

Nanku Vs. State

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Court : Allahabad

Decided On : Feb-24-1972

Reported in : 1973CriLJ498

Judge : S.D. Khare and ;M. Hamid Hussain, JJ.

Appellant : Nanku

Respondent : State

Judgement :

S.D. Khare, J.

1. This is an appeal directed against an order dated 31st August, 1968 passed by the learned Sessions Judge Banda convicting Nanku (appellant) under Section 302, I.P.C. for having caused the death of Ramzani and also under Section 323 I.P.C. for having caused simple hurt to Munna P.W. 1) and Kareem Bux (P.W. 9) and sentencing the appellant to imprisonment for life for the offence of murder and to nine months' rigorous imprisonment for causing simple hurt. Both the sentences were ordered to run concurrently.

2. One more person namely Jamiluddin a brother of Nanku was also tried along with Nanku. He was however, convicted only under Section 352. I.P.C. and sentenced to undergo imprisonment till the rising of the court. No appeal has been filed by Jamiluddin.

3. Ramzani who lost his life was a resident of village Bhagauta-Ka Purza within police circle Atarra, district Banda. Nanku (appellant) was his close neighbor. The house in which Nanku lived had originally belonged to Khelawan who had left the village after having entrusted his house to the care of Ramzani his neighbour. Ramzani had let out the house to Nanku and his brother on a monthly rent of Rs. 7/-. The two brothers had, however, failed to pay any rent to Ramzani and for that reason he often made a demand of the rent from them. Two days prior to the occurrence Khela wan had come to the village and had told Ramzani that the house had been let out to Nanku and his brother at his (Ramzani's) responsibility.

4. On 19th September, 1967 at about 5 p.m. while Nanku and his brother Jamiluddin were returning to their house after doing the day's work and Nanku had a sabal with him. Ramzani again made a demand of the rent from Nanku and Jamiluddin. They however, told Ramzani that they had no money at that time and Ramzani had no authority to ask for any rent from them. Ramzani told Nanku and his brother that he would realise the rent from them. On hearing that Jamiluddin who was empty-handed caught hold of Ramzani and Nanku (appellant), who had a sabal with him started causing injuries to Ramzani with that sabal. One such injury was caused on the chest and another on the back of Ramzani who fell down on the ground after having received the second injury. Munna aged about 17 years, a son of Ramzani (deceased), and Kareem Bux (P.W. 9) to whom a niece of Sm. Jinti (P.W. 2) the wife of Ramzani (deceased) was married, rushed to his rescue. Both Kareem Bux and Munna were beaten with that sabal by Nanku.

5. Dr. V.M. Gupta examined the injuries of Kareem Bux and Munna the same evening between 7 and 7-20 p.m.. He found that both of them had received two injuries each. Kareem Bux had received one contusion on the left side of his chest and an abrasion on the left side of his chest. Munna had suffered a swelling on the left forearm and an abrasion near the left elbow. All these injuries caused to Kareem Bux and Munna were simple in nature.

6. Ramzani died within half an hour of the occurrence. The first information report of the occurrence was lodged by Munna (P.W. 1) at police station Atarra, one mile away from the place of occurrence, at 6-45 p. m. The witnesses had managed to

catch hold of Nanku and take his sabal from him. They had also succeeded in apprehending Jamiluddin. the brother of Nanku (appellant). Both of them were tied with a rope and taken to the police station at the time first information report was lodged. The sabal, was also deposited at the police station. It was a small piece of iron with which Nanku was expected to repair the utensils. It must be one of the tools used by him for doing his daily work.

7. The post-mortem examination on the dead body of Ramzani was performed by Dr. K.N. Gupta Medical Officer Sub-charge, District Hospital. Banda on 20th September, 1967 at 2-30 p.m.. In the opinion of the doctor the probable age of the deceased was about 60 years and the probable time since death at the time of the post-mortem examination was about one day. Rigor mortis was present all over the body. The following ante-mortem injuries were noticed as a result of the external examination:

- (1) Abrasion with contusion 3 cm. x 1/2 cm. on right lower lateral chest, obliquely.
- (2) Abrasion 4 cm. 2/10 cm. on lower back, 2 cm. to the left from vertebral column longitudinally:
- (3) Abrasion below and outer from right knee size being 1/2 cm. 1/4 cm.
- (4) Abrasion below left knee, size 1/2 cm. 1/2 cm.

