

Nasir Ahmed Vs. the State

Nasir Ahmed Vs. the State

SooperKanoon Citation : sooperkanoon.com/685070

Court : Delhi

Decided On : Nov-11-1983

Reported in : 25(1984)DLT310

Judge : R.N. Aggarwal and; Malik Sharief-Ud-Din, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Arms Act, 1959](#) - Sections 27

Appeal No. : Criminal Appeal No. 113 of 1981

Appellant : Nasir Ahmed

Respondent : The State

Advocate for Pet/Ap. : B.G. Singh and; D.R. Sethi, Advs

Judgement :

Aggarwal, J.

(1) The appellant Naseer Ahmad along with his father Mohd. Umar was tried on the charge of murdering his step-brother Naseem Ahmad. Mr. G.S. Dakha, Additional Sessions Judge, found Naseer Ahmad guilty of the offence charged with and has sentenced him to imprisonment for life. Naseer Ahmad was also separately charged under section 27 of the Arms Act and was found guilty of the said offence and sentenced to rigorous imprisonment for one year. The sentence

awarded under both the offences were ordered to run concurrently. Mohd. Umar was acquitted. Against his conviction and sentence Naseer Ahmad has come in appeal.

(2) The prosecution case is this. Mohd. Umar with his family including the wife Shakeela (P.W. 1) and the sons Naseer Ahmad appellant and the deceased Naseem Ahmad resided at 313, Subzimandi Malkaganj, Road, Delhi. Shakeela is the second wife of Mohd. Umar. Naseer Ahmed is the son from Shakeela. Naseem Ahmad was the son of Mohd. Umar from his first wife. Shakeela has a daughter named Parveen. Parveen it seems, had complained to the mother that Naseem Ahmad had an evil eye on her. She in turn had brought this to the notice of her husband Mohd. Umar. Mohd. Umar told Naseem Ahmad not sleep on the roof.

(3) On 20th April 1980 at about 9. p.m. Naseem Ahmad picked up a cot and wanted to go to the roof for sleeping. Naseer Ahmad objected to Naseem Ahmad going to the roof. On that there was some quarrel between the two. The prosecution case is that Naseem took out a knife and gave a blow with it to Naseem took out a knife and gave a blow with it to Naseer Ahmad. Shakeela intervened but Naseem pushed her away, in the result she fell down and broke the bangles worn by her in her hands. A neighbour named Ishrat attempted to catch Naseem but Naseem also caused some injuries to Ishrat. Shakeela had before the police stated that Mohd. Umar had come and snatched the knife from Naseem Ahmad and given an injury on the neck of Naseem. (P.W. Shakeela in court did not support this part of her statement made before the police. She was declared hostile and was cross-examined. Shakeela denied to have made the said statement before the police).

(4) MOHD. Umar took Naseem to the Hindu Rao hospital where he was examined by Dr. Jayanti Gupta (P.W. 14). On an examination of Naseem Ahmad the doctor found the following injuries on his body :

(1) Incised wound lower part left side of neck 4 cm l cm.

(2) Incised wound 2 cm X 2 cm X 2 cm deep 2 cm medial and slightly below the left nipple. Naseem Ahmad succumbed to the injuries at 9.45.

(5) Dr. Bharat Singh performed autopsy on the dead body of Naseem and he found the following injuries on the body of Naseem Ahmad :-

(1) Small scattered abrasion on the left side of face brown in colour. (2) One incised stab wound over the left side front of chest just below the mid-point of left clavicle placed obliquely horizontal, size 1' X 1/4' tail end was present on the left side. (3) One incised stab wound on the left side front of chest placed 1" medial to the left nipple in oblique position with tail end of the left side, size of the wound was 1' X 1/4' X (4) One incised wound over the web of thumb and index finger of left hand through and through size was 1' long. (5) One incised wound over the palmar surface of left index, middle and ring finger in one line skin deep. (6) Cut open mark for drip on the front of right elbow (operational). (7) One incised stab wound on the left gulateal fold, placed obliquely size 1 1/4' X 1/4' X 1 1/2' Trailing was downward. No major blood vessel was cut in the track of the wound.

(6) The doctor gave the opinion that injuries 2 and 3 were sufficient to cause death in the ordinary course of nature. The doctor further opined that injuries 4 and 5 could be caused with the knives P-1 and P-2 but injuries 2, 3 and 7 were not possible by the weapons shown to him.

