

**Narasingha Bisoi Vs. State**

**Narasingha Bisoi Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/533248](http://sooperkanoon.com/533248)

**Court :** Orissa

**Decided On :** Aug-12-1986

**Reported in :** 1986(II)OLR313

**Judge :** G.B. Pattnaik and ;L. Rath, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 8 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 304

**Appeal No. :** Jail Criminal Appeal No. 56 of 1986

**Appellant :** Narasingha Bisoi

**Respondent :** State

**Advocate for Def. :** D.P. Sahoo, Standing Counsel

**Advocate for Pet/Ap. :** Sashi Das, Adv.

**Judgement :**

**G.B. Pattnaik, J.**

1. This is a convict's appeal from jail who has been convicted by the Sessions Judge, Koraput, Under Section 302, Indian Penal Code, and has been sentenced to undergo rigorous imprisonment for life for having committed the murder of one Lokanath Bisoi by means of a knife (M. O. I). After stating the facts, findings of

Court below and contentions of the counsel, His Lordship observed :

8. Coming now to the eye-witnesses P. Ws. 2 and 3, we find that both of them have stated that the accused and the deceased picked up quarrel and all on a sudden the accused stabbed the deceased on his neck by a knife which was identified to be M. O. I whereafter the deceased fell down after covering a distance of 30 cubits. The evidence of the two eye-witnesses is consistent and corroborates each other and nothing has been elicited from their cross-examination to cast any doubt about their testimony. Mr. Das, the learned counsel for the appellant, however, contends that this evidence must be rejected since it runs counter to the medical evidence. In the cross-examination of the doctor, it has been elicited that the injury No. 1 found on the neck of the dead body cannot be caused by stabbing with a knife like M. O. I, though in answer to a question from the Court the doctor had opined that the cut injury found on the dead body can be caused by sharp edge of a knife like M. O. I. According to Mr. Das, since both the eye-witnesses, namely, P. Ws. 2 and 3 categorically stated that the accused stabbed the deceased by the knife and since the doctor is of the opinion that the injury on the neck cannot be caused by stabbing, there is no option left with the Court than to reject the oral testimony of the two eye-witnesses as untrustworthy. In support of the aforesaid contention the learned counsel placed reliance on a decision of the Supreme Court in the case of Purshottam and Anr. v. State of Madhya Pradesh AIR 1980 Supreme Court 1873. The Supreme Court, no doubt in the aforesaid case came to hold :

'In the ordinary course of human events and experience also, it was extremely improbable, if not altogether impossible, that three blows simultaneously given by three different persons from different directions with sharp edged weapons would land with such precision and exactitude so as to cause a single wound of such clean-cut margins and such dimensions and other characteristics as those of the external wound found by Dr. Jain (P. W. 10) on the head of the deceased. The version of P. W. 1 and P. W. 2 with regard to the vital fact was inherently improbable and intrinsically incredible. It could not be accepted in preference to the evidence of the medical expert.'

In our opinion, the ratio of the aforesaid case has absolutely no application to the facts and circumstances of the present case. The oral evidence in this case is to the effect that the accused stabbed on the neck of the deceased with the knife (M.O. I). Even the doctor in answer to the question from the Court also stated that the injury found on the dead body can be caused by sharp edge of a knife like M. O. I. The only thing on which the counsel for the appellant relies is the statement of the doctor in cross examination that the injury in question cannot be caused by stabbing with M. O. I. The matter has not been further clarified thereafter. The nature of injuries as found by the doctor is that the internal jugular vein, carotid artery and superior thyroid artery were found to be cut on the left side. From the injuries itself, here cannot be any doubt that all these injuries are not possible by one thrust. Why the doctor said that the injuries were not possible by stabbing has not been elicited from him, but possibly because he found the injuries to be an incised one.

