

Naroo Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-14-2004

Reported in : 2004CriLJ2354; RLW2004(2)Raj1274; 2004(2)WLC19

Judge : N.N. Mathur and; Sunil Kumar Garg, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302 and 304

Appeal No. : D.B. Criminal Jail Appeal No. 427 of 1999

Appellant : Naroo

Respondent : State of Rajasthan

Advocate for Def. : K.R. Vishnoi, Public Prosecutor

Advocate for Pet/Ap. : Rakesh Arora, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been filed by the accused appellant from jail aggrieved from the judgment and order dated 9.6.1999 passed by the learned Sessions Judge Udaipur in Sessions Case No. 118/99 by which he while acquitting the accused appellant for the offence under Section 148 IPC, convicted him for the offence

under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/-, in default of payment to fine, to further undergo one year SI.

2. By the same judgment and order, the learned Sessions Judge acquitted four accused persons, namely, Prabhu, Deva, Puna and Bhagga of all the charges framed against them.

3. It may be stated here that this Court vide order dated 24.9.2001 appointed Shri Rakesh Arora, Advocate as Amicus Curiae to assist the Court and he has argued the case on behalf of the accused appellant.

4. It arises in the following circumstances: -

On 20.12.1998 at about 11.00 PM, PW12 Kuber lodged an oral report (Ex.P/8) before PW8 Nathulal, SHO, Police Station Jhadol District Udaipur stating that on that day in the evening at about 8.00 PM, he and his father Lakma (hereinafter referred to as the deceased) was sitting in the house and at that time, the accused appellant, who hailed from the same village, alongwith other accused persons, namely, Deva, Puna, Bhagga and Prabhu came there and at that time, the accused appellant was armed with sword and the other accused persons were having laths in their hands. It was further stated in the report Ex.P/8 by PW12 Kuber that the accused appellant pierced sword into the stomach of the deceased, as a result of which, his intestines came out and the accused appellant also gave second blow on the back of the deceased from back side of the sword.

The said report was reduced into writing by PW8 Nathulal in the shape of Ex.P/8 and regular FIR Ex.P/9 was chalked out and investigation was started.

During investigation, deceased was got medically examined on the same day i.e. on 20.12.1998 by PW3 Dr. Satish Chandra, who was Medical Officer in the Health Centre, Jhadol and his injury report is Ex.P/3, which reveals that the deceased received one incised wound on left side lower half of abdomen and the deceased was referred for further treatment to Medical College, Udaipur.

Since the injury caused to the deceased was severe one, therefore, he was got operated on 21.12.1998 by PW13 Dr. R.K. Paliwal and the operation notes are

Ex.P/22.

On 21.12.1998 at about 6.20 PM, deceased died and the post mortem of the dead body of the deceased was got conducted by PW14 Dr. Ravi Singhvi on 22.12.1998 and the post mortem report is Ex.P/23.

During investigation, the accused appellant was got arrested on 23.12.1998 through arrest memo Ex.P/11 and on the information of the accused appellant Ex.P/16, sword was got recovered and seized by PW8 Nathulal through fard Ex.P/5 in presence of Bhanwarlal and PW4 Manna Lal.

After usual investigation, police submitted challan against the accused appellant and four accused persons, namely, Bhagga, Prabhu, Deva and Puna in the Court of Magistrate and from where the case was committed to the Court of Session.

On 17.3.1999, the learned Sessions Judge, Udaipur framed charges for the offence under Sections 148 and 302 IPC against the accused appellant and for the offence under Sections 148 and 302/149 IPC against rest four accused persons. The charges were read over and explained to the accused persons, who pleaded not guilty and claimed trial.

During trial, the prosecution got examined as many as 14 witnesses and exhibited several documents. Thereafter, the statements of the accused appellant and other four accused persons under Section 313 Cr.P.C. were recorded. In defence, two witnesses were produced by the accused persons.

After conclusion of trial, the learned Sessions Judge, Udaipur through impugned judgment and order dated 9.6.1999 acquitted the four accused persons, namely, Bhagga, Prabhu, Deva and Puna of all the charges framed against them and also acquitted the accused appellant for the offence under Section 148 IPC, but convicted him for the offence under Section 302 IPC and sentenced him in the manner as indicated above holding inter-alia that the prosecution has proved its case beyond all reasonable doubts against the accused appellant for the offence under Section 302 IPC.