(7) The constable on duty at the hospital informed the police station about the admission of Naseem Ahmad in the hospital in an injured condition. The investigation of the case was entrusted to Mohinder Singh, Sub-Inspector (P.W. 17) Public Witness . 17 reached the spot and took into possession one dagger, two scabbards and some broken pieces of bangles from the spot of crime. He also picked up blood from the said spot. Naseer Ahmad was arrested and he led to the recovery of a dagger concealed under a stone from Kamla Nehru Park. Naseer Ahmad further got one shirt recovered from the first floor of the house. The shirt was found to have stains of blood.

(8) DR.S.L.DEWAN(P.W.LL) examined Ishrat Hussain on 20th April at 10.15 p.m. and found the following injuries on his person :

- (1) One incised wound over extensor surface of fore arm in the middle. size 4' XI'.
(2) Incised wound over the flexor surface of left forearm. Muscle coming out of wound, size 1 1/2' 1/2'.

(9) On the same night (21st April) at about 2.15 a.m. Public Witness . 14 examined Naseer Ahmad and found the following injury on his person :

(1) Incised wound 1 1/2" X 1/4' over the back of lower chest left side above the lower rib.

(10) Naseer Ahmad in his statement at the trial admitted that Naseem Ahmad had an evil eye on his sister and Parveen had complained to his mother about the evil intentions of Naseem Ahmad and his father Mohd. Umar had asked Naseem not to sleep on the roof. He further admitted that on 20th April 1980 Naseem wanted to take the cot to the roof and he had told Naseem not to do so, and on that there was a quarrel. He further stated that when he asked Naseem not to take the cot to the roof he took out a knife and attacked him, that his mother intervened but Naseem also pushed her and she fell on the ground and broke her bangles. He further stated that Ishrat had also received injuries in the said quarrel at the hands of Naseem. Naseer Ahmad further gave the following version of the occurrence :

'It is correct. Naseem had injured me on my chest. . My mother intervened, when I raised the alarm. She was thrown on the ground. My neighbour Ishrat saw Naseem hitting me and my mother. He also came to my rescue. Naseem injured him and inflicted knife injuries on his person. The sympathisers of Ishrat came and tried to over-power him but Naseem threatened them and started brandishing his knife and gave abuses. Then those persons inflicted injuries on Naseem Ahmad and over-powered him. Later on. my father came, he was removed by him along with Ishrat and myself to hospital where on examination Naseem was declared dead.'

(11) The accused further stated that if Ishrat and other people had not intervened Naseem would have killed him. Naseer Ahmad claimed that he is innocent.

(12) The undisputed prosecution case seems to be that the deceased Naseem had an evil eyes on his step sister Parveen. Parveen had probably complained to her mother Shakeela about the evil intention of Naseem Ahmad towards her. Shakeela had further brought this fact to the notice of Mohd. Umar. Mohd. Umar had told Naseem not to sleep on the roof. The prosecution case also admits of no doubt that on 20th April 1980 at about 9. p.m. Naseem wanted to go to the roof which was objected to by Naseer Ahmad and on that a quarrel had taken place in which Naseer Ahmad, Ishrat and Naseem had received injuries.

(13) We have carefully gone through the record and we find no evidence to connect the accused with the crime. Mr. Sethi, learned counsel for the state fairly stated that he is unable to support the conviction of the appellant. It is the case of the prosecution that the appellant Naseer had objected to Naseem going to the roof and Naseem had taken out a knife and given a blow with it to Naseer and thereafter to Ishrat Hussain. There is no evidence that Naseer had given the knife blows to the deceased Naseem. Even if we were to assume that Naseer had given the knife blows to Naseem he had clearly acted in defense of his person. The recovery of the blood stained shirt at the instance of Naseer is of no help to the prosecution. The blood group on the shirt tallies with the blood group of Naseer had received an incised injury and the blood must have fallen on his shirt from that injury. The recovery of the two daggers is also of no help to the prosecution.

(14) Beyond the fact that the dagger. Ex. P. 2 was recovered at the instance of Naseer Ahmad we have no evidence that earlier to the alleged occurrence he was in possession of the said dagger. The possibility that Mohd. Umar was in possession of dagger Ex. P. 2 cannot be ruled out.

(15) For the reasons stated we allow the appeal, set aside the convictions and sentences of the appellant on both the charges and acquit him. The appellant is already on bail and he need not surrender to his bail bond. The bail bonds are cancelled.