

**Brij Lal Vs. State**

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**Court :** Allahabad

**Decided On :** Feb-03-2003

**Reported in :** 2004CriLJ1873

**Judge :** Vishnu Sahai and ;Khem Karan, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 302 and 304

**Appeal No. :** Crl. A. No. 639 of 1980

**Appellant :** Brij Lal

**Respondent :** State

**Advocate for Def. :** N. Janardan Singh, Adv.

**Advocate for Pet/Ap. :** D.P. Mishra, Adv.

**Judgement :**

**Vishnu Sahai, J.**

1. Through this appeal, the appellant challenges the judgment and order dated 8-10-1980 passed by the III Additional Sessions Judge, Lucknow, in Sessions Trial No. 21/1980, convicting and sentencing him to undergo imprisonment for life for the offence punishable under Section 302 I. P. C.

It is pertinent to mention that along with the appellant was tried his real brother Sadhu, who has been acquitted vide the impugned judgment and the State of U. P. has not impugned his acquittal by preferring an appeal under Section 378(1) Cr. P.C.

2. Shortly stated the prosecution case runs as under :--

The informant Umrao (PW-1) was the brother of the deceased Newaji. At the time of the incident the informant, deceased, the informant's wife Smt. Kamla (PW-3), the informant's sister-in-law Smt. Madhu Rani (CW-1), the appellant and the acquitted accused Sadhu were living in different portions of the same house in village Babapurwa, hamlet of Shivpuri within the limits of Police Station, Itaunja, District Lucknow. The appellant and Sadhu were the sons of the uncle of the informant.

There was a common outlet of the house of the informant and others on one hand and the appellant and Sadhu on the other. With regard to it the relations between them were strained.

On the date of the incident i.e. on 4-9-1979, at about sunrise, the son of the appellant had defecated near the fodder cutting machine of the deceased Newaji, in front of the house of the appellant and the informant. As a consequence thereof the leg of the deceased Newaji got soiled. Newaji shouted as to who had defecated. Thereupon the wife of the appellant replied that her son had defecated. On that the appellant said that the daily pin pricks be finished and challenged that Newaji be killed. Appellant's brother Sadhu was also present there. Then the appellant, who was having a ballam in his hands, inflicted a blow on the abdomen and neck of Newaji. When the informant protested against Newaji being assaulted co-accused Sadhu inflicted a lathi blow on him. The informant's wife Kamla tried to save the informant whereupon the appellant assaulted her with a ballam. Co-accused Sadhu also assaulted the informant and Kamla and inflicted a gandasa blow on the person of Kamla. After assaulting, Newaji, the informant Umrao and his wife Kamla, the appellant, and acquitted accused Sadhu ran away.

The informant, who as a consequence of the assault had become unconscious, regained his conscious ten to fifteen minutes later and discovered that Newaji was dead. Thereafter on the place of the incident he scribed his F. I. R. and along with his wife proceeded to Police Station Itaunja, where he lodged his F. I. R.

3. The evidence of Constable K. P. Tiwari (PW-4) shows that on 4-9-1979 he was posted as Constable Clerk at Police Station Itaunja and the informant Umrao lodged his F. I. R. on the basis of which he registered an offence under Section 302 I. P. C. A copy of the chik F. I. R. shows that the F. I. R. was registered on 4-9-1979 at 8.30 A. M. and the distance between the place of the incident and the police station was five kilometers.

4. The autopsy on the corpse of the deceased Newaji was conducted on 5-9-1979 at 11.30 A. M. by Dr. M. S. Kunwar (PW-5), who found on it the following ante-mortem injury:--

'Stab wound 3 cm x 2.5 cm present on right side of neck 10 cm below the right ear. The wound have clean cut edges which are parallel but slightly curved to each other like an ellipse and have sharp angle at the two extremities. The wound is muscle deep and probe is passing upto 9 cm deep. The clotted blood is coming out from the wound and present around the wound.'

The cause of death spelt out in the post mortem report was shock and haemorrhage as a result of the ante-mortem injuries suffered by the deceased. 5. The injuries of Umrao were medically examined by Dr. V. S. Shukla (PW-8) on 4-9-1979 at 11.00 A. M. at PHC Itaunja, Lucknow. Dr. Shukla found on his person the following injuries :--

'1. Lacerated wound 3 cm x skin deep on scalp left to mid line 18 cm away from root of nose.

2. Contusion 2 cm x 2 cm right to mid line 17 cms away from root of nose.

3. Contusion 4 cm x 6 cm in thigh 6 cm above the knee.'

In the opinion of Dr. Shukla the said injuries were simple in nature and were attributable to a blunt weapon.

Dr. Shukla also examined Smt. Kamla the same day and found on her person the following injuries :--

'1. Lacerated wound on forehead 2.5 cm x 1 cm x skin deep 5 cm above the root of nose.

