

Narayan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-06-1992

Reported in : 1992(3)WLC9; 1992WLN(UC)327

Judge : Inder Sen Israni and; Farooq Hassan, JJ.

Appeal No. : D.B. Criminal Appeal No. 106 of 1990

Appellant : Narayan Singh

Respondent : State of Rajasthan

Judgement :

Inder Sen Israni, J.

1. This appeal has been filed against the judgment and order dated March 15, 1990 passed by learned Additional Sessions Judge, Gangapur City, in Sessions Case No. 26/89, whereby the appellant was convicted under Section 302 IPC. He has been sentenced to undergo life imprisonment and also fine of Rs. 500/-. In failure of payment of fine to undergo further imprisonment for 6 months.

2. Briefly stated, PW 1, Man Singh filed a written report (Ex.P.I) on April 25, 89 at about 9.30 p.m. stating that at about 7.00 p.m. after taking his food, while he was playing with his small child at his house, his kaka Kallu Singh and Surjilal & his wife were quarrelling amongst themselves. At that time, Narayan Singh accused-

appellant son of Surjilal went inside his Kacchahouse and came out with a Gandasi in his hand and gave blow with Gandasi on head of deceased Kallu Singh. Thereupon, he shouted as to what accused had done. Accused Narayan Singh thereafter went inside his house. When he tried to pick-up injured Kallu Singh, brother of accused Shambhu Singh, who was armed with a stick, threatened him to go-away from there and started abusing him. He tried to hit him with his stick, but his wife Savitri bent over him, therefore, he did not receive blow of stick. Profuse blood was coming out from head of injured Kallu Singh. This incident was seen by ladies living in the 'Guhadi'. His kaka Prahlad Singh was also present at that time and saw this incident. Thereafter, other persons came there. Injured Kallu Singh had become unconscious. He and his Kaka Prahlad Singh, Moti Singh, and Ganpat etc. took the injured in tractor-trolley of Khalik Mistry to Gangapur City Hospital. The doctor after examining the injured, who was unconscious, advised them to take him to Hospital at Karauli. They are taking the injured kaka to Karauli, since his condition is serious. This report is given in writing to take appropriate action in the matter.

3. It is contended by Shri S.K. Gupta, learned Counsel that this is a case of single blow giving by Gandasi on head and as such it cannot be said that the accused-appellant had any intention to causing death of deceased. It is further submitted that the trial court itself has dis-believed that Gandasi was recovered at the instance of the accused. The witnesses, in whose presence, the Gandasi is said to have been recovered at the instance of the accused have also denied the same. It is further submitted that the blood smeared clothes of deceased and PW 1 Man Singh, were sent to Forensic Laboratory, but no report was produced in the trial Court. This shows that the report of F.S.L. has been with-held by the prosecution. On this account adverse inference under provisions of Section 114 of the Evidence Act should have been drawn by the trial court against the prosecution. However, the trial court did not do so on the premise that the prosecution has not been able to produce the said report, since it has not yet been received from the Laboratory. It is further submitted that Ex.P. 1, the written report is said to have been given by PW 1 Man Singh at Gangapurcity Hospital to Jagdish Prasad, ASI, PW 15. He states that this report was written by Babulal compounder at his instance. It is pointed out that, in cross, this witness has stated that written report

Ex.P. 1 is one, which was written at Karauli and he had also signed at Karauli. This report was written by Babulal compounder, who accompanied them to Karauli. Thanedar' had come to Karauli, where this report was given. He has specifically denied that Ex. P. 1 report was given at Gangapur City. It is, therefore, contended that evidently two FIRs were filed, one at Gangapur City and Anr. at Karauli & one filed at Gangapur City has been deliberately suppressed by the prosecution. Therefore, no reliance can be placed on Ex.P. 1, which is suspicious in the circumstances mentioned above. It is further submitted that accused-appellant was arrested on April 29,'89 and has already undergone more than 2 years & 8 months of imprisonment. Keeping in view that this is a case of single blow and it was not his intention to cause death of the deceased, he could at the most be convicted under provisions of Section 304 Part-II IPC and not Section 302 IPC. In any case he deserves to be sentenced to imprisonment, which he has already undergone.

4. It is submitted by Shri M.K. Kaushik, learned Public Prosecutor that the blow of Gandasi given by the appellant on the head of deceased was sufficient to cause death and he has been rightly convicted under provisions of Section 302 IPC.

5. We have considered carefully the contentions raised by both the sides & have gone through the documents and statements referred to during the course of arguments.

