

Nisar Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-07-2002

Reported in : [2003(97)FLR696]; RLW2003(2)Raj1080; 2002(3)WLC546

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302 and 324

Appeal No. : D.B. Criminal Appeal No. 244 of 1995

Appellant : Nisar

Respondent : State of Rajasthan

Advocate for Def. : S.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : Rajesh Kandwal, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

Bansal, J.

1. This appeal is directed against the judgment dated April 21, 1995 passed by the learned Additional Sessions Judge, Sikar whereby the appellant-Nisar has been convicted for offence Under Section 302 IPC and sentenced to undergo imprisonment for life with a fine of Rs. 1,000/-, in default of payment of fine to

further undergo one year rigorous imprisonment. He has also been convicted for offence under Section 324 IPC and sentenced to undergo imprisonment for two years rigorous imprisonment with a fine of Rs. 500/-, in default of payment of fine to further undergo six months rigorous imprisonment. Both the sentences were ordered to run concurrently.

2. The brief facts of the prosecution case are that on receiving telephonic message on the interviewing night of September 18/19, 1994, PW-14 Samudra Singh, SHO, P.S., Fatehpur reached at the house of the appellant situated in Ward No. 28, Fatehpur and recorded the statement of Ms. Jannat (PW-1) D/o Babu Khan S/o the appellant- Nisar Khan wherein she stated that at 7:00 p.m., she alongwith other members of his father's family had gone to the house of her maternal Uncle Hazi Mohd. Ishaq for taking meals. They had come back at about 9.00 p.m. Thereafter, they had watched T.V. serial. It was also alleged by Ms. Jannat in her statement that her grandfather- Nisar, who had been residing in a seperate room of the same house, used to harrass her mother. He had a evil-eye on her mother and wanted that his son's family should not reside in the house. Ms. Jannat further stated that just before the incident, her father was sitting on a cot (Charpai) in the courtyard and her mother was sitting on the floor of the courtyard. Her grandfather Nisar asked them as to why they were making noise and told them to go to sleep. Her father replied that they were going to sleep. Thereafter, her grandfather Nisar came out of his room having a 'Chhuri' and inflicted-injuries on the person of her father. Her father fell down. Her mother made hue and cry and attempted to run away but she fell down. Thereafter, the appellant caused injuries with the 'Chhuri' on the person of her mother also. It was further stated by Ms. Jannat that when she tried to rescue her mother, the appellant inflicted injuries on her palm and abdomen and threatened her not to narrate the incident to anybody, otherwise she would also be killed. A little later, the appellant went out of the house after having put up a latch on the door of the house. Thereafter, she went to the roof of the house and made hue and cry, whereupon some neighbours came and opened the door of the house. It was further stated by her that she called her maternal Uncle through her younger brother Mubarak. Her maternal Uncle informed the Police on telephone about the incident. Her mother-Jeboon and father-Babu Khan died instantaneously. It was also stated that Arjun & Constable- Ali were amongst the

persons, who had come at her house.

3. The SHO Samudra Singh (PW-14) sent the statement (Parcha Bayan) Ex.P1 of Ms. Jannat to Police Station, Fatehpur for further action. On the basis of statement (Ex.PI), the Incharge, P.S., Fatehpur registered a case under Section 302, 323 & 342 IPC at 11:15 a.m. on September 19, 1994 and investigation commenced. Formal First Information Report is Ex.P.4.

4. In the course of investigation, PW-14 Samudra Singh, SHO, prepared the Inquest Report Ex.P2 & Ex.P3 of the dead body of Babu Khan & Jeboon respectively. Site Plan (Ex.P10) was also prepared. The Investigating Officer seized and sealed blood found on the place of occurrence vide Ex.P11 & Ex.P13, blood smeared piece of stone tile and blood smeared soil vide Ex.P.14. Photographs of the place of occurrence and dead body was taken. Autopsy on the dead body of both the deceased was conducted by PW-9 Dr. Yuddhveer Singh Mahla, Medical Officer Incharge, Government Dhanuka Hospital, Fatehpur and post-mortem reports Ex.P6 and Ex.P7 were prepared. Ms. Jannat was also medically examined by PW-9 Dr. Mahla and the injury report Ex.P5 was prepared. Statements of witnesses were recorded under Section 161 Cr.P.C. The appellant was arrested on September 23, 1994 at Railway Station, Durgapura, Jaipur. On his information given in police custody and at his instance 'Chhuri' and blood stained 'Lungi' were recovered by the Investigating Officer from a field situated near Railway Track. Recovery Memo Ex.P17 and the map of the field were prepared by the I.O. Both 'Chhuri' & 'Lungi' were sealed. Clothes of both the deceased (Baboo Khan & Jeboon) were also seized and sealed vide Ex.P15 & Ex.P16. On completion of investigation, a chargesheet was laid against the appellant in the Court of the learned Additional Chief Judicial Magistrate, Fatehpur Shekhawati, who committed the case to the Court of learned Sessions Judge, Sikar. In due course, the case came up for trial before the learned Additional Sessions Judge, Sikar. Charges Under Sections 302 & 324 were framed by the trial Court. The appellant denied the charges and claimed to be tried.

