

Nathia Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-30-1998

Reported in : 1999CriLJ1371; 1999WLC(Raj)UC399

Judge : V.G. Palshikar and; Bhagwati Prasad, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 383 of 1993

Appellant : Nathia

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, Public Prosecutor

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

Disposition : Appeal allowed

Judgement :

V.G. Palshikar, J.

1. This appeal is directed that against the judgment dt. 1-9-92 passed by the learned Sessions Judge, Udaipur in Criminal Case No. 1791 convicting the appellant-accused of offence under Section 302 of the Indian Penal Code and sentencing him to imprisonment for life.

2. The prosecution story stated briefly is that at about 1.30 p.m. on 24th October, 1990, first information report was lodged in Police Station, Parsola to the effect that one Paduri aged about 55 years has been killed by the accused as he wanted to take up the land belonging to Paduri who was a childless woman. It was alleged in the first information report that one Nathia s/o Chokha Meena has killed Paduri and this information was given to Kesia who lodged the first information report by Kalu s/o Roopa who directed to lodge the information with the Police. On the basis of this report, investigation was taken up and on completion of investigation, the accused was prosecuted as aforesaid and convicted by the impugned judgment. The learned counsel for the appellant has contended that the judgment of conviction is unsustainable in law. According to the learned counsel, only one person was named as eye-witness in the first information report whereas, three persons have been examined as eye-witnesses by the prosecution, even those who claimed to be an eye-witness in their deposition exclude each other as an eye-witness. According to the learned counsel, therefore, there is no eyewitness to the killing and therefore, merely because, there was possibility of a motive for the accused-appellant to have killed Paduri. It cannot be inferred that there is enough evidence to record a judgment of conviction.

3. With the assistance of the learned counsel for the accused-appellant and the learned Public Prosecutor, we have re-examined and reappreciated the evidence on record. PW 1 is the person who lodged the first information report. He had PWs. 2, 4 and 5 heard that the accused killed the deceased allegedly for taking over her properties in the shape of agricultural land. None of PWs. 1, 2, 4 and 5 are eye-witnesses. This witness PW. 2 nowhere in his deposition states that he saw accused giving blow of axe to the deceased. He has on the contrary stated that:

^ftl le; ;g ?kVuk gqbZ ml le; [ksrij :ik ekStwn Fkk vkSj ,d ykyk th Hkh Fks A**

This witness is obviously not an. eye-witness to the incident.

4. There is no mention in the first information report regarding P.W. 3 Lalu and PW. 6 Roopa being eye-witnesses, yet they said that they saw the incident. PW 3 Lalu says that when he was ploughing the field, he saw accused Nathia coming

from one side and giving axe blow on the left side of the neck of Paduri the deceased who felled and died and Nathia ran away. The witness states that when this incident occurred, he was alone in his field. In his cross-examination, he states that, when this incident occurred, there was nobody who saw it.

5. According to PW. 6 Roopa, he saw while he was ploughing his field accused Nathia hitting axe blow on the neck of Paduri and running away. It is pertinent to note that both these PWs. 3 and 6 have not been mentioned in the first information report equally interesting in the manner of deposition of these witnesses in relation to the incident which needs scrutiny. P.W. 2 the alleged eyewitness states thus :

^eqfYte inqMh ds ;gkW ij x;k FkkeqfYte us Mkdsjh inqMh ds dqYgkMh dk okj fd;k tks mlus vius dEcy esa dqYgkMhfNik j[kh Fkh mlls okj fd;k A eqfYte us inqMh ds nkfguh rjQ xnZu ij okj fd;kvkSj inqMh ekSds ij gh [kre gks xbZ A**

Describing this incident, PW. 3 says that:

^^inqMh ds ukfFk;k us xnZu dsnkbZ rjQ dqYgkMh dk okj fd;k ftlls inqMh uhps fxj xbZ A**

PW. 6 says that:

eSus gy pykrs gq,s ns[kk fdeqfYte ukfFk;k ftlus dkyh dEcy vks

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