the Statute Book contains two sections, namely, Sections 342 and 342A, is sufficient to indicate that if the accused chooses to examine himself as a witness on oath for the defence then what he says will be technically treated as evidence but if he does not so choose to examine himself it will not be technically evidence within the meaning of the word 'evidence' in Section 3 of the Evidence Act. We are of the opinion that his Lordship in that case never meant to say that the unsworn statement of an accused person would be technically treated as evidence under the law. But it is certainly one of the matters before the Court and as provided in Subsection (3) of Section 342 of the Code of Criminal Procedure may be taken into consideration by the Court. As I have already stated, as against the evidence for the prosecution that Thatu Majhi was in possession of the land there is only this unsworn statement of Moral Majhi, and this statement of his is in conflict with what he himself stated as far back as December, 1952 in his application as it originally stood, before the Special Officer and we have no manner of doubt that Thatu was in possession of the disputed land, namely, C. S. Plot No. 314.

7. The next question is whether it has been established on the evidence that Moral Majhi, the appellant, was responsible for the cheek injury on Thatu. This injury, according to the doctor, was a gaping incised wound $3\frac{1}{2}$ ' x $1\frac{1}{2}$ ' x whole thickness of the muscle through and through at the middle on the left side of the lower part of the face almost horizontally beginning from $\frac{1}{2}$ inch medial to the angle of the left side of the mouth on the lower lip, the margin of the mandible on the left side was sliced off with about half of the first molar tooth, left lower, with partial dislocation of

it. The evidence of Thatu is that he had as many as eight injuries of which the one on the cheek and another were grievous. It appears from his own evidence that he was admitted to the hospital on the 12th Kartick, that is on 29-10-1954 and was an indoor-patient in the hospital till the 13th Pous, that is, 29th December, 1954. He was thus in the hospital for a little more than two months. Now as regards this injury on the cheek for which alone the appellant was convicted under Section 326 of the Indian Penal Code it is the evidence of Thatu that after he fell down Moral Majhi struck him on the left cheek with a Tabla but then his two sons, Ram and Shambhu fled away. Ram and Shambhu, therefore, are not in a position to speak about it and they did not, as a matter of fact, say any thing about it. There is no other witness who saw this injury being inflicted on him by Moral and the question arises whether the uncorroborated statement of Thatu should be accepted by the Court on this point. It has been argued by Mr. Mukherjee on behalf of the defence that Thatu Majhi did not state this fact to the Dafadar nor does he appear to have stated that to the police and consequently it is not safe to act upon this uncorroborated testimony of Thatu. It is further argued by him that he did not state this either to the doctor who examined him at the hospital. The evidence of the Sub-Inspector who saw him on the 12th is as follows:

'I examined Thatu Majhi, his son Sambhu Majhi, Hopni Majhan, Puti-Mephan, Nadi Mejhan, Chowkidar Mangal Majhi, Rakhal Mahato, Jyoti Lal Kar on 29-10-1954. When I examined Thatu Majhi he was not able to speak well because of his wound on the left cheek On 1-11-1954 I saw him at Bankura Hospital for further examination but on that day he could not speak with ease; he could speak only with great difficulty and so I could not examine him on 1-11-1954. On 21-11-1954 I further examined Thatu Majhi at Bankura Hospital.'

Then if the evidence of the Dafadar be examined in the light of the statement of the Sub-Inspector it will be found that if Thatu could speak at all to the Dafadar it must have been with considerable difficulty on the day of the occurrence itself. The Dafadar, Akul Chandra Rakshit, P. W. No. 12, says that Thatu named before him Moral Majhi, Thatu Majhi, Chand Majhi, Muchiram, Mariram, Chuna, Duia and others and he said that these men had come to reap paddy and he did not say anything else to him. He further adds that Thatu spoke indistinctly and so he could

not follow him well. It is obvious, therefore, that even to the Dafadar Thatu Majhi could have said something only with, great difficulty. Then the Sub-Inspector who recorded his statement on 29-10-1954 and also on 21-11-1954 says as follows in his cross-examination:

'On 29-10-1954 I recorded Thatu's deposition in a little over one page of foolscap size. Thatu did not mention to me plot No. 314 or its boundaries, He did not tell me that Moral had cut his cheek.'