5. The prosecution examined as many as 14 witnesses in support of its case. In the statement recorded under Section 313 Cr.P.C., the appellant claimed

innocence and stated that on receiving the information of murder of his son and daughter-in-law, he had returned from Bombay and was arrested by the Police at Railway Station, Jaipur. He was not present at the time of the incident. No witness was produced by the appellant in his defence.

6. The learned trial Judge, after hearing the final submissions of both the parties, convicted and sentenced the appellant as indicated here-in-above.

7. We have heard the learned Amicus Curiae and the learned Public Prosecutor. Material on record has been scanned and scrutinized.

8. There is no dispute that both the deceased met with homicidal death and this fact is established by the medical evidence on record. PW-9 Dr. Mahla stated that on September 19, 1994, he was posted as Medical Officer, Government Hospital, Fatehpur and on police request, he conducted the post-mortem examination of the deceased Jeboo W/o Baboo Khan, aged 30 years, R/o Fatehpur at 8:30 a.m. and found the following injuries:-

External Injuries

(1) Incised wound 4 1/2" x 2"x6" at upper part of chest anteriorly obliquely downward & medially underlying ribs 2, 3 Cut pleurae cut In the same direction, upper lobe of right lung with right bronchus & pulmonary vessel.

(2) Incised wound 2" x 1" x 4" at 1" above right nipple with cut middle lobe directing posteriors.

(3) Incised wound 2" x 3/4" x 1" at right nipple.

Internal Injuries

(1) Right 2nd, 3rd ribs cut as mentioned above. Upper part of right side of pleurae was cut.

(2) Upper lobe of right lung with right bronchus and pulmonary vessel were cut near root of the lung.

9. Dr. Mahla further stated that membranes were congested. All the three external injuries were ante-mortem in nature and caused by a sharp weapon. He also stated that the cause of death was haemorrhagic shock because of injury to lung and pulmonary blood vessels. He prepared the post-mortem report Ex.P6. These injuries were sufficient in the ordinary course of nature to cause death. He prepared the post-mortem Ex.P6.

10. Dr. Mahla further stated that on the said day at 9:30 a.m., he also conducted the post-mortem examination of the deceased Baboo Khan S/o Nisar, aged 35 years, R/o Fatehpur and found the following injuries:-

External Injuries

(1) Incised wound 2' x 1' x 5/1/2' posteriorly downwards at right side of chest anteriorly near lateral border of sternum, 3rd, 4th ribs were cut. Pleurae cut lower part of upper lobe, right bronchus & pulmonary vessels cut in same direction.

Internal Injuries

(1) Right side 3rd rib cut near sternum. Pleurae cut near lower border of upper lobe of lung. Left lung-cut upper lobe lower part near root of the lung with right bronchus & pulmonary vessel.

11. It was also stated by Dr. Mahla that all the injuries were ante-mortem in nature. The cause of death was haemorrhagic shock because of injuries to lungs and pulmonary blood vessels. These injuries were sufficient in the ordinary course of nature to cause death. He prepared the post-mortem report Ex.P7.

12. The learned Amicus Curiae did not challenge the testimony of Dr. Mahla and in our opinion also, he is a trustworthy Witness and his testimony can be relied upon. Thus, it has been proved beyond reasonable doubt by the prosecution that both the deceased met with the homicidal death.

