

**Shankar Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/850723](http://sooperkanoon.com/850723)

**Court :** Rajasthan

**Decided On :** Mar-03-2010

**Judge :** Govind Mathur and; C.M. Totla, JJ.

**Appellant :** Shankar

**Respondent :** State

**Judgement :**

**Govind Mathur, J.**

1. Instant one is a jail appeal arising out of a shocking incident, where poor person with aboriginal background has killed two of his kin under a superstitious belief that one among them was a witch causing all odds and ills for his family.

2. Learned trial court by its judgment dated 22.7.2003 held the accused guilty for an offence punishable under Section 302 IPC and sentenced for life imprisonment with a fine of Rs. 1000. Further to undergo 6 months simple imprisonment in default of payment of fine.

3. As per the prosecution on 31.5.2002 one Rajeng orally Lakhma and elder brother Shankar. At about 7 a.m. on 31.5.2002, he went to village Noliya and his elder brother Shankar with his wife Leela were on tour to village Bargi from previous day to purchase clothes, leaving behind their mother and two children Ramji and Mukesh. At about 9 a.m. when Rajeng returned to home his nephew

Ramji came AND WHILE weeping stated that Baba Shankar S/o Raoji has killed Lakhma and younger brother Mukesh with an axe and their bodies were lying down the mango tree. On reaching at the spot Rajeng found the bodies their and then Mana, Sohan and Lawa all sons of Raoji too reached at the spot. Sohan then proceeded to police station to call the police. As per Parcha Bayan Ex.P/8 Lakhma was of 70 years and Shankar S/o Raoji was having a superstition that she was a witch causing death of his Ox a year back and also causing ailment in his family. Receiving this information a case was registered for offence under Section 302 IPC and after usual investigation the accused was charge-sheeted, committed to the court of Sessions and was tried. He pleaded not guilty.

4. To prove its case, the prosecution, in all, examined 18 witnesses of whom Ramji (PW-2), a boy of six years, is the only eye-witness. The other relevant witnesses PW-16 Sohan and PW-18 Mana are real brothers of accused Shankar. PW-5 Leela is mother of witness Ramji. PW-10 is informant Rajeng @ Rajendra and PW-17 Shankar is father of PW-2 Ramji and elder brother of informant Rajeng (PW-10). All the witnesses referred above corroborated the prosecution story. Dr. Mahendra Singh (PW-8) had done autopsy of the dead body of Lakhma and Mukesh on 31.5.2002 and proved his postmortem report, according to which following ante-mortem injuries were received by deceased Lakhma:

1. Incised wound 5 x 1 x 1 inch on right side of chest under collarbone.
2. Incised wound 4 x 1/2 x 1 1/2 inch on root of neck backside above collarbone.
5. According to Dr. Mahendra Singh Jakhar (PW-8) the cause of death of Lakhma was hemorrhage due to sharp cut of right sub-elavian artery.
6. The body of deceased Mukesh was having following ante mortem injuries:
  1. Incised wound 1 x .5 x .5 inch, in occipital region
  2. Incised wound 5 x 2 x 1.5 inch, on left side of back of neck
7. The cause of death given was shock due to fracture and dislocation of the vertebrae (C2 to C4) due to injury No. 1.

8. An axe was also recovered on 1.6.2002 at the instance of accused and that was having blood stains. As per Forensic Science Laboratory Report blouse of the deceased Lakhma and the axe recovered were found to be stained with `B' Group of blood. PW-9 Mohd Mustaffa, Sub Inspector was investigating officer and he deposed about the various steps taken during the course of investigation.

9. The accused denied his participation in the incident alleged but he did not adduce any evidence in defence. The learned trial judge believed the prosecution evidence, hence, convicted and sentenced the appellant.

10. In appeal it has been argued by learned Amicus Curiae Sh. Shambhoo Singh that the conviction is based on the evidence of a child and that is not worthy credence. We have heard learned Amicus Curiae, Public Prosecutor and also examined entire record minutely.

11. The most important witness in the instant matter is PW-2 Ramji, a boy of six years. Learned trial court before examining Ramji (PW-2) on merits of the case asked him certain general questions and those are in consonance to voir dire test. On basis of the questions asked, the trial court satisfied itself about competence of the witness. PW-2 Ramji stated that he alongwith his brother and grand mother went to the mango tree to have some raw-mango fruits. When both the brothers were collecting raw-mangoes, Shankar Baba came with an axe and gave a blow at the back of grand mother, consequent thereto she fell down and then again Shankar Baba gave an axe blow on her chest. This witness further stated that on seeing the assault given by Shankar Baba to their grand-mother both the brothers tried to run away from the spot, however, Shankar threw the axe and that gave a blow at neck of Mukesh, and therefore, he died. As per Ramji (PW-2) he then went to Mana Baba and informed him about death of grandmother and his brother. This young witness reiterated whatever he stated in chief during the cross- examination also.

12. PW-18 Mana is real brother of accused Shankar. As per him deceased Lakhma was his aunt and Mukesh was his nephew. He further stated that on the day of occurrence Ramji came to him and stated that Shankar has killed Mukesh and grandmother Lakhma. He immediately ran to the spot where Sohan too came

and they found Shankar in a nearby house with a blood stained axe. This witness further stated that he saw dead bodies of Mukesh and Lakhma just near the mango tree, behind his house. According to PW-18 Mana, accused Shankar used to call deceased Lakhma as 'Dakin' (witch).

