

Hari Narayan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-01-2003

Reported in : RLW2004(1)Raj291

Judge : Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

Acts : Indian Penal Code (IPC) - Sections 300, 302, 307, 324 and 452

Appeal No. : D.B. Criminal Appeal No. 234 of 1999

Appellant : Hari Narayan

Respondent : State of Rajasthan

Advocate for Def. : R.P. Meena, Public Prosecutor and; S.K. Jain, Adv.

Advocate for Pet/Ap. : A.K. Gupta,; N.A. Naqvi,; Vishal Bansal,;

Judgement :

Khem Chand Sharma, J.

1. These two criminal appeals, one by appellant Hari Narayan and another by Vijay Gautam have been filed against the judgment and order dated 22.2.99 passed by the learned Additional Sessions Judge No. 2, Bundi, thereby convicting and sentencing the accused appellants in the manner stated below

Appellant Hari Narayan

Under Section 302 IPC Life imprisonment. Under Section 452 IPC Five years' rigorous imprisonment with a fine Rs. 1000/-, in default thereof, to further undergo rigorous imprisonment for one year Appellant Vijay Gautam Under Section 307 IPC Seven years rigorous imprisonment with a fine of Rs. 500/- Under Section 452 IPC Five years' rigorous imprisonment with a fine of Rs. 500/-, in default thereof, to further undergo rigorous imprisonment for one year

2. Briefly stated the facts of these two appeals are that on 7.6.97 at 12.40 PM, PW 6 Kailash Chand Sharma submitted a written report Ex. P/3 at P.H.C., Kapren alleging therein that his house is situated near the house of appellant Hari Narayan. Some dispute as regards 'Chabutari' was going on between the parties. As a consequence of the said dispute, on the day of incident, at about 12 in the noon, when the complainant along with his mother and sisters were sitting in the room, appellants Hari Narayan and Vijay Gautam entered inside his room. It was alleged that appellant Hari Narayan, with an intention to kill his father, inflicted a knife blow on the stomach of his father, while appellant Vijay Gautam inflicted a knife blow on his mother. The accused also intended to stab him when he tried to intervene. However, he managed to save himself. The injured were removed to the hospital and were admitted there.

3. On the basis of above written report, police registered a case vide FIR, Ex. P 27, for offence under Sections 452, 307, 323 and 34 IPC and proceeded with the investigation. In the course of investigation, police rushed to the place of incident and prepared site plan, Ex. P. 7 and got injured Shanti Bai medically examined and collected her injury report Ex. P.29. On 7.6.99 at about 6-6.30 PM injured Ram Charan, father of the complainant died of the injuries. Thereafter, police prepared inquest report Ex. P4. PW 30 Dr. G.S. Vishwanath conducted autopsy on the dead body and prepared post mortem report Ex. P28. The blood stained cloths of deceased were seized vide memo Ex. P.8. Accused appellants Hari Narayan and Vijay Gautam were arrested vide memos Exs. P16 and P15, respectively. Appellant Hari Narayan furnished information (Ex. P24), while appellant Vijay Gautam furnished information (Ex. P.25) under Section 27 of the Evidence Act as regards recovery of knives. Pursuant to the information furnished by the accused appellants, police recovered two knives which were kept concealed in the house of

accused Janardan, who on the asking of appellants, made available the knives to the police and prepared recovery memos Ex.P.20 and 21. Police also arrested accused Bablu @ Janardan vide memo Ex. P.19. Accused Bablu furnished information, Ex.P.26 as regards recovery of one 'Kattar', which according to him was kept concealed by accused Raju Vyas and in pursuance of this information, police recovered one knife vide memo Ex.P.22. The police also recovered pant and shirt of accused Vijay Gautam, which he was wearing at the time of incident, vide recovery memo Ex.P.23.

4. After completion of usual investigation, police submitted a charge sheet against four accused in the court of learned Judicial Magistrate, 1st Class, Keshoraipatan. The learned Magistrate, having found the case exclusively triable by the court of Sessions, committed the case to the court of Sessions.

5. The case came to be tried, by the learned Additional Sessions Judge No. 2, Bundi. The learned trial Judge, after hearing counsel for the parties, framed charges under Sections 302, 302/34, 307/34, 452/34 and 120B IPC. as against the appellants, under Sections 302, 201 and 212 IPC as against accused Bablu @ Janardan and under Sections 302, 193 and 194 IPC as against accused Narayan. The accused denied the charges and claimed to be tried.

