

**Nathoo Vs. State**

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**Court :** Allahabad

**Decided On :** Feb-09-2000

**Reported in :** 2000CriLJ3850

**Judge :** R.R.K. Trivedi and ;M.C. Jain, JJ.

**Acts :** Indian Arms Act - Sections 25; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307, 323, 504 and 506; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** Cri. Appeal No. 1181 of 1980

**Appellant :** Nathoo

**Respondent :** State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** A. Rathore and ; Kamal Krishna, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**M.C. Jain, J.**

1. The accused-appellant-Nathoo has preferred this appeal against the judgment and order dated SIS'1980 passed by Sri Girish Chandra VIth Additional Sessions Judge, Bareilly in Sessions Trial No. 419 of 1978, convicting him under Section

302, I.P.C. and awarding the sentence of life imprisonment.

2. The broad spectrum of the prosecution case may be narrated. He allegedly committed the murder of his own uncle Champat Rai on 25-4-1977 at about 7.30 p.m. in village Bijamau, Police Station Hafizganj, District Bareilly. The First Information Report was lodged by deceased's brother Jhamman Lal the same day at 10.30 p.m. The distance of the police station from the place of occurrence was three miles. Jhamman Lal, Champat Rai deceased and Ram Swarup (whose son the present accused-appellant is) were real brothers. There had been partition between these brothers in respect of agricultural land as well as Abadi property. Ram Swarup - father of the accused-appellant had even died about 8-10 years before this incident. The accused-appellant-Nathoo had a grievance that his share was less while Champat Rai had taken bigger share in the house property. The Khalian of the deceased was situated towards the eastern side of the village and a culvert had to be crossed to reach his Khalian. On the fateful day and time the deceased was going to his Khalian and the informant Jhamman Lal P.W. 1 was also going there, following the deceased at a little distance. When Champat Rai reached near the culvert, the accused-appellant appeared all of sudden and opened fire on him. The fire, however, missed with the result that Champat Rai got alarmed and he immediately caught hold of the country made pistol of the accused-appellant. He succeeded in snatching away the same from the accused-appellant after some grappling. But in the meantime the accused-appellant took out a knife from the folds of his Tahmad and started inflicting knife blows on the deceased. On the shrieks and alarm raised by the deceased, Jhamman Lal P.W. 1 (who was a little behind him) and other witnesses including Umrai Lal P.W. 2 instantly reached there. After inflicting a few blows of knife on Champat Rai, the accused-appellant fled away from the scene of occurrence. The deceased fell down on receiving the knife injuries. A cot was arranged and he was taken to his house on the said cot. Jhamman Lal P.W. 1 dictated the First Information Report to Tota Ram P.W. 3 and proceeded to the Police Station along with the injured Champat Rai on a bullock cart, also carrying the countrymade pistol which had been snatched by him (Champat Rai from the accused-appellant). Champat Rai started crying on account of pain due to movement of the bullock cart and as such he was taken down from it. In the meantime, a mini truck came to the village with

paddy bags. The victim Champat Rai was taken to the police station on the said mini truck where Jhamman Lal P.W. 1 lodged the First Information Report at 10.30 p.m. Initially, a case under Section 307, I.P.C. and 25 of the Indian Arms Act was registered against the named accused-appellant (which was subsequently converted under Section 302, I.P.C. upon the death of the deceased). The victim Champat Rai was taken to the District Hospital Bareilly. He was medically examined there at 12.20 a.m. on 26-4-1977 by Dr. P. K. Bass. A report was sent for recording the dying declaration of the deceased which came to be recorded on 26-4-1977 between 8.10 a.m. and 8.50 a.m. by Sri R. C. Bharadwaj Sub-Divisional Magistrate P.W. 4. It was Dr. S. K. Mukerji P.W. 8 who had recorded a certificate regarding mental condition of the victim being fit at the time of making dying declaration. The victim died on 27-4-1977 at 4.30 a.m. On the receipt of the information about the death of Champat Rai S.I. Dwarka Prasad P.W. 11 was deputed to the hospital for preparing the inquest report and other relevant papers. The dead body was sent by him for post-mortem after doing the needful. His post-mortem was conducted by Dr. I. J. Punhani P.W. 7 on 27-4-1977 at 4 p.m.

3. For proper appreciation, it is useful to detail below the injuries found on the person of the victim Champat Rai at the time of medical evidence on 26-4-1977 at 12.20 a.m. As per injury report Ex. Ka 14 the following injuries were found on his person :

1. Elliptical incised wound left side abdomen 3 cm. x 2 cm. x omentum protruding out about 18 cm. from umbilicus at 2 O'clock.
2. Incised wound 4 cm. x 2.5 cm. x bone deep on left side chest back, 11 cm. below scapula.
3. Elliptical incised wound 2 cm. x 1.5 cm. x muscle deep on back left side chest 3 cm. above and medial to injury No. 2.
4. Incised wound 2 cm. x 0.5 cm. x skin deep on front and proximal phalanx of left limb.

