

Nanku Vs. State of U.P.

Nanku Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/490399

Court : Allahabad

Decided On : May-27-1999

Reported in : 1999CriLJ4693

Judge : B.K. Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1788 of 1995

Appellant : Nanku

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Kamal Krishna, Adv.

Disposition : Appeal dismissed

Judgement :

B.K. Sharma, J.

1. This is an appeal against the judgment and order dated 14-2-1995 passed by Sri Dharam Paul, the then I Additional Sessions Judge, Allahabad in S.T. No. 158 of 1989, State v. Nanku alias Jagat Bahadur, under Section 302, I.P.C., Police

Station Utraon, district Allahabad whereby he convicted the accused-appellant Nanku alias Jagat Bahadur for the offence under Section 304, Part II, I.P.C. and sentenced him to undergo rigorous imprisonment for a period of five years.

2. Ram Sunder deceased had two sons Nanku alias Jagat Bahadur accused-appellant and Mithai Lal. Smt. Shakuni Devi, the informant, who was examined as P.W. 1 at the trial, is the wife of Mithai Lal. Ram Sunder deceased and his sons lived in village Motiha, Police Station Utraon, district Allahabad. It is the admitted case between the parties that Ram Sunder deceased had four bighas agricultural land in the village in respect of which he executed a sale deed in favour of Ram Dular (father of Smt. Shakuni Devi, the informant of this case).

3. The prosecution case was that deceased Ram Sunder had two houses-one near the house of Nanku alias Jagat Bahadur accused-appellant and another at some distance, in which Smt. Shakuni Devi and her entire family lived together. The accused-appellant Nanku alias Jagat Bahadur was annoyed at the execution of the said sale deed in favour of Ram Dular aforesaid. It was alleged that Ram Sunder deceased had raised Tilli crop in an area of ten biswas land out of said four bighas land; that the deceased Ram Sunder harvested the Tilli crop on 27-9-1987 and brought and kept it at the door of the house of deceased; that the deceased was saying that this crop will go to the place where his entire family lived while Nanku alias Jagat Bahadur accused-appellant asserted that this crop will not go there but will remain at his door; that on this, the deceased locked the harvested crop in a Kothari, that after taking food, Ram Sunder deceased started at about 3.00 P.M. by saying that 'Chalo Purane Ghar (i.e. the house adjacent to the house of Nanku alias Jagat Bahadur accused-appellant) wahan Se Bhusa Le Aaye', that on this Ram Sunder deceased proceeded ahead followed by Kamlesh and Rakesh (both sons of Smt. Shakuni Devi) that the deceased Ram Sunder had just come and sat at the Darwaza; that accused-appellant Nanku-alias Jagat Bahadur came there carrying lathi in his hand and giving abuses to him about Tilli; that thereupon the deceased Ram Sunder got up and went to open the lock of the Koathari in which the Bhusa was kept; that before Ram Sunder deceased could open the lock, the accused-appellant Nanku alias Jagat Bahadur started beating him with lathi; that the deceased Ram Sunder fell down on receiving the injuries;

that on the cries raised by her and on the weeping of her sons, Dwarika son of Banai of village Motihan and others reached the spot whereupon accused-appellant Nanku alias Jagat Bahadur ran away towards north with lathi in his hand; that while search was being made for a suitable conveyance for carrying the injured Ram Sunder to the hospital the deceased Ram Sunder died on the spot after about half an hour.

4. The F.I.R. of this case was scribed by Shiv Nath at the dictation of Smt. Shakuni, the informant. The informant went to the police station Utraon which is at a distance of about 5.00 K.M. away from the place of occurrence and lodged the written F.I.R. there at 5.30 P.M. on 27-9-1987. On the basis of the said F.I.R., a case under Section 304, I.P.C. was registered against accused-appellant Nanku alias Jagat Bahadur.

5. The investigation of the case was entrusted to Sri Ram Shanker Verma S.I. (P.W. 4). The Investigating Officer visited the spot and found the dead body of the deceased Ram Shanker at the spot. He prepared the Panchayatnama and other papers. He also took in possession the blood stained earth and simple earth and prepared memo in respect of the same. After concluding the investigation, he submitted the charge-sheet against the accused-appellant Nanku alias Jagat Bahadur.