2. Contusion 4 cm x 4 cm on left shoulder.

3. Incised wound 3.5 cm x 1 cm on right side of chest 5 cm below the axilla in mid axilla.

4. Incised wound 3 cm x 1 cm on back of right chest 4 cm below the axilla on post axillary.'

6. The case was investigated in the usual manner and thereafter the appellant and co-accused Sadhu were chargesheeted.

7. The case was committed to the Court of Sessions in due course, where the appellant and co-accused Sadhu were charged for offences punishable under Sections 302 read with 34 I. P. C. and 323 read with 34 I. P. C. They pleaded not guilty to the charges and claimed to be tried.

During trial, in all, the prosecution examined eight witnesses. Three of them, namely, informant Umrao, Shiv Ram and Smt. Kamla, PWs. 1, 2 and 3 respectively were examined as eye-witnesses. Out of them, Shiv Ram turned hostile. The other two eye-witnesses however stood firm as rock of Gibraltar. The learned Trial Judge believed their evidence, as also that of Smt. Madhu Rani (CW-1) (the wife of the deceased) and convicted and sentenced the appellant in the manner stated in paragraph 1. As mentioned in the said paragraph he however acquitted co-accused Sadhu.

Hence, this appeal.

8. It is a matter of profound regret that although the appeal pertains to the year 1980 Mr. D. P. Mishra, learned counsel for the appellant, is not present in the Court. Since the appeal is pending in this Court for over 22 years, we did not think it appropriate to adjourn it but on the converse with the assistance of Additional Public Prosecutor Mr. Janardan Singh decided it on merits. That we can do so is clear from the ratio laid down by the Apex Court in paragraph-15 of the judgment rendered by it in the case of Bani Singh v. State of U. P., reported in AIR 1996 SC 2439 : (1996 All LJ 1399 : 1996 Cri LJ 3491)

9. So far as the involvement of the appellant in the incident is concerned, the same, in our view, is established to the hilt by the credible ocular account furnished by Umrao (PW-1), Smt. Kamla (PW-3) and Madhu Rani (CW-1). Since it is on the basis of the recitals contained in their examination in chief that we have set out the prosecution story in paragraph-2 of our judgment, we do not propose to burden our judgment by reiterating all the details.

In short, the evidence of the said witnesses shows:-- There was ill-will between the informant and deceased Newaji on one hand and appellant Brij Lal and his brother acquitted accused Sadhu on the other; all of whom were residing in different portions of the same house with regard to the outlet of the house. On the date of the incident, at about sunrise, the son of appellant Brij Lal had defecated near the fodder cutting machine of Newaji in front of the joint house of the informant and others and the appellant. As a consequence of it the leg of deceased Newaji got soiled. Understandably Newaji was infuriated and he shouted as to who had defecated. Thereupon the wife of appellant Brij Lal shouted that her son had defecated. At that juncture, appellant Brij Lal with a ballam and acquitted accused Sadhu with a lathi came. Appellant Brij Lal stated that the daily pin pricks be finished and Newaji be killed. Thereafter appellant inflicted a ballam blow on the neck and abdomen of Newaji. Co-accused Sadhu assaulted the informant when he tried to rescue Newaji. Smt. Kamla, the wife of the informant, rushed to his rescue. Thereupon Sadhu also assaulted her. Sadhu also assaulted Kamla with a gadasa. Thereafter the appellant and Sadhu ran away. After sometime the informant, who had become unconscious, regained his consciousness and discovered that Newaji was dead. He then along with his wife proceeded to Police

Station Itaunja and lodged the F. I. R.

10. We have gone through the statements of informant Umrao (PW-1), his wife Smt. Kamla (PW-3) and his sister-in-law Madhu Rani (CW-1) and find it to be credible. The same, in our view fixes the involvement of the appellant in the crime.

11. We now propose briefly giving our, reasons for reaching the said conclusion. So far as the evidence of the informant Umrao is concerned, he categorically stated that the appellant inflicted a ballam blow on the neck of the deceased and ante mortem injury suffered by the deceased, which we have extracted earlier in entirety, shows that the deceased received a stab wound on his neck. It is significant to point out that the autopsy surgeon Dr. Kunwar in his deposition has stated that the said injury could be caused by a sharp-edged weapon. Apart from the above, the claim of the informant of having seen the incident is also corroborated by the circumstance that he alleged that acquitted accused Sadhu assaulted him with a lathi and Dr. V. S. Shukla (PW-8), who medically examined the informant, found on his person one lacerated wound and two contusions, all of which, in his opinion, were attributable to a blunt weapon.

