

**Phoola Ram Vs. State of Rajasthan**

**Phoola Ram Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/757838](http://sooperkanoon.com/757838)

**Court :** Rajasthan

**Decided On :** Jan-25-2006

**Reported in :** RLW2006(3)Raj1839; 2006(2)WLC456

**Judge :** Shiv Kumar Sharma and; Dalip Singh, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 300, 302 and 324; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** D.B. Criminal Bail Appeal No. 1014 of 2001

**Appellant :** Phoola Ram

**Respondent :** State of Rajasthan

**Advocate for Def. :** R.P. Kuldeep, Public Prosecutor

**Advocate for Pet/Ap. :** Jagesh Joshi, Amicus Curiae

**Disposition :** Appeal dismissed

**Judgement :**

**Dalip Singh, J.**

1. This appeal has been filed by the accused appellant who has been convicted for the offence under Section 302 IPC for murder of Smt. Bhanwari Devi and also for the murder of Banwari Lal to imprisonment for life and a fine of Rs. 1,000/- and; in

default of payment of fine to further undergo six months rigorous imprisonment. He has also been convicted for the offence under Section 324\* IPC in respect of the injury caused to Nawal Kishore for one year's rigorous imprisonment and a fine of Rs. 200/- and in default of payment of fine to further undergo three months rigorous imprisonment. Both the sentences were ordered to run concurrently.

2. The brief facts giving rise to this appeal are that an FIR (Exhibit P-7) was lodged at Police Station Sadar at Jhunjhunu by one Balu Ram PW-5 stating therein that he along with his son Pradeep Kumar PW-6 were standing in front of their house at 11:00 in the morning when Phoola Ram, the accused appellant who is elder brother of Gopal whose shed which was used for tying the cattle, had got burnt down on the previous night on 17.1.1999, came with a gandasi in his hand. The accused appellant suspected that Banaram and his family had set the animal shed on fire. On seeing the deceased Bhanwari Devi wife of Banwari alias Banaram and her son Nawal Kishore (PW-4), the accused appellant struck Bhanwari Devi, deceased, with Gandasi on her head as a result of the aforesaid blow, she fell down and the accused appellant inflicted 3-4 more blows on her head. It was further stated in the FIR that accused appellant also inflicted a blow with gandasi on the left arm of PW-4 Nawal Kishore son of Banaram. Having inflicted the said blows on the person of Bhanwari Devi and Nawal Kishore, the accused appellant inquired as to where Banwari was and it is stated that the accused appellant was saying that he will take the life of Banwari Lal. So saying, as stated in the FIR, the accused appellant went towards the field of Khang Singh (PW-3). Khang Singh @ Khangaram (PW-3) and Banwari Lal deceased were sitting near the well of Khangaram smoking a chilam and on reaching there Phoolaram, the accused appellant, inflicted a blow with gandasi on the head of Banwari, the deceased, who fell down. It is then stated by PW-5 Baluram that he along with PW-3 Pradeep reach the spot and they along with Khang Singh wanted to apprehend the accused appellant but accused appellant ran away from there taking the gandasi with him. Thereafter, Baluram along with Pradeep and Khang Singh took the three injured persons Smt. Bhanwari Devi, Banwari and Nawal Kishore to the Government Hospital, Jhunjhunu. Smt. Bhanwari Devi and Banwari died as a result of the injuries sustained by them. PW-4 Nawal Kishore was medically examined and his Injury Report is Exhibit P-I. As per the Injury Report, PW-4 Nawal Kishore received

one incised wound which was simple in nature caused by sharp edged weapon.

3. The post mortem of deceased Bhanwari Devi was carried out and the Post Mortem Report of Bhanwari Devi is Exhibit P-2 dated 19.1.1999. As per the Post Mortem Report, deceased Bhanwari Devi received four injuries which were caused by sharp edged weapon and all the injuries were ante mortem in nature and sufficient to cause death in ordinary course.

4. The post mortem of deceased Banwari was also carried out and the Post Mortem Report of Banwari is Exhibit P-3. He received one injury caused by sharp edged weapon on the right side of parieto-occipital region measuring 13 cm x 1/2 cm x about 4 cm deep in brain tissue. As a result of the aforesaid injury, the deceased Banwari had suffered fracture of right parietal and occipital bone and brain matter was coming out. In the opinion of the Doctor, the injuries were ante mortem in nature and sufficient to cause death in ordinary course and caused on the vital parts of the body.

5. The police investigated the case and filed challan and the accused appellant was charged for the offence under Section 302 and 324 IPC. The prosecution examined 16 witness and the statement of accused appellant under Section 313 Cr.P.C. was recorded.

6. After the conclusion of trial, the learned Additional Sessions Judge (Fast Track), Jhunjhunu by the judgment dated 5.11.2001 found the accused appellant guilty of the offence under Section 302 IPC for murders of Smt. Bhanwari Devi and Banwari and convicted the appellant for life imprisonment with fine of Rs. 1,000/-. Learned Trial Court also found the accused appellant guilty for the offence under Section 324 IPC for the injuries caused by sharp edged weapon to Nawal Kishore (P.W-4), son of Smt. Bhanwari Devi.