6. The post mortem on the dead body of the deceased Ram Sunder was made by Dr. M.K. Bhatiya (P.W. 5), the then Medical Officer, Central Jail, Naini, Allahabad on 28-9-1987 at 3.45 P.M. He found the following ante mortem injuries on the body of the deceased :-

1. Lacerated wound 6 cm x 1/2 cm x cranial cavity deep on right side of scalp. 5 cm above right eye brow.
2. Lacerated wound 4 cm x 1 1/2 cm on top of scalp right side. 3 cm back of injury No. (1).
3. Lacerated wound 3 x 1/2 cm on right side of scalp. 8 cm above the right ear.

7. Internal examination revealed fracture of right parietal and right temporal bone under ante mortem injuries 1, 2 and 3. Membranes ruptured under ante mortem injuries 1, 2 and 3. Brain was lacerated and haematoma was present under ante mortem injuries. Stomach contained 4 oz. semi-digested food and small intestine was half full of digestive material large intestine contained faecal matter and gases. In the opinion of doctor, the death was caused due to coma as a result of ante mortem injury No. 1.

8. At the trial, ocular testimony was given by Smt. Shakuni Devi, the informant (P.W. 1) and Rakesh (P.W. 2) who is son of Smt. Shakuni Devi, The rest of the evidence was formal.

9. The accused-appellant Nanku alias Jagat Bahadur denied the charge and claimed to have been falsely implicated in the case.

10. The learned trial Judge held that it was established from the evidence on record that the accused-appellant Nanku alias Jagat Bahadur had given lathi-blows on the body of deceased Ram Sunder which resulted into his death and the same was sufficient to cause his death in ordinary course of nature. He further held that the accused-appellant Nanku alias Jagat Bahadur had given lathi blows on the deceased Ram Sunder with the knowledge that it is likely to cause death but he was having no intention to cause such bodily injury thereby as is likely to cause his death. He consequently held that the act of accused-appellant Nanku alias Jagat Bahadur comes within the purview of Section 304, Part II, I.P.C. and accordingly convicted and sentenced him as aforesaid.

11. I have heard the learned Amicus appearing for the accused-appellant and the learned A.G.A.

12. In my view there is no force in this appeal. It is a case of patricide. The post-mortem evidence established beyond doubt that it was a case of homicide. The place of occurrence cannot be doubted nor had it been disputed. It was a broad daylight occurrence. The F.I.R. has been lodged promptly at the police station. There is no material to support the defence plea taken at the trial that the F.I.R. was got scribed on the next day following the day of occurrence. There is direct

evidence of Smt. Shakuni Devi (P.W. 1) (daughter-in-law of deceased Ram Sunder) and Rakesh (P.W. 2) son of Smt. Shakuni Devi (P.W. 1). There was a clear cut strong motive for the accused-appellant Nanku alias Jagat Bahadur to commit the offence. Admittedly, the deceased Ram Sunder had executed a sale deed of his entire four bighas agricultural land in favour of Ram Dular, father-in-law of his other son Mithai Lal which had resulted in depriving him (the accused-appellant Nanku alias Jagat Bahadur) of getting one half share in the agricultural land by way of succession on his eventual death. The learned Amicus appearing for the accused-appellant Nanku alias Jagat Bahadur, has claimed that he had filed a suit for cancellation of the said sale deed executed by deceased Ram Sunder in favour of Ram Dular and the informant got the deceased murdered after making a plan so that the accused-appellant went in jail and he was not able to pursue the suit for cancellation of the sale deed filed by him. It has been claimed by him that the sale deed has been obtained from the deceased by fraud. Smt. Shakuni Devi, the informant (P.W. 1) has been cross-examined in great detail. She was suggested that the deceased has asked her to tell her husband to reconvene the said agricultural land in respect of which the sale deed had been obtained by her father; that on this, she got annoyed with him; that the deceased had asked the accused-appellant Nanku alias Jagat Bahadur to bring a suit in respect of the sale deed and assured that he (the deceased) would give evidence favourable to him (the accused-appellant); that the accused-appellant filed the suit and told the deceased and her that he has brought the suit; that on this the deceased said to the accused-appellant 'Achchha Hai Dekhenge' and that then she made a plan to get the deceased murdered. She has refuted the suggestion. She also refuted the suggestion that the accused-appellant Nanku alias Jagat Bahadur has been falsely implicated in this case by her, her father and Dwarika Prasad in concert with the police.

