

**Jeeva and ors. Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Apr-10-1995

**Reported in :** 1995CriLJ3300; 1995(3)WLC89

**Judge :** V.S. Kokje and; V.G. Palshikar, JJ.

**Acts :** Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

**Appeal No. :** D.B. Cr. A. No. 259 of 87

**Appellant :** Jeeva and ors.

**Respondent :** State of Rajasthan

**Advocate for Def. :** V.R. Mehta, Public Prosecutor

**Advocate for Pet/Ap. :** Sanjay Mathur, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**V.G. Palshikar, J.**

1. These appeal s are directed against the judgment dt. 1 -7-87 passed by the learned Sessions Judge, Dungarpur in sessions case No. 26/ 86 convicting appellant Kana under Sec. 302 I.P.C. and appellants Jeeva and Kaloo under Sec.

302 read with Sec. 34 of the Indian Penal Code and sentenced each of them to imprisonment for life.

2. The story of the prosecution stated in brief is that at about 7.30 in the evening of 24-3-86, the deceased Nathu was going for work with a cycle and a bed, when in the way, he was assaulted by the accused persons and some others, as a result of which, he was seriously injured and admitted to the hospital where he died on 29-3-86. The accused persons were, therefore, prosecuted for murdering said Nathu. The prosecution examined 13 witnesses in favour of its case and the accused examined 2 witnesses in his defence.

3. PW. 1 is the Medical Jurist at the General Hospital, Dungarpur who examined Nathu on 24-3- 86 at 9.10 in the evening. He has deposed to the injuries and has stated that the deceased had three injuries resulting in fracture. He also conducted post mortem of deceased Nathu in the morning of 29-3-86 and opined that death was caused due to head injury received by the deceased. He has proved the post mortem report. It is thus proved that deceased Nathu met with homicidal death caused by injuries which were sufficient in the ordinary course of nature to cause death.

4. PW. 2 is Maji who proved Ex. P/10 by which the clothes of the deceased were sealed by the Police.

5. PW. 3 is an eye-witness and wife of the deceased. She has stated that in the evening, her husband left the house for going to work, when he was' little away from the house, he was attacked by the accused persons. She stated that Jeeva hit Nathu by a stick on the back. Kana hit the deceased with axe. She said that the axe blow was given on the back (of head) by accused Kana. Kaloo hit Nathu by stick on the buttock of the deceased. Kachru also hit with stick. Her daughter started shouting that her father is being beaten. She saw accused persons assaulting the deceased. She has also deposed that because of the axe blow, her husband old and his brain had come out. The Doctor has deposed that the head injury was so serious that from the time of being injured till his death, the deceased was unconscious and was not in a position to give any statement and that the injuries were very serious. It will thus be seen that the evidence of P.W. 3 Kamla

has been corroborated on material particular by the independent medical evidence given by the Doctor PW. 1. The cross-examination does not yield any such serious contradictions or omissions which will require the witness to be disbelieved. There is thus, no material contradictions.

6. PW. 4 is Ramila daughter of deceased Nathu and another eye-witness. She has stated that Kana gave an axe blow on the hand of the deceased, she saw Kaloo, Kachru and Jeeva beating the deceased. The cross-examination of this witness also is inconsequential.

7. PW. 5 is Basanti who came on spot on hearing the shouts of PW. 4. She is sister of the deceased and saw the accused persons beating the deceased. She has stated that her brother was bleeding and Kana had an axe in his hand, rest three had sticks in their hands. She has frankly admitted that she cannot remember as to which blow was given by which accused. The cross-examination of this witness does not yeild any fruitful result.

8. PW. 6 is Chhagan who heard the shouts of Kamla and went to the spot where he saw the accused persons beating deceased Nathu. He has deposed that Kana had an axe and the rest three had sticks. He states that he saw Kana giving a blow on the head above right eye of Nathu. He states that the others gave Lathi blows and broke his arm in three places. He has identified the sticks and the axe. In his cross-examination, he was asked if he is a relation of the deceased and has categorically stated that he has no relationship with the deceased. He is thus, independent witness of the occurrence.

9. PW. 7 Shanker Nath is yet another witness who came on the scene of offence after hearing the shouts, but states that when he reached the spot, the accused had left and Nathu was lying there. He had suffered left hand and head injuries. He was not Speaking and was bleeding. Rest of the statement is hear-se and, therefore, need not be considered.