Aggrieved from the said judgment and order dated 9.6.1999 passed by the learned Sessions Judge, Udaipur, this appeal has been filed by the accused appellant from jail.

5. In this appeal, the following submissions have been made by the learned Amicus Curiae for the accused appellant:-

(i) That the so-called eye witnesses PW4 Manna and PW12 Kuber are sons of the deceased and PW5 Hudli is the wife of the deceased and therefore, they are close relatives of the deceased and interested witnesses and no independent witness has been produced and thus, their statements are tainted one and no reliance should have been placed by the learned trial Judge on their testimony.

(ii) That in this case, as per the post mortem report Ex.P/23, deceased received abrasions also apart from incised wounds and when four other accused persons have been acquitted by the learned trial Judge, a doubt has been created as to who caused other injuries on the body of the deceased and thus, medical evidence does not corroborate the statements of the eye witnesses. Hence, benefit of doubt should be given to the accused appellant.

(iii) That even the injury on the abdomen of the deceased was not sufficient in the ordinary course of nature to cause death and therefore, the act of the accused appellant would be covered by Clause (4) of Section 300 IPC punishable under Section 304 Part-II IPC.

(iv) That the recovery of sword in question has not been proved by independent witnesses as out of two motbirs, one Bhanwarlal has not been produced and other motbir witness Mannalal, PW4 is the son of the deceased and therefore, recovery in this case is doubtful.

Thus, it was prayed that the Findings of conviction recorded against the accused appellant be set aside and he be acquitted of the charge for the offence under Section 302 IPC.

6. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Sessions Judge, Udaipur.

7. We have heard the learned counsel appearing for the accused appellant and the learned Public Prosecutor and gone through the record of the case.

8. Before proceeding further, salient features of the FIR Ex.P/9 may be enumerated here:-

(i) That as per FIR Ex.P/9, the accused appellant was having sword in his hand and he gave one sword blow on the stomach of the deceased and he also gave second blow on the back of the deceased, but from back side of sword.

(ii) That as a result of the sword blow given by the accused appellant on the stomach of the deceased, his intestines came out.

(iii) That FIR Ex.P/9 was lodged by PW12 Kuber, who is son of the deceased, just after the occurrence and as per that FIR, the alleged incident took place in the house of the deceased.

9. Before proceeding further, the medical evidence has to be seen which is found in the statements of PW3 Dr. Satish Chandra, PW13 Dr. R.K. Paliwal and PW14 Dr. Ravi Singhvi.

10. PW3 Dr. Satish Chandra Shrimali in his statement recorded in Court has stated that on 20.12.1998 he was Medical Officer in the Public Health Centre, Jhadol and on that day, he medically examined deceased and found the following injury on his person:-

'Incised wound with large intestine coming out through wound of the size 6 cm x 1 cm x abdominal cavity on left side lower half of abdomen just above Lt. Inguinal ligament.'

He has further, stated that the injury that the injury was caused by sharp edged weapon and for expert opinion and further treatment, he has referred the case to Medical Jurist at Medical College, Udaipur. He has proved the injury report Ex.P/3.

11. Thus, from the statement of PW3 Dr. Satish Chandra, it is clear that the deceased received one incised wound on his abdomen by sharp edged weapon and as a result of which, his intestines came out and it is also clear that the

deceased was referred to Medical Jurist for expert opinion and further treatment at Medical College, Udaipur.

12. From the statement of PW14 Dr. R.K. Paliwal, who was at the relevant time Asstt. Professor (Surgery), General Hospital, Udaipur and who has proved the operation notes Ex.P/22, it is clear that the deceased was got operated on 21.12.1998.

13. It may be stated here that on 21.12.1998 at about 6.20 PM, the deceased died and the post mortem of the dead body of the deceased was got conducted by PW14 Dr. Ravi Singhvi, who states in his statement recorded in Court that on 22.12.1998 he was Medical Jurist, General Hospital, Udaipur and on that day, he conducted the post mortem of the dead body of the deceased and found the following injuries on his body:-

- (1) Stitched wound 18cm long on midline of abdomen extending upto pelvic area.
- (2) Stitched wound 'L' shaped 9cm long on left inguinal region.
- (3) Incised wound 1 cm long x 1/2 cm x cavity deep on right inguinal region.
- (4) Stitched lacerated wound 1cm on medial side of left ankle.
- (5) Abrasion 1x1/2cm on forehead.
- (6) Abrasion 2x1/2cm on left cheek.
- (7) Abrasion 5x1/2cm on right shoulder.
- (8) Abrasion 5x2cm on Right scapular region.
- (9) Abrasion 1x1 cm on right buttock.
- (10) Abrasion 1x1/2cm on right buttock.
- (11) Three abrasions ranging from size 1/4x1/4cm to 1/2 x 1/2 cm on right side of umbilical area.