6. The prosecution, to prove its case, examined as many as 30 witnesses and got exhibited numerous documents. Thereafter, the accused were examined under Section 313 Cr.P.C. In their explanation, the accused denied to have committed offence and stated that they have been falsely implicated. In defence, the accused did not examine any witness. However, they got exhibited some documents in their defence.

7. At the conclusion of trial, the learned Additional Sessions Judge while acquitting accused Bablu @ Janardan and Narain of the offences charged with, found the accused appellants guilty for causing death of deceased and accordingly convicted and sentenced the appellants as already indicated hereinabove. Hence these two appeals by the appellants.

8. We have heard learned counsel for the parties and have gone through the judgment under appeal and the evidence on record.

9. Before we proceed further, it would be appropriate to discuss the evidence of eye witnesses.

10. PW 1 Mst. Rama Sharma is the daughter of deceased Ram Charan Sharma. She has deposed that on the day of incident, at about 12 noon they along with deceased Ram Charan were sitting in a room. According to her, the accused appellants are their neighbours. She stated that two days prior to this incident there was scuffle between her father and the accused appellants, of which a report was lodged with the police and the police had visited her house. On the day of incident, the accused appellants came to her house and called her father who came out of the room and before he could speak, the accused appellants struck knife blows on his stomach. The accused also inflicted knife blows to her mother. She then raised an alarm, but her brother Kailash ran away from there to save himself. Thereafter, she and her elder sister took their parents to the hospital. In cross examination she deposed that it is wrong to suggest that the incident had already occurred before she came out. She admitted that dispute was only in between Hari Narayan and her father and they had no dispute with accused Vijay Gautam. However, she stated that it is wrong to say that Vijay Gautam was not involved in the incident.

11. PW 2 Mst. Shanti Bai, injured eye witness has deposed that on the day of incident at 12 in the noon, when she, her husband, daughters Rama, Uma and son Kailash were present at their house, accused Vijay and Hari Narayan came there. They had knives in their hands and they started inflicting knife blows' to her husband. When she tried to intervene, she also sustained knife injuries at the hands of both the accused. Her son Kailash saved himself and ran away. She then stated that knife blows struck on the stomach of her husband. She admitted that the dispute as regards 'Chabutari' between her husband and accused Hari Narayan. She denied to have any dispute with accused Vijay Gautam. She stated that it is wrong to say that accused Vijay Gautam did not inflict any injury and she has falsely involved him. According to this witness, her son Kailash did not come

forward to intervene and had he tried to intervene, the accused would have killed him.

12. PW 6 Kailash Chand Sharma, son of the deceased has stated that on the day of incident, his father and two sisters, namely Uma and Rama were present in the room. At about 12 in the noon, Hari Narayan and Vijay Gautam entered into his house from eastern gate. Both had knives in their hands. Soon the accused entered his house, they called his father in the 'chowk'. Soon his father came in the 'chowk', accused Hari Narayan struck knife blows on the left side of his chest and abdomen. When his mother tried to save his father, accused Vijay Gautam struck knife blow on her stomach. The witness stated that dispute with regard to 'Chabutari' was going on between his father and the accused appellants and that his father had initiated proceedings in the court against the mother and sister of accused Hari Narayan. His mother fell down after she was struck with knife. When he tried to intervene, the accused having open knives in their hands chased him and therefore, he ran away from the scene.

13. PW 10 Mst. Uma Sharma is also an eye witness of the incident. She has deposed that on the day of incident at about 12 in the noon, she along with her father Ram Charan, brother, sister and her son and daughter were engaged in discussion and were watching TV, while her mother was busy in cleansing the untencils. At that time, all of a sudden, accused Hari Narayan Gautam and Vijay Gautam entered into their house and asked her father to come out. Thereupon, her father came in the chowk and soon her father came, accused Hari Narayan struck two knife blows, one at the left side of his chest and another at his stomach. When her mother came to rescue, accused Vijay Gautam struck a knife blow on her stomach. The accused also tried to struck her brother Kailash when he came to intervene, but he escaped from the scene. According to this witness, she, her sister and brother took her parents to the hospitals. In cross examination, the witness has denied the existence of any chowk at the outer side of upper story.

14. PW 4 Hemraj and PW 9 Nemi Chand, both though had not claimed themselves to be the eye witnesses of the incident, however they had deposed that at about 10 or 10.30 AM on the day of incident, Ram Charan and Hari

Narayan both were present at their shop and they exchanged hot words to each other over a Chabutari dispute. Thereafter, both went to their houses. At about 1 - 1.30 PM the cries of daughters of Ram Charan attracted their attention and they saw Shanti Bai and Hari Narain putting their hands on stomach as they had sustained knife injuries.