13. The prosecution case rests mainly upon the testimony of PW- 1 Ms. Jannat, who was the only eye-witness of the occurrence. She is the daughter of both the deceased. In her statement, she stated that on the fateful night, after taking meals

at the house of his maternal Uncle Hazi Mohd. Ishaq, she, her parents and other members of the family had returned to her house at 9:00 p.m. Thereafter, they watched T.V. She further stated that just before the incident, her father was sitting on a cot in courtyard and her mother was sitting on its floor. Her grandfather, the appellant, who was residing in a room of the same house told her father to go inside the room, whereupon her father replied in the affirmative. Thereafter, the appellant told her father that he would take him inside the room and came put of the room having a 'Chhuri' and caused injuries on the person of her father Baboo Khan. Her father fell down. When she and her mother made hue and cry, the appellant inflicted injuries on the person of her mother-Jeboon, who also fell down. She further stated that the appellant caused one more injury to her mother after she fell down. All the injuries were caused with the 'Chhuri'. She also stated that when she tried to go out of the house, the appellant caught her hair and inflicted injuries with the 'Chhuri' on her hand and abdomen. Thereafter, the appellant washed the 'Chhuri' and went out of the house after putting latch on the door. She got her younger brother Mubarak awaken and both went on the roof of the house. When they made hue and cry, their neighbour Arjun Mali came and he brought a person from the mosque, who opened the door. The Police also arrived at the house and recorded her statement. PW-1 Ms. Jannat also stated that she was also medically examined.

14. The learned Amicus Curiae contended that PW-1 Ms. Jannat being the daughter of the deceased persons is interested as well as partisan witness and, therefore, her testimony should not be accepted as sufficient, in absence of corroboration from independent witnesses, which is lacking in the instant case, to come to the conclusion that the prosecution has succeeded to prove its case against the appellant. It was also contended that on the basis of the testimony of sole eye-witness PW-1 Jannat, the appellant could not be held guilty for the murder of Baboo Khan and his wife Jeboon.

15. We have given our thoughtful consideration to the submissions made by the learned Amicus Curiae for the appellant. The Apex Court in *Lehna v. State of Haryana* (1), held as under-

'We shall first deal with the contention regarding interestedness of the witnesses for furthering prosecution version. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse evidence to find out whether it is cogent and credible.'

In Dalip Singh v. State of Punjab (2), it has been laid down as under :

'A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth. However, we are not attempting any sweeping generalization. Each case must be judged on its own facts. Our observations are only made to combat what is so often put forward in cases before us as a general rule of prudence. There is no such general rule. Each case must be limited to and be governed by its own facts.'

The above decision has since been followed in Guli Chand v. State of Rajasthan (3), in which Vadivelu Thevar v. State of Madras (4) was also relied upon.

We may also observe that the ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dalip Singh Case in which surprise was expressed over the impression which prevailed in the minds of the Members of the Bar that relatives were not independent witnesses. Speaking through Vivian Bose, J. it was observed. (AIR P.366 Para 25)

'We are unable to agree with the learned Judges of the High Court that the testimony of the two eyewitnesses requires corroboration. If the foundation for

such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in *Rameshwar v. State of Rajasthan* (5). We find, however, that it unfortunately, still persists, if not in the judgments of the Courts, at any rate in the arguments of counsel.'

Again in *Masalti v. State of U.P.* (6), this Court observed:

'But it would, we think, be unreasonable to contend that evidence given by witnesses should be discarded only on the ground that it is evidence of partisan or interested witnesses....The mechanical rejection of such evidence on the sole ground that it is partisan would invariably lead to failure of justice. No hard and fast rule can be laid down as to how much evidence should be appreciated. Judicial approach has to be cautious in dealing with such evidence; but the plea that such evidence should be rejected because it is partisan cannot be accepted as correct.'

To the same effect is the decision in *State of Punjab v. Jagir Singh* (7)'.

16. In *State of Punjab v. Jugraj Singh and Ors.* (8), while reiterating the same rule, the Apex Court indicated that the testimony of the witnesses could not be discarded only on the ground that they happened to be the relations of the deceased. To the same effect are the decisions in *Ashok Kumar Pandey v. State of Delhi* (9) and *Bhagwan Singh and Ors. v. State of M.P.* (10).

17. In view of the above decisions of the Apex Court, the evidence of PW-1 Ms. Jannat cannot be discarded only on this ground that she happens to be the daughter of the deceased.

18. In *State of Haryana v. Ramsingh* (11), the Apex Court held as under.

'Admittedly all the supposed eyewitnesses are relations of the deceased. As such they fall within a category of interested witnesses. It is not that the evidence ought to be discredited by reason of the witness being simply an interested witness but in that event the Court will be rather strict in its scrutiny as to the acceptability of such

an evidence,'

19. Keeping in view the aforesaid decision of the Apex Court, the testimony of PW-1 Ms. Jannat needs to be scanned and scrutinized.