He has opined the cause of death of the deceased in the following manner:-

'Cause of death is shock as a result of injuries to abdomen and viscera as mentioned above which are antemortem in nature and sufficient to cause death in ordinary course of nature.'

He has proved the post mortem report Ex.P/23.

14. Thus, it may be stated here that no doubt PW3 Dr. Satish Chandra, who medically examined deceased and who has proved injury report Ex.P/3, has found only one incised wound in the abdomen of the deceased, while PW14 Dr. Ravi Singhvi found 3 sharp edged injuries on the abdomen of the deceased, in our considered opinion, since these three sharp edged injuries were found by PW14 Dr. Ravi Singhvi at the time of conducting post mortem of the dead body of the deceased, therefore, he had full opportunity to observe minutely and if three sharp edged injuries were found on the abdomen of the deceased, it cannot be said that the statement of PW3 Dr. Satish Chandra, who found one incised wound, is contradicted in any manner.

15. Not only this, PW14 Dr. Ravi Singhvi, who conducted the post mortem of the dead body of the deceased, was medical jurist and expert person in comparison to PW3 Dr. Satish Chandra, who was Medical Officer and therefore, the statement of PW14 Dr. Ravi Singhvi stands on better footing than the statement of PW3 Dr. Satish Chandra.

Furthermore, the correctness of post mortem examination by PW14 Dr. Ravi Singhvi cannot be doubted merely because it did not conform to the noting made in the injury report Ex.P/3 by PW3 Dr. Satish Chandra, who had initially checked up the deceased.

16. No doubt from the statement of PW14 Dr. Ravi Singhvi, it appears that deceased received some simple injuries on his body and what would be the effect of these simple injuries in relation to the statement of eye witnesses, it would be discussed later on, but from the above medical evidence, it is well established:-

(i) That deceased received a very fatal sword blow on his abdomen.

(ii) That as a result of that fatal blow on the stomach of the deceased, his intestines came out.

(iii) That for the said fatal injury on his abdomen, the deceased was got operated, but he died on 21.12.1998 because of that injury.

17. Thus, from the above, it can easily be concluded that the death of the deceased was homicidal one.

18. The next question for consideration is whether the fatal blow on the abdomen of the deceased was caused by the accused appellant or not and for that, the prosecution has produced three eye witnesses PW4 Manna, PW5 Hudli and PW12 Kuber.

19. PW4 Manna is the son of the deceased and he has clearly stated in his statement recorded in Court that the accused appellant came with sword and he pierced sword into the stomach of his father deceased and thereafter, he ran away and intestines came out because of that blow and other accused persons also ran away. In cross-examination, he has frankly, admitted that except the accused appellant, no other accused persons entered his house and they did not cause any injury. That was the reason that prevailed before the learned trial Judge and that is why, the learned trial Judge acquitted rest accused persons.

20. Similar is the statement of PW5 Hudli, who is wife of the deceased.

21. PW12 Kuber is the son of the deceased and he has lodged the report Ex.P/8 just after the occurrence. He has clearly stated that the accused appellant gave sword blow on the stomach of his father deceased.

22. Thus, from the statements of the eye witnesses PW4 Manna, PW5 Hudli and PW12 Kuber, it is very much clear that the accused appellant caused fatal sword blow on the stomach of the deceased and their statements are corroborated by medical evidence.

Point No. 1

23. No doubt the eye witnesses PW4 Manna and PW12 Kuber are the sons of the deceased and PW5 Hudli is the wife of the deceased and therefore, they are close relatives of the deceased, but looking to their statements, their testimony cannot be rejected merely on the ground that they are relatives of the deceased.

24. It may be stated here that a close relative, who is a very natural witness in the circumstances of a case, cannot be regarded as an 'interested witness'. No doubt for accepting the evidence of a relative witness it should be subjected to careful and close scrutiny and interested witnesses are not necessarily false witnesses. Simply because an eye witness happens to be relative of the deceased, his evidence cannot be discarded if his testimony is otherwise acceptable.