12. We now take up the evidence of informant's wife Smt. Kamla. She stated that the appellant assaulted deceased Newaji with a bhala and the autopsy surgeon found a bhala injury on the person of the deceased. She further stated that her husband Umrao was also assaulted with a lathi and when she ran to his rescue she was also assaulted by acquitted accused Sadhu with a lathi and the said accused also assaulted her with a gadasa. It is pertinent to mention that Dr. Shukla found blunt weapon injuries on the person of Umrao and injuries of a dual nature, namely, blunt weapon and sharp cutting, on her person.

13. We may also mention that the appellants' involvement in the incident is also established by the ocular account furnished by Madhu Rani (CW-1), the wife of the deceased. Since she has furnished the same manner of assault as the informant and Kamla we do not want to burden our judgment by reiterating the details. Her evidence, in our view, also fixes the involvement of the appellant in the incident,

14. Apart from the fact that the medical evidence corroborates the account furnished by the informant, Smt. Kamla and Smt. Madhu Rani, we find that the witnesses are perfectly natural witnesses of the incident inasmuch as they were living in the different portions of the same house wherein the deceased and the appellant also lived. In this view of the matter, in our judgment, their evidence squarely establishes the involvement of the appellant in the incident.

15. Two other circumstances also fix the involvement of the appellant in the incident, the first is that the F. I. R. was lodged very promptly. We have seen that the incident took place on 4-9-1979, at about sunrise, and the F. I. R. was lodged the same day by the informant Umrao at Police Station Itaunja at 8.30 A. M.; the distance between the place of the incident and the police station being five kilometres.

The second circumstance and a weighty one too is that all the three eye-witnesses namely, Umrao (the informant), Smt. Kamla and Smt. Madhu Rani were close relations of the appellant; the informant being the uncle's son of the appellant and Smt. Kamla and Smt. Madhu Rani being the sisters-in-law of the appellant. In our view, the said witnesses would not have falsely implicated the appellant unless he had participated in the incident.

16. For the said reasons, the involvement of the appellant in the incident has been established to the hilt.

17. The only question which remains is whether the learned Trial Judge acted correctly in convicting the appellant for the offence punishable under Section 302 I. P. C. Our answer to it is in negative. Apart from the fact that only a solitary bhala injury was inflicted by the appellant on the person of the deceased, who, as is apparent from the evidence on record, was not killed on the spot, we find that the evidence of the autopsy surgeon Dr. M. S. Kunwar (PW-5) shows that on internal examination of skull (the region in which the external injury was inflicted on the deceased) he detected no abnormality. We also find that the autopsy surgeon stated that the right carotid artery was punctured and cut through and through and deceased died on account of haemorrhage and shock as a result of rupture of carotid artery. In such a factual matrix, in our view, the act of the appellant would

not fall under any of the four clauses of Section 300 I. P. C. the breach is punishable under Section 302 I. P. C. but on the converse would fall under clause thirdly of Section 299 I. P. C. In our view, when the appellant inflicted a solitary bhala blow on the person of the deceased it would be reasonable to infer that he committed an act with the knowledge that the deceased could die in terms of clause thirdly of Section 299 I. P. C., the breach of which is punishable under Section 304(ii), I. P. C.

The view which we have taken is fortified by the decision of the Apex Court rendered in the case of Laxman Kalu Nikalje v. The State of Maharashtra, reported in AIR 1968 SC 1390 : (1968 CrL LJ 1647). In that case a penetrating injury 4' deep into the chest cavity was caused resulting in auxiliary artery and veins being ruptured and death ensuing. A perusal of paragraph-11 of the said judgment would show that the Supreme Court took the view that the act of the appellant would not fall under any of the clauses of Section 300 I. P. C. but instead would fall under clause thirdly of Section 299 I. P. C. Consequently, the Supreme Court converted the conviction of the appellant Laxman Kalu Nikalje from one under Section 302 I. P. C. to one under Section 304 I. P. C.

In our view, the ratio laid down in the said case would be fully applicable to this case. We have seen that the autopsy surgeon Dr. M. S. Kunwar (PW-5) has categorically stated that the deceased died on account of shock and haemorrhage as a result of injury to carotid artery. In our view, when the appellant inflicted the external injury beneath which carotid artery was ruptured at the highest what could be said that he had knowledge that the said artery could be ruptured and hence committed an act with the knowledge that the deceased could die in terms of clause thirdly of Section 299 I. P. C.

18. The only question, which remains, is the quantum of punishment to be awarded to the appellant for the offence punishable under Section 304(ii) I. P. C. Considering the overall circumstances and bearing in mind the fact that more than 23 years have elapsed since the incident took place, in our view, a sentence of five years R. 1 would meet the ends of justice.

19. In the result, this appeal is partly allowed. Although we acquit the appellant for the offence punishable under Section 302 I. P. C. and set aside his conviction and sentence thereunder, but we find him guilty for the offence punishable under Section 304(ii) I. P. C. and sentence him to undergo five years R.I. for the same. The appellant is on bail and shall be taken into custody forthwith to serve out his sentence.

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