The prosecution case is that only two blows, one on the chest and the other on the back, had been given to Ramzani with the sabal which Nanku held. It is therefore, evident that the two abrasions on the knees of Ramzani must have been the result of a fall after he had received the two injuries with the sabal.

8. The internal examination of the dead body of Ramzani revealed that the tenth rib on the right side was fractured at its middle on the lateral side and the broken piece of the rib had lacerated the liver to the extent of 5 cm. 2 cm 1 1/2 cm. on its lower outer surface. Two pounds of blood was found inside the abdominal cavity. In the opinion of the doctor death was due to shock and hemorrhage as a result of injury to the liver, which was sufficient in ordinary course of nature to result in death.

9. The prosecution examined five eye-witnesses of the occurrence. They are Munna (P.W. 1) son of the deceased Sm. Jinti (P.W. 2) the widow of the deceased. Kareem Bux (P.W. 9) a relation of the deceased, Kallu Kahar (P.W. 5) a neighbour of Ramzani (deceased), and Ramdin Kahar (P.W. 3) who happened to be sitting at the house of Kallu Kahar at the time of the occurrence. All of them fully supported the prosecution case and stated that two fatal injuries were caused by Nanku to Ramzani in their presence and that Ramzani had fallen down on the ground as a result of the second fatal injury inflicted on his back and had died within half an hour of the occurrence.

10. Both the accused persons, including Nanku (appellant), pleaded not guilty. They did not dispute the presence of the witnesses at the time and Place of the occurrence. While explaining the circumstances appearing against him. Jamiluddin stated that his brother-in-law Qaim Ali had taken the house of Khelawan on rent from Ramzani that the arrears of rent were being illegally demanded from Nanku and Jamiluddin and that on the day of the occurrence Ramzani and other members of his family had caught hold of the two brothers. Jamiluddin could give no explanation how Ramzani had received injuries. The statement made by Jamiluddin was adopted by Nanku (appellant) also. No evidence was led in defence.

11. The learned Sessions Judge after having considered the entire evidence on the record arrived at the conclusion that the prosecution witnesses were reliable. He, therefore, convicted and sentenced Nanku (appellant) as mentioned earlier.

We have heard Sri N.L. Ganguly, amicus curiae for Nanku (appellant) and also the Deputy Government Advocate.

12. We have been taken through the entire record and the evidence given by the prosecution witnesses has been read out to us. Nothing could be pointed out in the statement of any of the eye-witnesses of the occurrence to show that he (or she) could be interested in falsely implicating Nanku (appellant). It is significant to note that Nanku (appellant), while explaining the circumstances appearing against him did not dispute the time and place of the occurrence and the presence of the prosecution witnesses. He also did not dispute that he had been arrested at the

spot and at that time he had a sabal with him.

13. All the prosecution witnesses examined as eye-witnesses of the occurrence must have been present at the time of the occurrence. Munna (P.W. 1) is son of Ramzani (deceased), while Smt. Jinti (P.W. 2) is the widow of the deceased Kareem Bux (P.W. 9) is a relation of Ramzani (deceased). All these three Witnesses were present at the house of Ramzani at the time the occurrence took place. Therefore, they must have seen the incident from the very beginning. Kallu (P.W. 5) is a close neighbour of Ramzani (deceased). The house of Kallu is at a distance of about 24 or 25 paces only from the place of occurrence. Kallu was sitting at his house when the exchange of words between Ramzani and the appellant took place. Ramdin (P.W. 3) was at that time sitting at the house of Kallu. Both Ramdin and Kallu could, therefore, have reached the place of occurrence on hearing the exchange of hot words between Ramzani and Nanku and seen the entire occurrence from the beginning to the end.

14. The learned Sessions Judge was perfectly justified in placing reliance on the eye-witnesses of the occurrence to hold that it was Nanku who was responsible for having caused all the injuries to Ramzani (deceased) with a sabal.

15. The learned Counsel for the appellant has contended that the offence which Nanku committed was not that of murder punishable under Section 302 I.P.C. but it could be held to be merely the offence of culpable homicide not amounting to murder, punishable under Section 304 part II, I.P.C. There appears to be good deal of force in this contention.

