

Nanbu Vs. the State

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Court : Madhya Pradesh

Decided On : Jan-23-1956

Reported in : 1956CriLJ1078

Judge : Nevaskar and ;Samvatsar, JJ.

Appellant : Nanbu

Respondent : The State

Judgement :

Nevaskar, J.

1. Accused Nanbu was convicted by Sessions Judge, Ratlam (camp Alirajpur) for an offence under Section 302, I, p. Code and sentenced him to transportation for life.
2. This appeal is preferred by the accused against his conviction.
3. The relationship between various persons who are concerned in this case is as described below.
4. Nukati was married¹ to Radu; Radu died. Later she was kept by Damdia as his wife. Deceased Joharu was her son from Radu. He accompanied her at Damdia's house. Damdia had a first wife named Nahali. Through Nahali, Damdia had two sons, accused Nanbu and P. W. Nankya.

5. The case of the prosecution is that Joharu had illicit connection with the wife of accused Nanbu. The latter nursed a grievance against Joharu for this. A day prior to the incident Nanbu had beaten his wife. He then left but returned next morning. While he was thus returning he found Joharu coming back home with some 'Ma-huwa fruits. The accused stopped him and abused him and ran after him. Joharu tried to escape but the accused struck him with an arrow.

Nankya by that time had arrived there and he tried to save him but before this could be done the arrow had been shot. Nukati, mother of the deceased, too had come out and seen the incident. The arrow pierced through the thigh of the deceased through and through. The femoral artery in his thigh was cut and there was profuse bleeding. The deceased died within an hour. First Information Report was lodged by Damdia in which he mentioned Nanbu as the culprit. The dead body was sent for post mortem examination at the hospital at Alirajpur where it was examined by Dr. Joshi who gave his report indicating the nature of the wound and cause of death as described above.

6. At the trial Damdia and Nankya took up the position that it was Nukati who had stated to them that Nanbu had killed Joharu.

7. The only evidence was that of Nukati who supported the prosecution case about the incident. The accused pleaded 'alibi'. He stated that he had been to Thandla at the house of his wife's brother Kala, on Thursday. He stayed there that day. Later he went to Udegarh Hat and after returning therefrom again stayed at Kala's place. On Saturday Damdia and Balsingh called him. The incident is of Friday.

8. The learned Sessions Judge relied upon the statement of Nukati and disbelieved the evidence of alibi. According to him Nukati had named the accused immediately after the incident as is clear from the First Information Report made by his own father Damdia. He therefore held that it was the accused who shot an arrow which pierced through the thigh of Joharu. The learned Judge further held that the act of shooting an arrow is so dangerous that the offence falls under Section 300, I. P. Code. He therefore convicted him under Section 302, Penal Code.

9. In this appeal it is mainly urged by Mr. Devandas that Nukati ought not to be believed or that at any rate it is unsafe to convict the accused who is his step son on her solitary statement.

10. In my opinion the statement of Nukati is natural and has been rightly believed by the learned Sessions Judge who had the advantage of seeing the witnesses. The statement of Nukati is corroborated by the statement of Damdia and the First Information Report. The place where the deceased was hit was not away from the hut in which Damdia and his wives and sons lived. It was therefore natural that Nukati was there.

There was a cry by Nukati and Damdia. Bhu-rasingh and others were attracted. Nukati tells Damdia that her son Joharu was hit with an arrow by Nanbu. Damdia who had come soon after did not take Nukati's statement to be untrue. He relied upon it and made a First Information Report against his own son.

11. These circumstances and the natural reluctance which would be expected from Nankya and Damdia to involve the accused in a murder charge should in my opinion be sufficient to place reliance upon the statement of Nukati. The plea of the accused that he had been to Thandla at his brother-in-laws house a day before the incident and had been to Udegarh on the date of the incident has been rightly disbelieved.

12. Next question is, is the accused guilty under Section 302, Penal Code?.

13 The learned Sessions Judge says that the act was so dangerous that the act fell under Clause IV of Section 300, Penal Code.

14. In my opinion application of Clause IV to the circumstances of the case is inapt. Shooting an arrow on the lower part of the body cannot constitute an act so imminently dangerous that it must, in all probability cause death or such bodily injury as is likely to cause death. There is nothing established on record apart from the act and its consequence to indicate that the accused intended to cause death or intended to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The cutting of femoral artery was an accident and it is

difficult to attribute intention of the accused to bring about the result.

15. I should prefer to hold that the accused intended to cause bodily injury and that he should be assumed to have knowledge that it is likely to cause death. The arrow struck thigh and not any vital part of body such as chest, stomach, back or head. There was a single arrow shot. The accused therefore ought to be convicted under Section 304, Penal Code, part second.

16. The appeal is therefore partly allowed and the conviction and sentence of the accused under Section 302, Indian Penal Code, is set aside and he is convicted under Section 304, part second I. P. Code and sentenced to four years' rigorous imprisonment.

Samvatsar, J.

17. I agree.

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