6. PW 1, Man Singh is the person, who has lodged the written report, Ex. P. 1. He has stated that there was a verbal altercation, on account of children amongst deceased Kallu Singh and Surjilal & his wife, whereupon accused-appellant went inside his Kacha-house, brought Gandasi and gave one blow on left side of the head of the deceased from back. When he tried to pick-up injured Kallu Singh, Shambhu Singh brother of the appellant Narayan Singh tried to give him a blow with stick, but his wife bent over him, on account of which, he did not receive the blow of lathi. He states that Prahlad Singh, PW 4 & Savitri PW 6 were also present at that time. In cross he states that children of Shambhu Singh had quarrelled with children of Kallu Singh deceased, on this account the verbal altercation had taken place. The quarrel between the children had taken place about a month/15 days

before the day of incident. He also states that Ex. P. 1 written report was given by him to Jagdish Prasad, ASI, PW 15 at Karauli and not at Gangapurcity. He also states that even though the report is signed by him, but it was written by Babulal compounder, who had accompanied them to Karauli. When confronted with his statement recorded under Section 161 Cr.P.C. Ex. D. 1, he denied that he had given statement to the effect that when they were taking injured Kallu Singh to Karauli at that time Thanedar' had come and he had given a written report to him. However, PW 15 Jagdish Prasad, ASI, states that report Ex.P.I was given to him by PW 1 in Hospital at Gangapurcity, where he had gone to record the statements, since the injured was un-conscious. Prahalad Singh, PW 4 has also corroborated that statements of PW 1 regarding the incident. He also states that accused appellant gave one blow to deceased Kallu Singh in his head with Gandasi. He states that he did not know why the quarrel took place. In cross examination, he states that no one gave any report in writing to Thanedar in Gangapurcity Hospital. He further states that PW 1 did not give any report in writing to Thanedar. Mst. Savitri, PW 6 wife of PW 1 has corroborated the statements of PW 1 & PW 4, so far as to place of incident is concerned and it is evident from her statement that accused appellant gave one blow of Gandasi on the head of the deceased. Dr. Mool Chand, PW 12 has proved Ex. 13, which is injury report of deceased Kallu Singh and has stated that there was one injury on his head, which could be caused by a sharp edged weapon, like Gandasi. Ex. P. 10 post-mortem is also to the effect, so far as the injury on the head of the deceased in concerned.

7. It can, therefore, be said that it is an admitted position corroborated by a medical evidence, that the accused-appellant, caused a blow with Gandasi on the head of the deceased. A verbal altercation arose between the deceased Surjlal & his wife of account of their children. All of a sudden Narayan Singh appellant, who is son of Surjlal went inside the house, brought a Gandasi and struck a blow on the left side of the head of the deceased from back. This clearly shows that there was no pre-meditation and all this happened on the spur of the moment. This is also admitted by PW 1, who has lodged the written report Bx. P. 1, as also other eye-witnesses. We are, therefore, of the considered opinion that it does not appear that the accused-appellant intended to cause the death of the deceased and to our mind the case of accused is covered by Exception-4 to Section 300

IPC. The accused-appellant did not repeat the blow and after causing one blow he went inside his house. It is also evident that the appellant had no quarrel with the deceased and he did not make any attempt of giving second blow to him, therefore, it could not be said that he wanted to cause intentionally this particular-injury. In the circumstances though the injury has proved fatal, the case of appellant would not be covered by thirdly of Section 300 IPC, since the intention to cause death or causing such particular injury could not be imputed to him. From the circumstances and the evidence on record it can be said that the appellant had knowledge that he was causing such injury, which was likely to cause death and as such in our opinion he has committed the offence, which falls under Section 304 Part-II IPC and not under the provisions of Section 302 IPC and we convict him under Section 304 Part-II IPC. So far as the other, contentions raised by learned Counsel for the appellant are concerned, we do not find any force in the same. In view of the admitted fact that the appellant did cause the fatal injury with Gandasi on the head of the deceased, on account of which he died. The minor discrepancies regarding the place of handing over written report Ex. P. 1 to the Jagdish Prasad, ASI, PW 15 has no material bearing on the merits of the case.

8. So far as the punishment that should be awarded to the accused-appellant is concerned, we are of the considered opinion that his sentence of 4 years rigorous imprisonment and a fine of Rs. 5500/- and in default of payment of fine, further rigorous imprisonment for 6 months, would meet the ends of justice. The deceased Kallu Singh has two daughters and if the fine is realised Rs, 2250/- may be paid to each of the daughters of the deceased.

9. The appeal is partly allowed, as above and the conviction of the appellant is altered from one under Section 302 IPC to that of Section 304 Part-II IPC. The sentence of life imprisonment and a fine of Rs. 500/- is set aside, and instead the accused-appellant is sentenced as stated above to undergo rigorous imprisonment for period of 4 years and pay a fine of Rs. 5500/- and in default of payment of fine, further rigorous imprisonment for 6 months. Out of the fine, if realised, amount of Rs. 2250/- be paid to each of the daughters of the deceased to satisfaction of the trial court.