20. We have carefully read the statement of PW-1 Jannat. The trial Court has found her evidence to be reliable and truthful. There has been searching cross-examination and she has stood the test of cross-examination. The cross-examiner has not been able to make any dent in her testimony. We, therefore, see no reason to dis-believe PW-1 Jannat. Apart from that she herself sustained injuries in the alleged incident. PW-9 Dr. Mahla also stated that on September 19, 1994 he examined Ms. Jannat D/o Baboo Khan, aged 16 years, R/o Fatehpur and found the following injuries:-

(1) Linear abrasion 1/2' x 1/10' x superficial at right middle finger anteriorly.

(2) Linear abrasion 1/2' x 1/10' x superficial at right palm anteriorly lateral side.

(3) Incised wound 1/2' x 1/10' x 1/10' at left side of abdomen.

21. All the injuries were simple and caused by sharp weapon. The duration of injuries was within 24 hours. He prepared the injury report Ex.P.5.

22. As already stated, PW-9 Dr. Mahla is a reliable and trustworthy witness and in regard to injuries of PW-1 Jannat also, his testimony can be relied upon. As per statement of PW-1 Jannat, she was also inflicted injuries with a 'Chhuri' by the appellant. In our opinion, looking to the duration of the injuries, PW-1 Jannat had sustained the aforementioned injuries in the same incident in which her parents were caused injuries, which resulted in their death instantaneously. In *Surjeet Singh v. State of Punjab* (12), it was held that- 'nephew of the deceased, who had suffered greivous injuries in the occurrence was a natural and stamp witness, in *Sardul Singh v. State of Punjab* (13), it was indicated that the presence of witness, who received injuries during the course of incident cannot be doubted.' *Bankiya v. State of Maharashtra* (14), was the case wherein Hon'ble Supreme Court observed that the presence of the injured witness at the scene of occurrence cannot be doubted and being victim themselves, they would not leave out real

assailants and substitute them with innocent persons.

23. PW-1 Jannat herself sustained injuries in the incident. Her presence at the place of occurrence was most natural and, therefore, in view of the above aforequoted judicial pronouncements, her testimony can be relied upon. On close scrutiny, we have found nothing which can dis-credit her testimony. The appellant is her real grandfather and if he had not committed the alleged crime, she would have not deposed against him.

24. So far as the contention of the learned Amicus Curiae that the appellant could not be held guilty on the testimony of sole eye-witness PW-1 Jannat is concerned, it has no force. In *Amrik Singh v. State of Rajasthan* (15), the Apex Court held that-

'It is settled law that the evidence has to be weighted and not counted. The testimony of a sole eye-witness, whose testimony suffers from no infirmity whatsoever, can be itself form the basis of conviction. We have found Trilok Kumar (PW-2) to be a highly reliable witness whose testimony suffers from no blemish at all. His testimony has also received corroboration from the medical evidence and other evidence. In another case, *State of Haryana v. Manoj Kumar* (1993 Cr. L.R. (SC) 688), the Apex Court held that Rohan (PW-14) is the sole eye-witness of the fatal knock down by the accused. But, that cannot be held to be an infirmity of the prosecution case. A conviction can be based and the verdict of the Court can rest even on the testimony of a sole witness, if the Court is fully satisfied that such witness is a truthful witness and his presence at the time of occurrence has been proved beyond reasonable doubt.'

25. In *Munshi Prasad v. State of Bihar* (16), it was held by the Apex Court that 'It is the quality of the evidence and not the quantity, which is required. The crux of the issue being has the prosecution been able to bring home the charges with the evidence available on record, if the evidence on record is otherwise satisfactory in nature and can be ascribed to be trustworthy, an increase in the number of witnesses cannot be termed to be a requirement for the case.'

26. In view of the aforementioned decisions of Hon'ble Supreme Court, we cannot accept the contention of the learned Amicus Curiae that the trial Court could not record the conviction of the appellant on the basis of the testimony of sole eye-witnesses PW-1 Jannat. Apart from that, there is other evidence on record in support of PW-1 Jannat.