15. PW 5 Mahaveer, tenant in the shop of Ram Charan's house also saw the accused appellants entering into the house of deceased and they both came out of the house after 10-15 minutes. He also saw Ram Charan, Shanti Bai, Uma and Rama coming out from their house and Ram Charan and Shanti Bai had knife injuries on their persons.

16. PW 30 Dr. Vishwanath examined injured Shanti Bai on 7.6.97 and found stab wound $3/4'$ x $1/2'$ x cavity deep vertically right side of abdomen. He has deposed that on the basis of surgical notes, he found the injury to be grievous. He further deposed that had the injury been not treated within time, it would have been dangerous to life.

17. Dr. Vishwanath also conducted autopsy on the dead body of Ramcharan and found following injuries;

1. Stab wound $1-1/4'$ x $1/4'$ x bone deep obliquely over anterior auxiliary line on chest middle $1/3$ rd left side.

2. Stab wound $1-1/2'$ x $1/4'$ x cavity deep obliquely lateral aspect of abdomen left side middle $1/3$ rd.

18. The Doctor opined that injury No. 1 was simple in nature. He found cut on the peritoneum underneath the injury No. 2. He also found mesentery of small intestine badly cut at places and inferior mesenteric left artery though and through cut. According to him, the cause of death was shock as a result of injury No. 2 causing injury to inferior mesenteric artery leading to haemorrhage.

19. Though PW 1 Rama and PW 2 Shanti Bai have stated that both the accused appellants struck knife blows to Ram Charan and Shanti Bai, but PW 6 Kailash and PW 10 Uma had clarified that Hari Narain struck knife blows to Ram Charan

on his chest and abdomen and Vijay Gautam struck knife blows on the abdomen of Shanti Bai. Their statements are corroborated by the medical evidence referred to above. Even PW 4 Hem Raj, PW 9 Nemichand and PW 5 Mahaveer shop neighbours have supported the prosecution version. Therefore, unerringly it is proved that Hari Narain inflicted knife blows on the chest and abdomen of Ram Charan and Vijay Gautam inflicted knife blow on the abdomen of Shanti Bai.

20. Learned counsel for the appellants have vehemently contended that PWs 2, 6 and 10 are not the eye witnesses of the incident. Referring to the statement of P.W. 1 Mst. Rama containing her admission that Kailash escaped from the place of incident prior to infliction of knife injury to Shanti Bai, it was stressed that he was not an eye-witness of the incident. Likewise, referring to the statement of P.W. 3 Nand Kishore, wherein he had admitted that day prior to the incident he had gone to Indergarh to bring back his wife and he also intended to bring back his sister Uma Sharma from village Talwas from her husband's house, it was contended that Uma Sharma was not an eye- witness of the incident.

21. P.W. 1 Rama Sharma has specifically deposed that Hari Narayan struck knife blows to his father in the presence of Kailash. P.W. 2 Shanti Bai, P.W. 10 Uma Sharma and P.W. 6 Kailash himself has deposed that Kailash escaped from the place of incident after infliction of knife blows by accused appellants to his parents. P.W. 10 Uma Sharma has specifically deposed that when she and her sister were on the way to hospital with their parents, Kailash met them in the way. Her statement is further corroborated by the fact of lodging the report Ex.P.3 by Kailash at hospital Kapren at 12.40 P.M. just after 40 minutes of the incident. Therefore, this argument that Kailash is not an eye witness of the occurrence has no legs to stand.

22. It is an admitted position that P.W. 10 Uma Sharma is a married lady and her brother Nand Kishore had gone to bring her but in the meanwhile she on her own came back to her father's house. This fact is abundantly clear from the statement of Nand Kishore and Uma Sharma. P.W. 4 Hemraj, P.W. 9 Nemi Chand and P.W. 5 Mahaveer have specifically admitted the presence of Uma at the time of incident. Even Ex.P.7 contains the signatures of Uma Sharma which was prepared on the

same day at 2.00 P.M. Therefore, this argument is also devoid of merit that Uma is not an eye witness of the incident and hence liable to be discarded.