4. The injuries had been caused by a sharp edged weapon and could have been sustained on 25-4-1977 at about 7.30 p.m.
5. The outcome of the post-mortem report may also be taken note of. The deceased was aged about 50 years and his death had occurred in District Hospital Bareilly on 27-4-1977 at 4.30 a.m. The following ante-mortem injuries were found on his person :
  1. Stitched wound 2 cm. x 0.1 cm, on the left side upper abdomen, 1.5 cm. below left nipple, two stitches present.
  2. Stitched wound 4 cm. x 0.2 cm. on the left side back of chest 5 cm. below the scapula, 4 stitches present.
  3. 2 cm. long stitched wound on left to injury No. 2, two stitches present.
  4. abrasion right side face 1 cm. x 1 cm. x 2 cm. above right eyebrow.
  5. Abrasion 1 cm. x 1 cm. on right elbow.
  6. Abrasion 4 cm. x 0.1 cm. left side upper abdomen 9 cm. medial.
  7. Incised wound 1 cm. x 0.5 cm. on the tip of left index finger.
  8. Linear abrasion 10 cm. on the back side of left elbow.
  9. Abrasion 1 cm. x 1 cm. on the left elbow joint.
  10. Linear abrasion 2.5 cm. on left fore arm 12 cm. above wrist joint.
  11. Incised wound 2 cm. x 0.5 cm. on the front of leg 10 cm. above right ankle.
6. On internal examination, pleura was found cut and there were two incised wounds on left lung. The cause of death was shock and haemorrhage owing to ante-mortem injuries.
7. The investigation had been started by S.I. Babu Singh P.W. 9 and was concluded by SI Mahabir Singh P.W. 13.

8. The accused-appellant denied the prosecution story and pleaded false implication on account of enmity. According to him, he had lodged a report against the sons of Jhamman Lal P.W. 1 and this was the reason for his false implication. Against Umrai Lal P.W. 2 also he alleged that he belonged to his Khandan and there had been a Marpit between the two earlier. Lakhan Singh Constable D.W. 1 was examined to prove a Chik report Ex. Kha 1 to show that he had lodged a report against three sons of Jhamman Lal P.W. 1 under Sections 323/504, I.P.C. on 23-4-1977 at 6.30 a.m. regarding an incident of 22-4-1977 of 9 p.m.

9. In order to bring home the guilt of the accused, the prosecution examined 13 witnesses besides relying on documentary evidence. Out of them, Jhamman Lal P.W. 1 and Umrai Lal P.W. 2 were examined as eyewitnesses. Tota Ram P.W. 3 was the scribe of the First Information Report to whom the deceased had also stated that his assailant was the present accused-appellant. Apart from those other witnesses in respect of whom reference has come in the earlier discussion, the rest were formal.

10. The learned trial Judge believed the prosecution case and evidence as regards the offence of murder was concerned. He accordingly convicted and sentenced the accused-appellant as mentioned in the earlier part of the judgment. He, however, acquitted him of the charge under Section 25 of the Indian Arms Act for the technical flaw of sanction for the said offence having not been proved according to the requirements of law.

11. The appeal was filed by the accused-appellant through Sri A. Rathore, Advocate who died. Despite the notice having been sent to the accused-appellant to engage another counsel, he did not do so and this Court appointed Sri Kamal Krishna, Advocate as amicus curiae to argue out the appeal on behalf of the accused-appellant. We have heard the learned amicus curiae on behalf of the accused-appellant and the learned A.G.A. on behalf of the State. We have also gone through the material and evidence on record with great care. The learned amicus curiae has argued that there was no motive on the part of the accused-appellant to commit this crime; that there was inordinate delay in the lodging of the First Information Report; that the eye-witnesses were of partisan character and

that the dying declaration of the deceased was the outcome of tutoring. On the other hand, learned A.G.A. has countered these arguments and has supported the judgment under appeal. We wish to deal with these arguments in the succeeding discussion one by one.