7. The learned Trial Court carefully examined the evidence more particularly the evidence given by PW-5 Balu Ram, PW-6 Pradeep Kumar and PW-3 Khangaram @ Khang Singh as well as of the injured PW-4 Nawal Kishore. On the basis of the aforesaid evidence the Trial Court held that appellant had inflicted injuries on the person of deceased Smt. Bhanwari Devi and also on the person of deceased

Banwari and further inflicted injuries to the injured PW-4 Nawal Kishore. As a result of the aforesaid finding based upon the appreciation of evidence, the accused appellant was found guilty and was convicted and sentenced, as mentioned above.

8. Learned Counsel who has been appointed as Amicus Curiae on behalf of the accused appellant has contended that the present one is a case of grave and sudden provocation, inasmuch as, the accused appellant was labouring under the impression of the deceased Banaram alias Banwari and his family having set on fire the shed in which the animals belonging to him and his brother Gopal were tied on the previous night and as a result on the next day i.e., on 18.1.1999 when the accused came to the village and learnt about the aforesaid incident in which the deceased had set fire to the shed belonging to the family of the accused, he immediately took the gandasi and wanted to take revenge.

9. So far as aforesaid submission is concerned, in the present case, there is no foundation for the same. In the first instance, the defence has not led any evidence. In the statement under Section 313 Cr.P.C. the accused appellant as stated as under:

esjs ?kj ij vkdj vkx yxk nh ftlesa esjs vkb8 i'kq ty x;s A esjs ?kj ij gfFk;kjksa ls ySal gksdj ekjus vk;s Fks A esjklkeku tyk fn;k A mUgha ds gfFk;kjksa ls mUgha pksV vk;h Fkh A cUukjke] eknkjke]ckyw] ckyw dh cgw o cuokjh dh cgw ,d jes'k] iznhi] cuokjh vk;s Fks ftUgksausesjs ?kj ds vkx Hkh yxk nh A esjs HkkbZ;ksa dh iRuh] esjh ekrk ds lkFk ekjihV dhFkh ge Nqi dj Hkx x;s A

10. A look at the aforesaid statement, which has been appreciated by the Trial Court as well, goes to show that the accused appellant has come forward with an explanation that the deceased along with other persons came armed with weapons and set fire to the shed and received injuries by their own weapons. It has also been stated that family members of the accused appellant also received injuries in the said incident.

11. In the first instance, the above explanation cannot be construed as a plea of exception as provided under Section 300 IPC for the plea of grave and sudden

provocation. The accused has explained that the injuries were received by the deceased not because they were caused by the accused on being provoked as result of the act of the deceased of setting fire to their shed but that the injuries were self inflicted by their own weapons. Thus, the present one from the explanation furnished cannot be said to be a case of grave and sudden provocation.

12. Moreover, in the facts and circumstances of the present case, it has amply been proved that incident in which the shed belonging to the brother of accused appellant got burnt took place on 17.1.1999 whereas the present incident involving the murder of Smt. Bhanwari Devi and Banwari and the injuries caused to Nawal Kishore (PW-4) took place at about 11:00 AM on 18.1.1999. So far as explanation furnished by the accused appellant that in the said incident when the shed belonging to his family was set on fire by the members of family of deceased who came and attacked them as a result of which the family members of the accused appellant sustained injuries is not borne out from the evidence on record. So far as the fact regarding sustaining injuries by the family members of accused appellant is concerned, the same is not proved. There is no evidence to suggest or to prove that any member of the family of the accused appellant was injured in the alleged incident as there is no evidence or injury report in that behalf to show whether any of the members of family were injured and what was the nature of their injuries and how many persons sustained injuries. Moreover, there is no F.I.R. on the part of the accused appellant or from any member of his family pertaining to the alleged incident. Thus, the theory of the deceased having attacked the accused or his family is not proved.

13. Apart from the above, in the instant case the accused attacked the deceased persons with a gandasi, being armed with a sharp edged weapon on the next day at about 11:00 when sufficient time had elapsed between the alleged act of setting fire to the shed on 17.1.1999 and the attack by the accused on the next day i.e., 18.1.1999 at 11:00 AM after arming himself. It has been held by the Hon'ble Supreme Court in the case of K.M. Nanawati v. State of Maharashtra reported in : AIR 1962 SC605 in para 85 as under:

The fatal blow should be clearly traced to the influence of passion arising from that provocation and not after the passion had cooled down by lapse of time, or otherwise giving room and scope for premeditation and calculation.

14. In the light of the above, in the facts and circumstances, when sufficient time had elapsed, the accused armed himself the next day and systematically murdered Banaram and his wife Bhanwart Devi and caused injury to his son after arming himself. It does not give rise to the defence of grave and sudden provocation.

15. In view of the above, we are in agreement with the findings arrived at by the learned Trial Court that the explanation which has been furnished by the accused appellant cannot be believed. On the other hand, the finding of conviction recorded by the learned Trial Court is based upon the prosecution evidence, more particularly, of the eye witnesses PW-3, PW-4, PW-5 and PW-6 and one of these being the injured witnesses PW-4 Nawal Kishore.

16. For these reasons, we find no merit in the appeal and the same stands accordingly dismissed. The conviction and sentence of the appellant under Sections 302 and 324 IPC are confirmed.