23. Learned counsel for the appellants have also contended that genesis of the occurrence has been suppressed and place of occurrence has also been changed as no blood was found on the spot. Therefore, the entire prosecution version appears to be false and fabricated. As regards the above argument, suffice it to say that genesis of occurrence was the dispute over Chabutari and just prior to the main incident there was exchange of hot words between Hari Narayan and Ram Charan deceased as is evident from the statement of P.W. 4 Hemraj and P.W. 9 Nemi Chand. All the eye witnesses of the incident i.e. P.Ws 1, 2, 6 and 10 have referred the room of ground floor, where they were sitting prior to incident. Even the report Ex.P.3 did not refer the room at first floor of the house of deceased. But surprisingly enough S.H.O. Manoj Sharma P.W. 19 decided to inspect the site of room situated at first floor. Therefore, the circumstances of absence of blood stains in the room and chowk of ground floor is of no consequence as the SHO inspected the site of room and chowk of first floor.

24. It is next contended that in the facts and circumstances of the case it cannot be inferred that Hari Narayan had intended to murder Ram Charan or intended to inflict injury which was sufficient in the ordinary course of nature to cause death. Reliance has been placed on *Laxman Kalu Nikalje v. State of Maharashtra* (1), and *Masumsha Hasanansha Musalman v. State of Maharashtra* (2).

25. We have given our anxious consideration to the above argument. The intention of accused is invisible state of mind and its existence has to be gathered from the circumstances such as weapon used, ferocity of attack, multiplicity of injuries, the antecedent relation of the parties, the manner in which the attack was made i.e. whether sudden or premeditated, nature of injuries and the part of the body where the injury was inflicted and the other surrounding circumstances.

26. In the present case, Hari Narayan and Ram Charan deceased had a dispute of Chabutari and some litigation was also pending in the court. On the day of incident at about 10-10.30 A.M. when Ram Charan and Hari Narayan were present at the shop of Nemi Chand and Hemraj, there was an altercation and exchange of hot

words and thereafter Ram Charan went to his house. After some, time at about 12.00 in the noon, Hari Narayan entered the house of Ram Charan armed with knife and inflicted knife blows on chest and abdomen. In view of the nature of injury whereby peritoneum underneath injury No. 2, mesentery of small intestine and inferior mesenteric left artery were cut and doctor opined that death was caused as a result of haemorrhage and shock due to injury No. 2 causing injury to inferior mesenteric artery, it can reasonably be inferred therefrom that such a solitary injury inflicted upon the deceased was sufficient to cause death in the ordinary course of nature. It is an admitted fact that the question whether the bodily injury was sufficient in the ordinary course of nature to cause death was not put by Public Prosecutor to the doctor who conducted the post mortem examination but from the nature of injury it could be concluded that injury No. 2 was responsible for causing death and was sufficient to cause death in the ordinary course of nature and hence mere non-mention by the doctor that injury No. 2 was sufficient in the ordinary course of nature to cause death is inconsequential. Reference may be made to *State of West Bengal v. Mir Mohammad Omar* (3). In this case, their Lordships came to the conclusion that the trial court made a fallacious conclusion regarding the death of the deceased on the premises that the Public Prosecutor did not elicit from the doctor as to whether the injuries were sufficient in the ordinary course of nature to cause death. Their Lordships quoted the conclusion of the trial court on the issue, which reads as under:

'There being no evidence on record to show that the injuries were sufficient in the ordinary course of nature to cause death, it cannot be said that the injuries noticed by the autopsy surgeon (PW 30) were responsible for causing the death of the deceased Mahesh.'

It was then held:

'No doubt it would have been of advantage to the court if the Public Prosecutor had put the said question to the doctor when he was examined. But mere omission to put that question is not enough for the court to reach wrong conclusion. Though not an expert as PW 30, the Sessions Judge himself would

have been an experienced judicial officer. Looking at the injuries he himself could have deduced whether those injuries were sufficient in the ordinary course of nature to cause death. No sensible man with some idea regarding the features of homicidal case would come to a different conclusion from the injuries indicated above, the details of which have been stated by the doctor (PW-30) in his evidence.'

27. Clause thirdly of Section 300 IPC consists of two parts. Under the first part, the prosecution has to prove from the given facts and circumstances that the intention of the accused was to cause that particular injury found to be present, whereas, the second part provides that whether it was sufficient to cause death is an objective enquiry and is a matter of inference from the particulars of injury. In the case in hand, Hari Narain used knife to inflict injury on the vital part of the body i.e. abdomen of Ram Charan and the degree of force released in wielding it resulted in cutting of peritoneum and mesentric artery, the attack was pre-meditated, the antecedent relations of parties were strained and just prior to the main incident there was exchange of altercation and hot words, and he also inflicted knife blow on the chest of deceased, leave no manner of doubt in our mind that accused appellant Hari Narain intentionally inflicted the injury on abdomen of deceased, which was sufficient to cause death in the ordinary course of nature. In the absence of evidence or reasonable explanation to show that appellant Hari Narain did not intend to inflict injury by knife on the abdomen with that degree of force sufficient to cut peritoneum and mesentric artery, it would be perverse to conclude that he did not intend to inflict that particular injury found on the abdomen of deceased. When a person commits an act, he is presumed to expect the natural consequences and, therefore, presumption arises that he intended to cause that particular injury and in the facts and circumstances of the case narrated above, there is nothing on record which may rebut the above presumption. Therefore, the inevitable conclusion would be that accused appellant Hari Narain has committed the offence of murder.