13. There was no material on record to show that the sale deed was obtained by fraud or by misrepresentation nor there is anything to show that the deceased Ram Sunder was inclined to help in the cancellation of the sale deed. There is categorical statement in the testimony of informant Smt. Shakuni (P.W. 1) that the suit for cancellation of the sale deed aforesaid was filed subsequent to the present murder. Thus testimony of this witness had not been challenged, muchless

controverted by filing a copy of the plaint of that suit. When even the suit had not been filed for cancellation of the sale deed up to the date of occurrence, it is very difficult to believe that the beneficiaries of the sale deed would get the maker of the sale deed murdered. It may be noted here that the accused-appellant Nanku alias Jagat Bahadur did not lead any oral or documentary evidence in defence and it is notable that in his statement under Section 313, Cr.P.C. he did not set out any such case as had been suggested in cross-examination of Smt. Shakuni Devi (PW 1) in respect of the sale deed. That being so, the case suggested to her in cross-examination cannot be sustained for a moment. In his statement under Section 313, Cr.P.C. he admitted that the deceased was living with his (accused-appellant's) brother Mithailal and that it was he (Mithai Lal) who used to keep the deceased. He claimed in his statement that Dwarika had come to commit his murder along with his family and he has been falsely implicated in concert with the police but no such suggestion has been made in cross-examination to the ocular witnesses produced at the trial by the prosecution.

14. The learned Amicus has referred to the statement made by informant Smt. Shakuni Devi (PW 1) in para 14 of her cross-examination that after taking the food, they went again for taking the Bhusa; that the accused again called upon for division of Tilli and the deceased declined whereupon the accused-appellant said that if he did not make the division of Tilli he would do whatever he liked and that after it, the deceased started opening the lock in his Kothari and that when he was opening the lock, the accused-appellant Nanku alias Jagat Bahadur assaulted him and argued that this immediate motive, was not mention in the F.I.R. lodged by her. A perusal of the F.I.R. would show that this matter of division of Tilli is not newly introduced at the trial. In the F.I.R. itself, the informant Smt. Shakuni Devi (PW 1) had said that the accused-appellant was abusing the deceased about Tilli and earlier there was also a mention about the cutting of Tilli crop the same morning and that the same was kept by the deceased in a Kothari at the place where his family lived. It may be that in her testimony at the trial, she has made conflicting statements on the question whether the accused-appellant had also participated in the harvesting of the Tilli crop or not. She testified in her examination-in-chief that the harvesting was done by the deceased and the accused-appellant. Cross-examined, she claimed that the Tilli crop was carried by

the deceased and she herself. She has explained that she had got written in the F.I.R. that the crop was cut by the accused-appellant and the deceased as the accused-appellant had started carrying the load of Tilli by force though he had not cut the Tilli by force. She also explained that in the F.I.R. she has got recorded that the crop was cut by accused-appellant (also) as she had reached the spot subsequently and when she reached, accused-appellant Nanku alias Jagat Bahadur and deceased were present in the field.

15. The importance of this discrepancy is finally lost when we notice that in his statement under Section 313, Cr.P.C. the accused-appellant Nanku alias Jagat Bahadur denied the evidence as to the fact of cutting of Tilli crop by himself and the deceased put to him on the basis of the earlier part of her statement. He did not claim in his statement that it was he who had harvested the crop of Tilli.

16. Thus there is no escape from the conclusion that the deceased met his death as a result of the giving of several lathi blows by the accused-appellant on his head. It was also not a case of provocation given by the deceased to the accused-appellant. The learned Additional Sessions Judge has diluted the higher offence that was logically flowing from the facts of the case. However, the State Government in its wisdom did not prefer an appeal for enhancement of sentence and the conviction relates to the year 1995 and by this time, the accused-appellant would have served out most of his sentence imposed on him by the learned trial Court, so I refrain from giving notice of enhancement of sentence at this stage.

17. So in my view of the matter, this appeal has no force. Consequently it is dismissed. The accused-appellant is in jail. He shall serve out the remaining part of his sentence according to law.

18. Let a copy of this judgment be sent by the Registry to the Superintendent, District Jail concerned for communication to the accused-appellant.

19. Let a copy of this judgment be also sent by the Registry to the Additional Sessions Judge concerned for information and compliance in record.