25. In the present case, the statements of the eye witnesses PW4 Manna, PW5 Hudli and PW12 Kuber on the point that the accused appellant gave sword blow on the stomach of the deceased appear to be straight forward, reliable and trustworthy and fully corroborated by medical evidence. It cannot reasonably be inferred or presumed that they were telling lie or falsely implicating the accused appellant.

26. Furthermore, the eye witnesses PW4 Manna and PW12 Kuber being sons of the deceased and PW5 Hudli being wife of the deceased are natural witnesses and their presence on the scene, because of their relationship with deceased, appears to be reasonable one and doubt cannot be created that they were falsely implicating the accused appellant. Since the report Ex.P/8 was lodged by PW12 Kuber just after the occurrence, therefore, there is no possibility that he has manipulated the story.

27 Thus, if the learned trial Judge placing reliance on the statements of eye witnesses PW4 Manna, PW5 Hudli and PW12 Kuber has come to the conclusion that the accused appellant has caused fatal sword blow on the stomach of the deceased, he has committed no illegality in doing so. Simply because PW4 Manna, PW5 Hudli and PW12 Kuber happen to be relatives of the deceased, their evidence cannot be discarded, as their testimony is worth reliable and fully corroborated by medical evidence.

28. Hence, the argument of the learned counsel for the accused appellant that since PW4 Manna, PW5 Hudli and PW12 Kuber are relatives of the deceased therefore, they are interested witnesses and thus, their statements should have not been believed by the learned trial Judge, stands rejected because of the reasons mentioned above.

Point No. 2

29. So far as the point that deceased also received some abrasions apart from incised wounds, but the eye witnesses do not say that these injuries were caused by other accused persons is concerned, in our considered opinion, in this case, four accused persons have been acquitted by the learned trial Judge and if some abrasions, which were simple in nature, were detected by PW14 Dr. Ravi Singhvi at the time of conducting post mortem of the dead body of the deceased, it would not create doubt on the injury on abdomen, which was caused by the accused appellant by sword, as the death of the deceased was the direct result of the abdomen injury.

Therefore, the simple abrasions found on the body of the deceased would not affect the case of the prosecution as well as the testimony of the eye witnesses at all on the point that fatal injury on abdomen of the deceased was caused by the accused appellant with sword. Hence, it cannot be said that medical evidence does not corroborate the statements of the eye witnesses on the point that the accused appellant caused sword blow on the abdomen of the deceased.

Point No. 3

30. So far as the point that the injury on the abdomen of the deceased was not sufficient in the ordinary course of nature to cause death and therefore, the act of the accused appellant would be covered by Clause IV of Section 300 IPC punishable under Section 304 Part-II IPC is concerned, it may be stated here that the sword is a very dangerous and fatal weapon and if an accused pierces a sword into the stomach of a person, as a result of which if intestines come out and later on that person dies, in such a situation, it can reasonably be inferred or gathered that the accused had intention to murder that person.

Therefore, the act of the accused appellant piercing sword into the abdomen of the deceased, as a result of which his intestines came out and later on died, reflects that he had the intention to cause murder of the deceased and he did so. Therefore, the act of the accused appellant would be clearly covered by Clause 3 of Section 300 IPC punishable under Section 302 IPC and it cannot be said that the act of the accused appellant would be covered by Clause 4 of Section 300 IPC punishable under Section 304 Part-II IPC. Thus, the accused appellant was rightly convicted for the offence under Section 302 IPC as he has committed the offence of culpable homicide amounting to murder punishable under Section 302 IPC.

On Point No. 4

31. So far as the point of recovery is concerned, no doubt in this case independent witness has not been produced to prove the recovery, but when there is direct evidence, the evidence of recovery is of little importance and thus, if the evidence of recovery of sword at the instance of the accused appellant is rejected, it would not affect the testimony Of the eye witnesses.

32. For the reasons stated above, all the contentions raised by the learned counsel for the accused appellant stand rejected and no interference is called for with the findings of conviction recorded by the learned trial Judge against the accused appellant for the offence under Section 302 IPC as they are based on correct appreciation of evidence and it cannot be said that they are perverse or based on no material or evidence and this appeal deserves to be dismissed.

Accordingly, this appeal filed by the accused appellant from jail is dismissed after confirming the judgment and order dated 9.6.1999 passed by the learned Sessions Judge, Udaipur.

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