It is obvious from what this Sub-Inspector stated earlier, namely that when he examined Thatu on 29-10-1954 he could not speak well and that on 21-11-1954 he could not examine him at all because he could speak only with great difficulty, that what was stated by Thatu on 29-10-1954 covering only a little over one page of foolscap size could not have represented the whole of Thatu's statement to the Police. Whether Thatu stated to the police in his further statement to them on 21-11-1954 anything about Moral Majhi having cut his cheek was not put to the Sub-Inspector. The only question put to the Sub-Inspector about Thatu's statement to the police on 21-11-1954 is as follows:

'Q. Thatu did not mention to you the names of Ada, Jala, Thulu. Chuna, Kalo, Juna, Gopal alias Gopla, Chand and Mariram?

A. He said so on 21-11-1954. I did not record on 21-11-1954 that Thatu mentioned those names. I recorded that he gave out the remaining names of accused persons as noted in the statement of his son Sambhu Majhi.

(To Court;-- I examined Sambhu--son of Thatu--on 29-10-1954).'

It is obvious, therefore, that the defence refrained from putting any question to the Sub-Inspector as to whether or not on 21-11-1954 when Thatu was examined again by the police he stated anything about Moral Majhi having cut his cheek. Evidently then when Thatu himself said that he told the police about Moral Majhi having cut his cheek there is really no contradiction, for we do not know whether he stated this before the police on 21-11-1954 or not. The doctor, P. W. No. 25, says in his examination-in-chief that Thatu made certain statements to him but he did not

ask him details. He does not state what Thatu told him. We, therefore, do not know what exactly Thatu told him. Thus there is the statement of Thatu only that Moral Majhi caused him the injury on the cheek. The fact that he did not state this to the police on 29-10-1954 and that he did not speak of this to the Dafadar on 28-10-1954, that is, the very day of occurrence, is fully explained by the nature of his injury and what the Sub-Inspector, P. W. No. 41, stated about his condition on 29th October and again on 1-11-1954. Another fact which must be considered is that Budhu, one of his sons, was killed as a result of the injury received shortly after the infliction of the injuries and the very sight of a son being killed must have overwhelmed Thatu with grief. It has also been argued that Thatu did not speak of this to his wife, P. W. No. 2, or to his daughter-in-law, P. W. No. 3. Thatu's wife did not even notice the injury on her husband's cheek and the obvious reason for this is that she saw one of her sons Budhu dying of the injuries he had received. Shambhu's wife, P. W. No. 3, also does not say that her father-in-law told her anything as to who caused his cheek injury. But in the circumstances of the case it is not likely that Thatu would be anxious to speak about any of his injuries. From the mere fact, therefore, that he did not tell any of these witnesses as to who caused his cheek injury it is impossible to say that he must have perjured himself when he said that Moral Majhi had caused him that injury. P. W. 7, Kashi Nath Kar, who speaks of having seen the occurrence from a distance of two rashis does not really give the details of what happened and so he does not say that it was Moral who struck Thatu on the cheek with a Tabla. As I have already said, the evidence on this point is only that of Thatu. On that evidence a reasonable body of men can certainly say that Moral caused that injury. That that injury amounted to grievous hurt is obvious from the fact that a part of the molar tooth was dislocated and that Thatu had to be kept in the hospital for about a couple of months during which obviously he was not able to follow his ordinary avocation.

8. The appellant, therefore, was rightly convicted under Section 326 of the Indian Penal Code and although there was a misdirection we do not think there is any ground for interference with the verdict of the Jury as against him. The sentence, in the circumstances of the case, is far from being too-severe.

9. The result, therefore, is that the conviction, and sentence passed on the appellant are both confirmed and the appeal is dismissed. The appellant must surrender to his bail forthwith.

Bhattachakya, J.

10. I agree.

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