9. It has been stated in Modi's Medical Jurisprudence and Toxicology that an incised wound is produced by sharp cutting instrument such as a knife, which has a sharp cutting pointed or linear edge and the cutting edge of a knife may be completely or partly sharp and partly blunt and the other edge may be blunt, serrated, scalloped or hollow. While describing a punctured wound, it has been stated by the said author that these are popularly called stabs and are termed penetrating wounds, when passing through the tissues they enter a cavity of the, body, and these wounds are produced by a long piercing or stabbing instrument such as a pin, needle, knife, scissors, bayonet, spear, dagger, pickaxe, arrow etc. and further point of the instrument may be sharp or blunt. Thus from the nature of injury in the present case, it cannot be said that the same is not possible by a stabbing by the knife (M. O. I), It is true, that the prosecution should have done well to get some clarification from the doctor, but in view of what has been extracted from Modi's book and from the ordinary course of human experience, we cannot accept the evidence of the doctor that the injury in question could not have been caused by a stabbing by the knife (M O. I) particularly when the oral evidence of the two eye-witnesses is consistent and trustworthy. In fact the learned Sessions Judge, has discussed this aspect of the case in paragraph 10 of his judgment and accepted the oral testimony of the two witnesses. It is too well-

settled that where the evidence of the eye-witness is found to be entirely trustworthy then even if it runs contrary to the medical evidence, the same can be preferred to the medical evidence. As we have discussed earlier, in the present case the oral evidence and the medical evidence are reconcilable particularly in view of the discussions, we have extracted from Modi's Medical Jurisprudence. Even alternatively the evidence of P. Ws. 2 and 3 must be accepted even if it is held that the medical evidence runs contrary to the same. On the basis of the aforesaid two eye-witnesses, we must hold that the accused stabbed the deceased on the neck by M O. I as a result of which the deceased died. We are fortified by the decision of the Supreme Court in Solanki's case and Punjab Singh's case.

10. As has been held by the Supreme Court in the case of Solanki Chimanbhai Ukabhai v. State of Gujarat AIR 1963 S.C. 484, the value of medical evidence is only corroborative. It proves that the injuries could have been caused in the manner alleged and nothing more. The use which the defence can make of the medical evidence is to prove that the injuries could not possibly have been caused in the manner alleged and thereby discredit the eye-witnesses. Unless, however, the medical evidence in its turn goes so far that it completely rules out all possibilities whatsoever of injuries taking place in the manner alleged by eye-witnesses, the testimony of the eye-witnesses cannot be thrown out on the ground of alleged inconsistency between it and the medical evidence. Somewhat similar view has been expressed by the Supreme Court in the case of Punjab Singh v. State of Hariyana, AIR 1984 Supreme Court 1233. It has been held in the aforesaid case that if the direct evidence is satisfactory and reliable the same cannot be rejected on hypothetical medical evidence.

11. So far as the extrajudicial confession is concerned, the same has been spoken by P. Ws. 4 and 5. P. Ws. 4 and 5 belong to different villages than the village of the accused. From their evidence, it appears that some people went and called them to the village of the accused where the accused confessed before them that he had killed the deceased. There is no reason as to why these two witnesses will be called to the place of occurrence just to be witnesses to be extrajudicial confession. Neither they are in any way related to the accused nor there is any

reason as to why the accused would choose such people to make the extrajudicial confession, It is too well-known that the extrajudicial confession in order to be relied upon must be clear and cogent, true and trustworthy and it must be found to have been voluntarily made, Further the exact words confessed by the accused must be reproduced. All these pre-conditions appear to be absent in the present case, if we test the evidence of P. Ws 4 and 5. The evidence of these two witnesses does not inspire any confidence and we are not prepared to accept the so-called extrajudicial confession alleged to have been made by the accused before them. Accordingly the extrajudicial confession must be kept out of consideration,

