Mangoo And Another vs State Of Madhya Pradesh on 17 January, 1995

Equivalent citations: AIR1995SC959, 1995CRILJ1461, AIR 1995 SUPREME COURT 959, 1995 AIR SCW 927, (1995) 2 RECCRIR 481, (1995) 2 CRICJ 16, (1995) JAB LJ 373

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Bench: M.M. Punchhi

JUDGMENT

1. This is an appeal under Section 2-A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970. Mangoo, original accused No. 1 and Hanumant Singh, original accused No. 3 are the appellants. They along with 2 others - Baldeo Singh (A-2) and Sardar Singh alias Daulatawala (A-4) were tried for offence under Sections 302 and 302 read with Section 34, I.P.C. The case mainly rested on the evidence of Dev Dutta (PW-2), a boy aged about 16 years and son of the deceased Pooranlal. The trial court acquitted all the four accused holding that the evidence of the sole witness namely PW-2 was not wholly reliable. The learned trial Judge discarded his evidence on the ground that the medical evidence is in conflict and that there is possibility of the witness having been tutored and that there are certain discrepancies in material particulars in his evidence.

2. The State preferred an appeal and the High Court having examined PW-2's evidence in the light of surrounding circumstances carefully considered all the reasons given by the trial court and held that the reasoning given by the trial court is wholly unsound and allowed the appeal convicting all the four accused. It is stated that A-4 died and that A-2 did not prefer any appeal. Hence, the present appeal by A-1 and A-3.

3. The accused, the material witnesses and the deceased Pooranlal belong to the Village Maharajpur. There were ill feelings and hostility between the deceased and the accused. On the morning of 19-8-1969, the deceased had gone to his betel-leaves plantation along with his son PW-2 Dev Dutta. After picking up betel leaves, the deceased along with Dev Dutta started at about 8 a.m. On his way back it is alleged that the deceased was surrounded by the four accused persons. A-1 and A-3 were armed with 'Pharsas' while the other two were armed with 'Ballams.' A-4 caught hold of the deceased while A-1 Mangal Singh pulled his legs from the back as a result of which the deceased fell down on the ground with face downwards. Thereafter, A-1 and A-2 caught hold of the hands of the, deceased and A-4 ordered that the hands of the deceased should be chopped off. Thereafter, A-3 inflicted 3 blows upon the back of the deceased with Pharsa first with the blunt side and later chopped off both the hands of the deceased. PW-2 after having witnessed the occurrence, left the place crying aloud. On the way, he came across PW-1 to whom he narrated the incident. PW-1 went

to the Police Station which is about half a mile away and lodged Ex. P-1 at about 8-30 a.m. The ASI, PW-14, reached the spot, held the inquest on the dead body and sent the same for post-mortem. The doctor, PW-13, who conducted the post-mortem found 6 injuries. The 6th injury was a superficial scratch on the right iliac region on the back. Other injuries were all incised injuries, Injuries Nos. 2 & 3 were described as amputation of the left and right upper arms. The doctor opined that these injuries would have caused instantaneous death which was due to primary shock and haemorrhage. The accused were arrested and after completion of the investigation the chargesheet was laid. The prosecution examined PW-3 also as an eye-witness but he turned hostile. Therefore, the case rested entirely on the evidence of PW-2.

4. Learned Counsel for the appellants submits that if PW-2 has really seen the occurrence, he would not have given such a discrepant version with regard to the blows given by A-3 and as regards which portion of the weapon was used in inflicting such blows. PW-2 no doubt in his deposition stated that A-3 first inflicted blows with Pharsa on the back of the deceased with its blunt side and then inflicted a blow with the sharp side on his father's arm. Having seen this, he entered into Bareja and hid himself and heard the cries. Commenting on this, it is said that the medical evidence does not show any injury having been caused by the blunt side of the Pharsa and at any rate PW-2. on his own admission would not have seen the entire occurrence and in such a situation the evidence of the sole witness ought not to have been relied upon by the High Court particularly in the view that the trial court rejected the same by giving good reasons.

5. We have carefully gone through the evidence of PW-2. He has deposed that after having seen such a ghastly occurrence, he ran crying and on the way he met PW-1 to whom he narrated the woeful tale. From the record we find that PW-1 has given Ex. P-1 within half an hour. In Ex. P-1 it is mentioned that PW-1 met PW-2, son of the deceased, who was weeping bitterly and informed him that the 4 accused had assaulted his father with Pharsa and Ballam and had severed both the hands. PW-1 on the basis of this information, gave Ex. P-1. This is how the law has been set into motion. Unless PW-2 was an eye-witness, these details could not have found place in Ex. P-1. Therefore, we have to accept that PW-2 was present and witnessed the occurrence. If that is so, these discrepancies pointed out by the learned Counsel regarding the number of blows inflicted and which side of the Pharsa was used in the first instance, are not at all material and at any rate they do not affect his veracity. Viewed from this angle, we would not agree that the medical evidence is in entire conflict with the ocular version of PW-2. The learned Counsel also pointed out that PW-2 being a child witness, there was every scope of tutoring and the fact that he has admitted that he was in the district headquarters for about 12 days before adducing the evidence, also shows that he must have been with the Police for the purpose of tutoring. The mere fact that he might 'have been taken by the Police to be produced as a witness, is not a ground to come to the conclusion that the witness must have been tutored but on examining the evidence and from the contents, we have to see whether there are any traces of tutoring. We find that the version given by PW-2 appears to be quite natural and there is a ring of truth in the same. The evidence of PW-1 further corroborates the evidence of PW-2 namely to the extent that immediately after the occurrence PW-2 mentioned the names of the accused and the manner in which his father had been done to death.

6. We have also gone through the judgment of the trial court and we entirely agree with the High Court that the reasons given by the trial court for acquitting the accused are wholly unsound. For all these reasons, we find no merit in this appeal and the same is dismissed accordingly.