10. PW. 8 is Velanath who is younger brother of deceased. He has candidly said that he did not see accused assaulting the deceased but saw they were running towards their house. He saw them running and saw Kana having axe and others

having sticks in their hands. He gives description of the injuries caused to the deceased and this description matches the statements made by other eye-witnesses and is corroborated by the medical evidence. He, however, states in his cross-examination that when he was coming, he saw the accused assaulting the deceased. He has thus improved the statement in the cross-examination.

11. PW. 9 is the person who recorded the F.I.R. PW. 10 Heera is yet another brother of deceased who reached the spot after the beating was over and saw Nathu lying injured. This witness also therefore, not an eye-witness. PW. 13 is the Investigating Officer who investigated the crime and has deposed in detail to the investigation carried on by him.

12. In defence, 2 witnesses have been examined. D.W. 1 Bada son of Nanji who has deposed that on the date of occurrence, Nathu was dead drunk and was abusing the accused persons and was throwing stones towards them. While returning, he fell in a ditch of his face. D.W. 2 is Ramji who also corroborates the testimony of D.W. 1. It was on appreciation of this evidence that the learned Sessions Judge came to the conclusion that death of Nathu was caused due to the axe blow given by the accused Kana and this intention was shared commonly by accused Jeeva and accused Kaloo consistent with this view taken by the learned Sessions Judge who convicted the accused as aforesaid.

13. Shri Sanjay Mathur arguing on behalf of the accused submitted that the appeal is liable to be allowed and conviction is liable to be set aside. He canvassed several grounds in support of his contention. He contended that no independent evidence is led by the prosecution, though, such witnesses were available and hence the deposition of the interested witnesses who were close relation of the deceased cannot be taken into consideration. The second contention was that there are contradictions in the deposition of various witnesses which are material in nature and thus falsify the witnesses. According to him, conviction on the basis of such interested testimony cannot be sustained. His third argument was that recovery of axe was not proper as envisaged by Sec. 27 of the Evidence Act and is liable to be rejected. He also contended that recovered article was not identified. However, this statement is unsustainable as factually one witness has identified

the axe in the hand of the accused Kana. Lastly, it was submitted by the learned counsel that the injuries were caused on 24-3-86 and the Nathu died on 29-3-86. As the deceased alive for five days it cannot be presumed that the accused had any intention to cause death of the deceased. According to the learned counsel, even if the entire prosecution evidence is accepted, conviction under Sec. 302 is not permissible.

14. It was then contended by the learned counsel that the F.I.R. was belated. There was no ordinary delay in transmitting the F.I.R. to the Court of the Magistrate, relying on the decision of the Supreme Court reported in : (1977)ILLJ5SC . He, therefore, submitted that the entire prosecution story is liable to be disbelieved on the ground of concoction which cannot be ruled out by reasons an ordinary delay cause in transmitting the F.I.R. However, a perusal of the record will show that there is no unreasonable or unexplained delay in transmitting the F.I.R. We are, therefore, unable to accept this contention raised by the learned counsel.

15. For the proposition that interested witnesses without corroboration cannot be accepted. Reliance was placed by the learned advocate on a decision of this Court reported in 1979 R.L.W. 254. However, as will be seen from the analysis of the above, the evidence is duly corroborated. This judgment is of, therefore, no avail.

16. Learned counsel then urged that the site plan made by the prosecution is defective. He does not state or show the place where witnesses were standing and, therefore, according to him, it was a serious infirmity. He relied on a decision of this Court reported in 1984 WLN 463, however, facts of that case are entire different and the only consequence observed by the learned Judges of this Court was that the presence of witness at the scene of occurrence could not be believed. The presence of the witnesses in this case is natural as the occurrence took place in front of their house and therefore, there is no reason to disbelieve the witness only because they are not shown in the site plan.

17. That brings just to the consideration of the submission that in view of the fact that five days' period was lost between causing of the injury and death of the deceased no intention can be inferred on the part of the accused and, therefore,

conviction under Sec. 302 I.P.C. is not possible. True is that Nathu died after five days but the Doctor has deposed that his condition extremely serious and he was unconscious for five days. The head injury is the fatal injury, it was caused deliberately. The injuries caused by sticks are also serious as multiple fractures. The manner in which the assault was conducted by the accused persons leaves no doubt in our minds that the assault caused with the intention of killing Nathu. The fact that death occurred little later cannot prove the intention on the part of the accused. We are, therefore, unable to accept this submission also.

18. In the result, there is no substance in these appeals and the same are dismissed.

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