12. So far as the confessional statement (Ext. 14) is concerned, we have ourselves gone through the same and in our view, it does not amount to a confession. Even the learned Sessions Judge has come to that conclusion and yet illegally has held that it lends corroboration to the case of the prosecution. Since it cannot be held to be confession the question of the same lending corroboration to the prosecution case does not arise. The next piece of incriminating evidence is the recovery of M. O. I on being led by the accused while in custody which on chemical examination and serological test was found to contain human blood as well as the wearing apparel of the accused (M. O. II) on chemical examination and serological test was also found to be stained with human blood. The I. O. (P. W 8) in his evidence has stated that after the accused was arrested when interrogated, he gave information that he had kept the knife used in his house, and thereafter he went to his house and brought out the knife which was seized under seizure list (Ext. 12) This fact has also been spoken to by P. W 4. No doubt, there is no statement made by the accused while in custody so as to be admissible Under Section 27 of the Evidence Act. But the fact that the accused led the police to his house and brought out the knife (M. O. I ) is admissible as a piece of conduct Under Section 8 of the Evidence Act. The said M. O. I on chemical examination and serological test was found to be stained with human blood as would appear from Exts. 15 and 17. It is further established by the prosecution that the cloth of the accused (M. O. II) was seized under seizure list Ext. 13 and the same also found to be stained with human blood as would appear from Exts. 15 and 17. The finding of human blood on M. O. I and M O II as well as the conduct of the

accused in giving recovery of M. O. I are undoubtedly incriminating materials against the accused. In our view the evidence of the two eye-witnesses, P Ws. 2 and 3, recovery of M. O. I by the accused while in custody and M. O. I as well as the wearing apparel of the accused (M. O. II) being found to be stained, with human blood, bring home the charge against the appellant beyond reasonable doubt and it must be held that it is the appellant who stabbed the deceased by means of a knife which resulted the death of the deceased.

13. Mr. Das, the learned counsel for the appellant then urged that even if it is held that it is the accused-appellant who gave the blow by the knife (M. O. I), yet in the circumstances in which the said blow was given would clearly indicate that there was no intention on the part of the accused to kill the deceased nor he had the necessary knowledge that the injuries in question could cause the death and at the most he must be liable Under Section 304, Part II, I. P. C. The F. I. R. version was to the effect that the accused and the deceased after quarrelling with each other, the accused stabbed the deceased. P. W. 2 in her evidence stated :

' The accused Narasingha picked up quarrel with him. I orally intervened not to quarrel. The accused suddenly pushed aside Tobha Bisoi and stabbed Lokanath on his neck by a knife '

PW 3 also stated :

' I came out of my house on hearing quarrel and found the accused and the deceased were having hot-altercation I was dissuading them not to quarrel. They started fighting. The accused who was holding a knife stabbed the deceased on his neck and fled away with the weapon.'

The prosecution evidence no where indicates that the accused had the slightest intention of causing the murder of the deceased. There was no ill-feeling or enmity between the two, the quarrel in question was an unpre-meditated and in the heat of passion the accused gave only one blow. The quarrel in question took place on the spur of the moment. The cause of the quarrel is also not known. In the circumstances, the accused cannot be imputed with the intention to cause the death or the intention to cause that particular injury which was proved fatal and

consequently the appellant cannot be convicted for having committed the murder of the deceased. His conviction for the offence Under Section 302, IPC, and the sentence of imprisonment for life are liable to be set aside. The question then arises as to what offence the appellant can be said to have committed. In a somewhat similar circumstance in the case of Jagtar Singh v. State of Punjab, AIR 1983 S. C. 463, the Supreme Court held :

'...The quarrel was of a trivial nature even in such a trivial quarrel the appellant wielded a weapon like a knife and landed a blow in the chest. In these circumstances, it is a permissible inference that the appellant at least could be imputed with a knowledge that he was likely to cause an injury which was likely to cause death. Therefore, the appellant is shown to have committed an offence Under Section 304, Part II of the IPC...'

Following the aforesaid decision, we would hold in the present case that the appellant committed the offence punishable Under Section 304, Part II, IPC.

14. In the result, therefore, the conviction of the appellant for the offence Under Section 302, IPC, and the appellant is convicted for having committed an offence Under Section 304, Part II of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years.

The Criminal Appeal is accordingly disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**