28. We have also carefully gone through the case laws cited by the counsel for the appellants. In *S.C. Laxman Kalu v. State of Maharashtra* (supra), the quarrel between Ramrao and Laxman was not such as would have prompted Laxman to

make a homicidal attack upon his brother-in-law. The quarrel was only this much, whether Laxman's wife should accompany him by the evening train or the morning train. Their Lordships found that it may be that some abuses might have ensued as is common among these people and Laxman having lost his temper whipped out his knife and gave one blow. The accused though inflicted only blow on the chest but it was not on the vital part of the chest. The Court further found that looking at the matter objectively, the injury which Laxman intended to cause did not include specifically the cutting of artery but to wound Ramrao in the neighbourhood of the clavicle. In view of these facts and circumstances of the case, their Lordships held that clause thirdly of Section 300 does not cover the case. Similarly in *Masumsha Hasanasha v. State of Maharashtra* (supra), the doctor who conducted autopsy found as many as 10 injuries. Except one injury, all nine injuries were found to be sustained due to scuffle. Having discussed the medical evidence, their Lordships observed that it could not be inferred that the appellant intended to inflict more injuries than injury No. 1. If this aspect is borne in mind, it would be clear that the appellant had given only one blow with the Jambiya resulting in his death. In the case at hand, admittedly there was long standing dispute between the deceased and accused appellant Hari Narain. Prior to the incident of committing murder, there was some altercation and exchange of hot words between the parties. After a short while, the accused appellant Hari Narain along with Vijay Gautam, duly armed with knife entered the house of the deceased and inflicted knife injury on the abdomen of deceased Ram Charan, resulting into death of deceased. Therefore, accused appellant Hari Narain intended to cause death or to cause that injury which was sufficient to cause death in the ordinary course of nature. In this view of the matter the facts involved in the instant case are totally different than those involved in the cases cited by the counsel for the appellants. Hence the case laws cited at the bar are of no help to the accused appellants.

29. From the evidence of eye witnesses of the case, it stands established that accused appellant Vijay Gautam inflicted knife injury on the abdomen of Shanti Devi. The doctor who examined injured Shanti Devi has opined her injury to be grievous on the basis of surgeons' report. But neither surgeon has been examined nor surgeon's report has been exhibited. Therefore, in the absence of the above

evidence, the injury cannot be treated to be grievous. Reference may be made to a decision of the Single Bench of this court in Bhagwat Singh v. State of Rajasthan (4). In this case the prosecution has not proved the injury reports of injured persons by examining the concerned doctor who prepared the same and, therefore, it was held that the injury reports could not be acted upon at its face value. In Ganpat Lal v. State (5), the Single Bench of this held that due to non-examination of Radiologist and non production of X-ray films, the injuries cannot be taken to be grievous or dangerous.

30. The prosecution witnesses have categorically admitted that there was no past enmity between accused appellant Vijay Gautam and the deceased's family. It is also worthy to note that appellant Vijay Gautam inflicted solitary injury on abdomen and did not attempt to repeat the blow, although no one could dare to intervene. Since the injury on the person of injured was simple in nature and was caused by sharp edged weapon, the offence would not travel beyond Section 324 IPC.

31. The result of the above discussion is that appeal of accused appellant Hari Narain fails and is hereby dismissed. His conviction under Sections 302 and 452 IPC and the sentences awarded there under by the trial court are maintained. The appeal of accused Vijay Gautam is partly allowed. His conviction under Section 307 IPC and the sentence awarded thereunder is set aside. Instead he is convicted under Section 324 IPC and his conviction under Section 452 IPC is maintained. Accused appellant Vijay Gautam has already undergone imprisonment for more than two years and, therefore, the ends of justice would be met if he is sentenced to the period already undergone. Accordingly, while convicting appellant Vijay Gautam under Section 324 IPC and maintaining his conviction under Section 452 IPC, he is sentenced to the period already undergone by him Appellant Vijay Gautam is on bail and he need not surrender to his bail bonds. His bail bonds stand cancelled.