12. So far as the question of motive is concerned, suffice it to say that motive pales into insignificance when there is direct and positive evidence regarding commission of a crime by a particular person as is the case here. The prosecution is only supposed or required to indicate the previous background, if any, having bearing on the incident. In the present case, Jhamman Lal P.W. 1 stated before the Court that though partition had taken place 8-10 years back but the accused-appellant was not satisfied and his grudge was that he had got lesser share in the house property as compared to the deceased-Champat Rai. We find that this motive was disclosed even by the deceased in the dying declaration made to the Sub-Divisional Magistrate on 26-4-1977. Therefore, it is clear that nothing was concealed by the prosecution from being disclosed before the Court on the aspect of the motive as was known to Jhamman Lal P.W. 1 as also the victim himself. The mere fact that the partition had taken place 8-10 years back and in the intervening period, the grudge, if any, on the part of the accused-appellant, would have subsided cannot counter the facts regarding motive brought before the Court from the side of the prosecution as known to it. It goes without saying that all the persons do not behave alike in a given situation. Some are of reconciling nature where as others are stubborn and cherish the grudge or enmity for long years to wreak vengeance even after long lapse of time. Under the circumstances of the case, we are inclined to reject the argument that the accused-appellant did not have any motive to commit this crime. Moreover, the fact also remains, as we alluded to earlier, that there being direct and positive evidence against the accused-appellant, the question of motive is material too.

13. The second argument complaining delay in the lodging of the First Information Report also does not hold water at all. The incident took place on 25-4-1977 at 7.30 p.m. and the written First Information Report was lodged at the concerned Police Station by Jhamman Lal P.W. 1 the same night at 10.30 p.m. The distance was about 3 miles from the place of occurrence to the Police Station. The time gap

has very well been explained by the prosecution. It was quite natural that after the incident, the victim (Champat Rai) who was till then alive was first taken to his home on a cot. It was thereafter that a bullockcart was arranged to carry him to the hospital. Naturally, some time must have been consumed in arranging conveyance for carrying the injured Champat Rai. Jhamman Lal P.W. 1 has also plausibly explained that on being placed on the cart Champat Rai started crying of pain. He was then shifted on a mini truck from the bullock-cart and was then taken to the Police Station. The way to the Police Station was Kachcha as stated by Umrai Lal P.W. 2. Indeed, the informant Jhamman Lal P.W.1 (brother of the victim) could not be expected to run to the Police Station leaving victim uncared for and all others behind immediately after the occurrence at hurricane speed in a computer like manner. The things have to be viewed in a reasonable and logical way, and not with a theoretical approach ignoring the ground realities of the situation. We reject the argument that the F.I.R. was delayed one.

14. It is not possible for us to accept this argument of the learned amicus curiae on behalf of accused-appellant that the testimony of the eye-witnesses namely Jhamman Lal P.W. 1 and Umrai Lal P.W. 2 should be treated as of partisan character. No doubt Jhamman Lal P.W. 1 is the own brother of the deceased, but the fact cannot be ignored that the accused-appellant is also his own nephew. The simple fact that the accused-appellant had lodged a F.I.R. Ex. Kha 1 against the three sons of Jhamman Lal P.W. 1 on 23-4-1977 at 6.30 a.m. regarding some incident of 22-4-1977 at 9 p.m. under Sections 323/504/506, I.P.C. does not justify the rejection of his testimony which has been tested by the weapon of cross-examination. The said F.I.R. Ex. Kha 1 lodged by the accused-appellant related to a minor incident of his alleged beating by kicks and fists and hurling abuses by Mangal Sen, Man Singh and Shyama Charan, sons of Jhamman Lal P.W. 1. There was no medical report regarding any injuries of the accused-appellant. The present incident having taken place two days later on 25-4-1977, it can also not be said with certainty that Jhamman Lal P.W. 1 had come to know about the said report made by the accused-appellant against his three sons on 23-4-1977 at 6.30 a.m. In any view of the matter, because of the lodging of such F.I.R. by the accused-appellant against the sons of Jhamman Lal P.W. 1, he (Jhamman Lal) would not have gone to the extent of falsely implicating the accused-appellant (his

own nephew) for murder of his brother. As against Umrai Lal P.W. 2, the statement of the accused-appellant under Section 313, Cr.P.C. was that a Marpit had taken place between the two earlier. There is nothing to indicate that any report had been lodged by the accused-appellant against Umrai Lal P.W. 2 regarding the alleged earlier incident of Marpit with him or that Umrai Lal P.W. 2 had suffered in certain measure on that account, prompting him to be up against the accused-appellant to falsely implicate him in a murder case. Minor bickering and skirmishes amongst the residents of the village over real or fancied reasons are the usual features of rural life but that does not mean that one would falsely implicate his adversary in a serious murder case. In the case at hand, Umrai Lal P.W. 2 even emphatically denied that he had any Chak adjacent to that of the accused-appellant or that any quarrel had taken place between the two over the digging of Gul by him. He categorically stated that there was a Chak-road between his field and that of the accused-appellant.. Despite searching cross-examination, nothing could be elicited from the cross-examination of Umrai Lal P.W. 2 to discredit his testimony. We find Jhamman Lal P.W. 1 and Umrai Lal P.W. 2 to be wholly reliable witnesses from whose testimony it unimpeachably follows that the accused-appellant was the assailant of Champat Rai on the given date, time and place and that incident occurred as alleged by the prosecution.