27. PW-2 Arjun Lal stated that on the fateful night at about 11:00 p.m., he woke up to urinate and saw Jannat & Mubarak crying on the roof of their house. Both Jannat & Mubarak were crying that their parents had been killed. They were calling neighbours for help. Arjun Lal further stated that he went to Maneer (PW-3) and apprised him about the incident. Maneer told him that he is a disabled person and so he should go to the Mosque where so many persons were present. Thereafter, he went to the Mosque and brought some persons to the house of the deceased. Arjun Lal again stated that PW-1 Ms. Jannat was crying that her mother and father had been killed by her grandfather. Thereafter, door of the house was opened by the persons, who had assembled there. It was also stated by him that as his Aunt had died, he did not go inside the house of the appellant and went to the house of his Aunt. PW-3 Maneer has supported the version of PW-2 Arjun Lal. Besides the testimony of PW-2 Arjun Lal & PW-3 Maneer, PW-7 Ali Mohd. stated that on the date of incident, he was posted as Constable at Police Station, Fatehpur. At mid-night he went to his house for taking food. When he reached at his house, he saw a crowd of some persons in the lane. A boy came and told him that Baboo and Jeboon had been killed by Nisar. Thereafter he went to the house of the appellant, where he found many persons. He also stated that he found PW-1 Jannat standing and weeping outside her house. He went inside the house and found the dead body of Baboo & Jeboon. There were injuries on the dead bodies. He further stated that he reported the incident to the Police, Station on telephone and when he came back, Jannat told him that her father and mother had been killed by her grandfather Nisar by causing injuries with a 'Chhuri'. She also told him that her grandfather Nisar had left the house after having locked them inside the house. Jannat narrated the whole incident to him. PW- 14 Samudra Singh, the then SHO, P.S.- Fatehpur stated that on receiving telephonic message, he went to the house of the deceased persons. Ms. Jannat D/o Baboo was present there. He recorded her statement Ex.P1 and sent it to the Police Station for registration of

the case through Bagwan Singh- Constable. He further stated that after registration of the case, he took up the investigation and prepared the Inquest Reports of the dead body of Baboo Khan and Jeboon. PW-14 Samudra Singh has also proved the other documents prepared by him. On careful and close scrutiny of the testimony of PW-2 Arjun Lal, PW-3 Maneer, PW-7 Ali Mohd. and PW-14 Samudra Singh, we have found it reliable and trustworthy. The testimony of the aforesaid witnesses also corroborates the testimony of PW-1 Jannat. Apart from these witnesses, PW-1 Jannat has also received corroboration from the medical evidence stated above. Thus, in our considered opinion, the prosecution has succeeded in proving that the appellant Nisar inflicted injuries with a 'Chhuri' on the person of Baboo Khan and Jeboon, which resulted in their death at the spot instantaneously.

28. The trial Court has found the appellant guilty for offence under Section 302 IPC. It is clear from the ocular and medical evidence that the appellant had caused three injuries with a sharp edged weapon 'Chhuri' to Mrs. Jeboon. All the injuries were on her chest, which is a vital part of the body. As stated by PW-9 Dr. Mahla, all the injuries were sufficient in the ordinary course of nature to cause death. The appellant had caused an injury with 'Chhuri' on the chest of the deceased- Baboo Khan. This injury also was sufficient in the ordinary course of nature to cause death. Because of the injuries caused by the appellant, both Baboo Khan and his wife Jeboon had died at the spot instantaneously. The appellant was not satisfied with causing only one injury to the deceased- Jeboon, but, three injuries were caused by him and one of the injuries were inflicted after Jeboon had fallen down. In these circumstances, it can safely be inferred that the appellant had intended to kill Baboo Khan and Jeboon and to cause such injury which was sufficient in the ordinary course of nature to cause death. Thus, in our opinion, the appellant has rightly been convicted for offence under Section 302 IPC by the trial Court.

29. The appellant has also been convicted under Section 324 IPC for having caused simple injuries by sharp weapon to PW-1 Jannat. As already stated, PW-1 Jannat deposed in her statement that when she made attempt to go outside the house in order to save herself, the appellant inflicted injuries with a 'Chhuri' on her hand and abdomen. At the time of medical examination, three injuries of sharp

weapon were found on the person of PW-1 Jannat. Out of these injuries, one injury was on her abdomen and another on her right hand. Thus, the testimony of PW-1 Jannat has been corroborated by medical evidence. As the testimony of PW-1 Jannat and PW-9 Dr. Mahla has been found reliable and trustworthy, we come to the conclusion that the prosecution has also succeeded in proving that the appellant had caused simple injuries by sharp weapon to PW-1 Jannat and thereby committed the offence punishable under Section 324 IPC.

30. In view of the aforesaid, we find no merit in this appeal and the same is dismissed. The conviction and sentences of the appellant-Nisar Under Sections 302 & 324 IPC are confirmed. The appellant is in jail. He will serve out the remaining part of the sentence.

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