16. Section 299 of the Indian Penal Code provides that:

Whoever causes death, by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

17. There can be no doubt that Nanku, when he inflicted two sabal injuries on the chest and back of Ramzani could not be supposed to have any intention to cause

the death of Ramzani. There was no previous enmity between Nanku and Ramzani. The sabal which Nanku had was a tool and Nanku had used the sabal against Kareem Bux and Munna also, but only simple injuries had been caused to them. In the circumstances of the case it will be difficult to say that Nanku could have any intention to cause the death of Ramzani. It was frankly conceded by Munna (P.W. 1) in the course of his cross-examination that soon after the exchange of hot words everything happened very suddenly. Jamiluddin caught hold of Ramzani and Nanku inflicted two blows with the sabal on Ramzani. Had Nanku intended to cause the death of Ramzani he would not have stopped after causing two blows with the sabal one blow falling on the chest and the other on the back of Ramzani.

18. Culpable homicide may be murder if the act by which the death is caused (i) is done with the intention of causing death or (ii) is done with the intention of causing such bodily injury as the offender knows to be likely to cause death of the person to whom the harm is caused, or (iii) if it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or (iv) if the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, (vide Section 300 I.P.C. The act of Nanku could not fall under the first, or second or fourth category. It has however been, contended by the learned Deputy Government Advocate that it must fall under the third category that is to say it was done with the intention of causing bodily injury to Ramzani and the bodily injury intended to be inflicted was sufficient in the ordinary course of nature to cause death.

19. The statement of Dr. K.N. Gupta, who performed the post-mortem examination on the dead body of Ramzani is clear on the point that the liver injury caused to Ramzani was sufficient in the ordinary course of nature to result in his death. The question however, to be considered is whether Nanku had intended to cause that particular injury (liver injury) to Ramzani. The answer must be in the negative. All that Nanku must have intended was to cause the external injury which Ramzani had received as a result of the two blows which he had inflicted on Ramzani with his sabal. We are supported in this view by the case of *Laxman Kalu Nikalie v. The*

State of Maharashtra : 1968 CriLJ1647 . In that case very serious injury had been caused to the victim inasmuch as the axillary artery and veins had been cut. However, it was found in the post-mortem examination that although the injury had been caused in the chest, the weapon had not reached the lungs. Their Lordships of the Supreme Court while discussing the third clause of Section 300 I.P.C. observed as follows:

That Section requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. This clause is in two parts: the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one: the second part is objective in that looking at the injury intended to be caused the court must be satisfied that it was sufficient in the ordinary course of nature to cause death. We think that the first part is complied with because the injury which was intended to be caused was the one which was found on the person of Ramrao. But the second part in our opinion is not fulfilled because but for the fact that the injury caused the severing of artery death might not have ensued. In other words, looking at the matter objectively, the injury which Laxman intended to cause did not include specifically cutting of the artery but to wound Ramrao in the neighborhood of clavicle. Therefore, we are of opinion that the thirdly of Section 300 does not cover the case. Inasmuch as death has been caused the matter must still come within at least culpable homicide not amounting to murder. There again. Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above Laxman did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing, such bodily injury as is likely to cause death. Here again the intention must be to cause the precise injury likely to cause death and that also as we have shown above was not the intention of Laxman. The matter therefore comes within the third part. The act which was done was with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 of the Indian Penal Code as culpable homicide not amounting to murder.

20. In the present case also, looking objectively we find that the appellant could never have intended to cause the breaking of the tenth rib or the laceration of the liver. However, inasmuch as he was hitting on the chest and back of Ramzani with an iron sabal he could have the knowledge that by that act one of the ribs of Ramzani could be ruptured which again might or might not have resulted in serious internal injuries. In a case like this all that could be said is that the assailant could have knowledge that by his act death could be caused to the victim if one of the ribs got fractured, and lacerated either the lung or the liver.

21. It was held in the case of *Guptar v. Rex* AIR 1949 All 109 : 50 Cri LJ 127 by a learned single Judge of this Court that if an injury is given on the lesion of the liver it could be presumed that the person who caused the injury had knowledge that death might be caused if the liver was ruptured and the case will clearly fall within the second part of Section 304 I.P.C. It was also observed in that case that the fact that the injury appeared superficial from outside was immaterial. We respectfully agree with that view.

22. In the result the appeal partly succeeds. The conviction and sentence of Nanku (appellant) under Section 323 I.P.C. are maintained but his conviction and sentence under Section 302 I.P.C. are set aside and instead he is convicted under Section 304, part II. I.P.C. and sentenced to five years' rigorous imprisonment. Both the sentences shall run concurrently. The appellant is in Jail. He must serve out his sentence as modified by this Court.