15. Lastly, the criticism levelled by the learned amicus curiae for the accused-appellant against the dying declaration of the deceased is also not capable of being accepted. The victim Champat Rai was admitted to the District Hospital at about 12 O'clock in the night of 25/26th April, 1977 and was medically examined by Dr. P. K. Bass, P.W. 6 at 12.20 a.m. At 12.35 a.m. he had sent a message to S.O. Kotwali for recording the dying declaration of the deceased. Sri R. C. Bharadwaj, Sub-Divisional Magistrate P.W. 4 reached the District Hospital at 8.10 a.m. on 26-4-1977 and recorded the dying declaration of the deceased finishing it at 8.50 a.m. The authenticity of the dying declaration (Ex. Ka 5) made by the deceased cannot be doubted simply because the Sub-Divisional Magistrate could not reach the hospital in the night itself to record the same. In usual course, some time was likely to be taken in securing the presence of the Sub-Divisional Magistrate in the hospital to record the dying declaration. It was about midnight when the memo was sent by Dr. P. K. Bass P.W. 6 for managing the recording of

dying declaration of the victim which came to be recorded 8 hours later. Having regard to the timings, no adverse inference can possibly be drawn against the prosecution case on the ground that the dying declaration was recorded between 8.10 a.m. and 8.50 a.m. on 26-4-1977. The fit mental condition of the victim for making the dying declaration had been certified by Dr. S. K. Mukerji P.W. 8. Sri R. C. Bharadwaj, Sub-Divisional Magistrate P.W. 4 clearly stated that before recording the dying declaration of the victim he had asked all the outsiders to go out of the room. The contention is wholly imaginary that the dying declaration made by the deceased was the outcome of tutoring. The law attaches sanctity to the dying declaration on the general principle that it is a statement made in extremity when declarant is at the point of death and when every hope of this world is gone. At that time, the mind of the declarant is induced by the most powerful consideration to speak only the truth. We see no reason whatsoever to doubt or reject the dying declaration of the deceased made to Sri R. C. Bharadwaj Sub-Divisional Magistrate P.W. 4. Needless to say, he as well as S. K. Mukherji P.W. 8 who certified the fit mental condition of the victim (at the time of making of the dying declaration) were wholly impartial functionaries discharging public duties and none of them could be least interested in producing a fictitious dying declaration. We agree with the learned Additional Sessions Judge that the dying declaration is perfectly believable. It is unequivocal where the victim clearly accused the accused-appellant as his assailant who inflicted knife blows to him. In fact, the core of the prosecution case has wholly been supported by him in his dying declaration that in the beginning the accused-appellant had opened fire on him which missed and the firearm had been snatched by him (victim) from him (accused-appellant) and it was thereafter that he had assaulted him with a knife causing injuries to him. He even named the eye-witnesses Jhamman Lal P.W. 1 and Umrai Lal P.W. 2 in his dying declaration. He did suffer incised wounds including in abdomen as is clear from his initial medical examination report and post-mortem report. Such injuries could have been caused by knife. Thus, the ocular testimony, the dying declaration made by the victim and the medical evidence are in complete harmony of each other.

16. We may also observe that it is a case of single accused and the possibility of false implication is completely obliterated. It cannot stand to reason at all that the

eye-witnesses and the victim himself in his dying declaration would give a clean chit to the real culprit and would substitute the present accused-appellant for him. Such a conduct bristles against natural and probable human behaviour.

17. To come to a close, we do not locate any merit in any of the arguments advanced by learned amicus curiae on behalf of the accused-appellant to back the appeal. It was proved to the hilt beyond every shadow of doubt that the accused-appellant committed the murder of his uncle Champat Rai. The eye-witness account coupled by the dying declaration of the deceased is of unimpeachable character.

18. For the discussion made hereinabove on different aspects of the case, we do not find any merit in this appeal and we hereby dismiss it. The accused-appellant-Nathu has rightly been convicted under Section 302, I.P.C. and sentenced to life imprisonment. He is on bail. His bail is cancelled. The Chief Judicial Magistrate, Bareilly is directed to get the accused-appellant arrested and to commit him to prison to serve out the sentence of life imprisonment.

19. Sri Kamal Krishna, Advocate who argued the appeal as amicus curiae on behalf of the accused-appellant shall get his fee according to rules.

20. Let a copy of the judgment along with the record of the case be immediately sent down to the Court below for needful compliance under intimation to this Court within two months positively.

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