13. PW-16 Sohan is also a real brother of accused Shankar and he too corroborated the prosecution story with specific assertion that Shankar was usually calling deceased Lakhma 'Dakin'. He further stated that Shankar was of the view that Lakhma being a 'Dakin' has eaten his Ox and because of her his children were remaining ill. Other witnesses, informant Rajeng

14. PW-10, Leela PW-5 and Shankar PW-13 also supported prosecution story and they also reiterated that Shankar used to call Lakhma as 'Dakin'. Certain other independent witnesses viz. PW-6 Kalu, PW-7 Ratan Bai too stated that accused Shankar was always treating deceased Lakhma as 'Dakin'.

15. Learned trial court beside the evidence discussed above also considered medical and scientific evidence including FSL Report according to which the axe recovered and blouse of the deceased were having Group `B' blood stains.

16. The argument of learned Amicus Curiae regarding credence of a child witness is required to be examined in totality of the evidence available in present case. As per Section 118 of the Indian Evidence Act every person is competent as a witness unless the court reaches at the conclusion that the witness is prevented from understanding the question put to him or from giving rational answers to those questions by tender years, extreme old age, disease whether of body or mind or any other cause of same kind. The provision aforesaid is founded with a presumption that every person coming in witness box must have attained a normal degree of intelligence or knowledge. To determine competence of such a witness certain preliminary questions those are having no direct relation with case are put to the witness.

17. Beside the above while relying upon a child witness or a witness reference of whom is given under Section 118 of the Indian Evidence Act, need of corroborative evidence is also desirable. The court must be cautious while relying

upon testimony of a child witness as the children are susceptible to tutoring, but as held by Hon'ble Supreme Court in number of cases including State v. Venkappa : 2003 Cr.L.J. 3558, evidence of a child witness can not be rejected merely on the score of his age.

18. In the case in hand the trial court while examining PW-2 Ramji first proceeded with voir dire test and then only after reaching at a definite conclusion about his competence examined him on merits. From going through the entire statement of this young boy we are satisfied that his testimony was rightly believed by the trial court. This witness remained unperturbed and firm even during the long cross examination. Further pertinent to note that all other witnesses corroborated the prosecution story and the medical and scientific evidence too supported the prosecution case. As such, evidence tendered by child witness Ramji (PW-2) was corroborated, and thus, is worth credence, therefore, the trial court rightly relied upon that. From the evidence available the charge of committing an offence under Section 302 IPC by the accused is established beyond doubt, therefore, we do not find any error with the judgment impugned. Accordingly, this appeal giving challenge to the judgment dated 22.7.2003 passed by learned Addl. Sessions Judge, (Fast Track) No. 1, Doongarpur in sessions case No. 1/2003 is dismissed. Conviction of the accused Shankar S/o Raoji Dindor Meena resident of Dhangaon, P.S. Chintri, Distt. Doongarpur for commission of an offence punishable under Section 302 IPC and also the sentence awarded by the trial court are maintained, appeal stands dismissed.

19. While concluding we also consider it appropriate to appreciate services of Sh. Shambhoo Singh, learned Amicus Curiae, who quite effectively and seriously assisted the Court.

20. After parting with merits of the case we would like to note that this Court is facing with number of criminal cases arising out of superstitions prevailing like 'dakin' and other ill traditions like mautana and vair existing in tribal area of the State of Rajasthan. These superstitions and ill traditions prevalent in aboriginal tribe dominated southern Rajasthan, where the illiteracy and backwardness are in high ratio are taking a tole on the life of people. The superstitious behaviour as

existed in present case suspends logic, common sense and common human considerations, that often results in heinous crimes. A very important task of governance is to eliminate all ills in the society those are against rational approach of thinking and reasonability. It is unfortunate that tremendous growth of our nation and society is yet not so multi dimensional as desired in a Welfare Democratic State. The dalits, aboriginals and other tribes are yet not getting desired benefit of socio-economic promotional schemes.

21. For tribal area of the State a huge amount of money is available for development and promotion of people, however, real change in socio economic conditions of the tribes is yet awaited.

22. To make a real change in the objective conditions of the tribal area the government have to ensure literacy for every one, quality education for tribal children, cultural and socio reformist programs, self reliance and adequate employment to local people, easy access to medical facilities and also adequate participation in self rule through local self government bodies.

23. We are having no doubt that the government must be having numerous programs and schemes to satisfy the all above specifications, but the question still remains is of efficacious implementations of such schemes and programs. We being an essential wing of governance, looking to the existing conditions of tribes of the Rajasthan, consider it appropriate to direct the Secretary to the Government of Rajasthan, Tribal Area Development Department to submit a detailed report relating to plans and schemes available for promotion of tribes in the State of Rajasthan and the steps taken for their implementation. Such report is required to be submitted within a period of four weeks from today. The Registry shall de-tag record of this criminal appeal and shall independently constitute a separate file to have report from the Secretary, Government of Rajasthan, Tribal Area Development Department. A copy of this order is also required to be a part of that file.

24. Put up for further consideration and orders on 15.4.20 10.