

**Nagar Het Ram Vs. State**

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**Court :** Punjab and Haryana

**Decided On :** Jan-18-1960

**Reported in :** 1961CriLJ396

**Judge :** J.S. Bedi, J.

**Appellant :** Nagar Het Ram

**Respondent :** State

**Judgement :**

**J.S. Bedi, J.**

1. Nagar appellant, aged about 40 or 42 years, was tried upon a charge under Section 307/34, Indian Penal Code, for attempting to murder Nada son of Bhai Ram on the 20th March, 1959. The learned Additional Sessions Judge of Sangrur found the charge proved against the appellant and consequently convicted him under that section and sentenced him to seven years' rigorous imprisonment, vide his judgment dated the 7th August, 1959. The appellant feels aggrieved and has approached this Court in appeal.

2. The story for the prosecution as given by various P.Ws. briefly runs as under Sardara, a cousin. of Nada P-W. was murdered by Gulab and Jhabar some time before this offence in which case Nagar appellant and Panna absconder appeared as prosecution witnesses as a result of which Gulab and Jhabar were sentenced

to imprisonment for life. On account of that murder the relations of the parties were highly strained.

It is alleged that on the 20th March, 1959 at about 8 p.m. Ballu (P.W. 2), Mst. Sabha Kaur (P.W. 3), Mst. Chandro (P.W. 4), Mst. Maha Kaur (P.W. 5) and Nada, the injured in this case, were coming back to their village from their fields after harvesting gram crop. When they approached near the village, Nagar and Panna came from opposite direction. On arrival Nagar caught hold of Nada by his right hand and Panna fired four shots at him; two out of those only hit the victim. After this the appellant and Panna absconder ran away.

Nada then took to his heels and entered into his house and thus escaped. The P- Ws. mentioned above also did not intervene on account of fear. Report was lodged by Ballu P-W. on the next day at 10 a.m. at Police Station Satnali. The police accordingly came to the village, recorded the statements of the eye-witnesses and sent Nada injured to the civil hospital at Dadri for medical examination. Dr. Jagjit Sethi, Women Assistant Medical Officer, Dadri, examined Nada injured at 10 a.m. on the 22nd March, 1959.

She found two gun-shot wounds on his person. The appellant was arrested on the 13th April, 1959 on his voluntary surrender. Panna accused is still absconding. After due investigation the appellant was sent up for trial as mentioned above. He denied the allegations against him and attributed this case due to his enmity with the eye-witnesses. He, however, did not examine any witness in defence.

3. The learned counsel for the appellant submitted that Ballu (P.W. 2), who lodged the F.I.R., did not support the prosecution case when examined in the Sessions Court and the learned Additional Sessions Judge wrongly transferred his statement which he made in the Court of the Committing Magistrate under Section 288, Criminal Procedure Code. He further submitted that Mst. Sabha Kaur (P.W. 3) was the widow of Nada, the injured in this case, and Mst. Chandro (P.W. 4) was the sister of Mst. Sabha Kaur P.W. above mentioned and her husband Gulab had been sentenced to life imprisonment for the murder of Sardara.

Mst. Maha Kaur' (P.W. 5) was the mother of the deceased. The counsel, submitted that in view of their being highly interested in this case, the evidence of the eye-witnesses should be scrutinized with care. He also pointed out to me that the medical evidence in this case also does not fully support the prosecution. I feel that there is considerable force in the above mentioned arguments. Ballu P. W. was the person who had made the F.I.R., but when examined in the Court of Session stated that Nagar appellant did not participate in this offence.

Objection was raised by the Public Prosecutor, who submitted that the statement of this witness which he made in the Committing Court be transferred to the file of the Sessions Court under Section 288, Criminal Procedure Code. The learned Additional Sessions Judge consequently ordered that the statement of this witness should be so transferred, but he gave no reasons whatsoever for doing the same. It is well settled law that unless the Sessions Judge comes to the conclusion that a witness has gone back from the statement which he had made in the Committing Court and that he had done so intentionally, such an order of transfer would be entirely unjustified.

The learned Additional Sessions Judge has given no reasons whatsoever for allowing that prayer of the Public Prosecutor and only satisfied himself by saying that the statement of the witness be transferred as prayed for by the Public Prosecutor under Section 288 of the Code of Criminal Procedure, and that at the time of arguments it may be gone into as to which statement of the witness was correct and which statement should be considered.

In this connection see *Gunadhar Das v. State* : AIR1952 Cal618 and *Zila Singh v. The State* 1954-56 Pun LR 123 : AIR 1954 Punj 182. Apart from Ballu (P.W. 2), Bharat Singh (P.W. 6) stated that on the day of this occurrence at about 9 p.m. Ballu P.W. came to him and told him that Nada had been shot at by Panna, while he was returning from his fields, his mother also came to him shortly after. He (P.W. 6) along with Raj Rup Lambardar (P.W. 8) and Dharmala Chowkidar (P.W. 7) went to the house of Nada, who was lying injured, and made enquiries from him.

Nada told them that he had been fired at by Panna while returning from his fields. In other words, according to this witness, neither Ballu P.W. nor Nada or his mother told them at that time that Nagar appellant was also one of the assailants. No prayer was made by the Public Prosecutor to get this witness declared as hostile. There is nothing on the record to show that Bharat Singh (P.W. 6) was, in any way, connected with any party. I, therefore, do not see why his statement should have been discarded by the learned Additional Sessions Judge.

Apart from the above arguments, we find that the circumstances in this case also do not connect Nagar appellant with this offence. It is alleged that Panna fired at Nada as mentioned above. If that is so, I do not see any reason why Nagar appellant should have come forward and caught hold of Nada. When a fire-arm is used in offences, like the present, it is hardly ever that the companion of the person who is armed with a fire-arm goes and catches the victim, evidently for the reason that he is afraid of being hit by the shot if fired. Admittedly the parties are at daggers drawn. Moreover, the doctor is of the view that the two shots were fired from the front and not from the back as alleged by the eye-witnesses in this case. It is not uncommon for the witnesses to rope in as many of their enemies as possible in a case of this type.

4. For the reasons given above, I feel that the case against Nagar appellant is not conclusively proved. I, therefore, give him the benefit of the doubt and acquit him.

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