
Shrawan Nath Vs The State of Rajasthan

Criminal Appeal No. 419 of 2008

Court: Rajasthan High Court

Date of Decision: Dec. 8, 2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 313#Penal Code, 1860 (IPC) â€” Section 300, 302, 304, 341

Citation: (2015) CriLJ 1046

Hon'ble Judges: Govind Mathur, J; Atul Kumar Jain, J

Bench: Division Bench

Advocate: Dhirendra Singh, Advocates for the Appellant; Vishnu Kachhawaha, Public Prosecutor, Advocates for the Respondent

Judgement

Atul Kumar Jain, J.

This appeal has been filed by accused-appellant Shrawan Nath against the judgment dated 18.6.2008 which was

passed in Sessions Case No. 55/2007 by Additional Sessions Judge(Fast Track) No. 1, Jodhpur. In FIR, about seven persons were named as

accused, but after investigation, the police had submitted charge-sheet only against four persons and out of those persons, only accused-appellant

Shrawan Nath was convicted by the trial court. He has been convicted and sentenced by the trial court as follows:

The trial court has also ordered that both the substantive sentences of accused-appellant Shrawan Nath shall run concurrently. It was further

ordered by the trial court that out of the fine, if recovered, an amount of Rs. 15,000/- will be paid as compensation to the "kith and kins" of

deceased lady Smt. Madan Kanwar.

2. The State has not filed any appeal against the acquittal of other three accused-persons by the trial court and so in this matter, we are concerned

only with the alleged culpability of accused-appellant Shrawan Nath which has to be determined in this appeal.

3. It has been argued on behalf of accused-appellant Shrawan Nath that the judgment of the trial court is against the facts as well as against the

law. It has also been argued that FIR was lodged by an alleged eye-witness Achal Nath, who was real brother of deceased and he was highly

interested witness. It has also been argued that the dimensions of injury do not match the size of knife which was allegedly recovered from the

accused-appellant. The recovery of knife from accused-appellant Shrawan Nath has also been challenged. It has been argued that when the knife

was recovered, there was no blood stains on it but when it reached FSL, then it was found having blood stains of Group of blood of deceased

lady, so there must be manipulations to procure the favourable FSL report. In the end, it has been argued that benefit of doubt should be given to

the accused-appellant and if that too is not possible, then the conviction of the accused-appellant should be converted from Section 302 of Indian

Penal Code to Section 304 Part I of Indian Penal Code and he should be released on undergone sentence because accused-appellant Shrawan

Nath is in jail since the date of his arrest, viz., 13.3.2007, although he had remained on temporary bail for some intervening period.

4. In the light of the aforesaid arguments, we have perused the record of the case. The learned Public Prosecutor has vehemently argued that the

prosecution case was proved beyond reasonable doubt and so the conviction and sentence of accused-appellant Shrawan Nath should not be

disturbed. It has also been brought to the notice of this Court by the learned Public Prosecutor that the incident was of 10.7.2005 and the

accused-appellant surrendered on 13.3.2007 and for that long period, he was absconding and so a supplementary charge-sheet had to be filed

against him in the trial court.

5. PW-1 Dr. C.P. Mathur had conducted the post-mortem of Smt. Madan Kanwar aged 35 years on 11.7.2005 and he states that along with two

abrasions, there was one stab wound in the stomach (at center) of Smt. Madan Kanwar and it was of the size of 2 c.m. x 7.5 c.m. X 1 c.m. and

this wound was deep enough to damage the heart and because of this wound, valve of heart was also damaged. Dr. C.P. Mathur has specifically

stated that Smt. Madan Kanwar had died only because of this injury and because of shock due to intra-thorasic haemorrhage. The post-mortem

was conducted by Medical Board of Dr. H.K. Sharma and Dr. C.P. Mathur. The doctor has not been examined on the point that the knife

recovered from accused-appellant Shrawan Nath could have caused an injury of such dimension or not. We are of the opinion that looking to the

size of the knife, as mentioned in the seizure memo Ex. P. 23, it can be said that the dimension of the injury was perfectly matching with the size of

edged part of the knife. The statement of Dr. C.P. Mathur categorically proves that the stab injury was fatal and it was sufficient in itself to cause

death of Smt. Madan Kanwar.

6. Ex. P. 23 is seizure memo of Knife which was prepared in presence of witnesses Sujana Ram and Chena Ram and it mentions that it was a

push-button Rampuri knife of about fourteen centimeters edge and sixteen centimeters long handle and its width was one centimeter in front side

and of three centimeters width of the back side. Chena Ram has not appeared as prosecution witness in the case but PW-17 Sujana Ram, Head

Constable has fully supported the seizure memo and he states that in his presence, the knife was recovered from the residential house of accused-

appellant Shrawan Nath by the Investigating Officer Shri Devendra Singh. In his cross-examination, he specifically mentions the fact that there

were slight visible stains of blood also on the knife. Similarly, PW-19 Devendra Singh, the then S.H.O. of Police Station, Ossian has also stated

that on 13-3-2007, accused-appellant Shrawan Nath had given an information for recovery of knife to him. Memo of information is Ex. P. 29. He

further states that in furtherance of that information, a Rampuri push-button knife was recovered by him and a seizure memo Ex. P. 23 was

prepared by him in presence of the witnesses. He admits that both the witnesses of seizure memo of knife were police constables but in his cross-

examination, he has not deviated from his examination-in-chief in this regard and it is also proved by his evidence that the knife was sealed on the

spot and then it was sent to FSL as per the procedure for examination of blood stains on it.

7. It is pertinent to mention here that FSL report Ex. P. 30 has been exhibited in this case and as per the FSL report, "kurti" of deceased and a

"chaku" (knife) recovered from accused-appellant Shrawan Nath both were having blood stains of Group-"AB". The blood smeared soil which

was taken from the place of incident was also found stained with the same group of blood. This fact also proves the participation of accused-

appellant Shrawan Nath in the brutal killing of helpless lady in daylight.

8. Then comes the statement of PW-6 Achal Nath. He states that on 10.7.2005 at 2.30 p.m., he was accompanying his sister Smt. Madan

Kanwar to the Bus Stand and in the mid-way, when they reached near the agricultural farm of Lal Singh, he had gone for easing the call of nature

(for urination) and so he was about fifty steps behind his sister and then accused-appellant Shrawan Nath along with his other companions came

and accused-appellant Shrawan Nath stabbed his sister in her chest/stomach and then he cried for help, so Om Nath and Shanker Lal also

reached on the spot, but three of them could not save his sister from the attack of assailants and the assailants were able to run away from the spot

after causing instantaneous death of Smt. Madan Kanwar. He states that he had rushed towards his sister and within two minutes of attack on his

sister, he had reached to her rescue but by that time, his sister had succumbed to her injury. In his cross-examination, witness Achal Nath has been

proved natural, innocent and trustworthy witness, though he was brother of the deceased but his presence on the spot is proved beyond any iota of

doubt.

9. Another contention raised on behalf of the appellant-accused is that only family members of the deceased were examined as witnesses and they

being interested witnesses cannot be relied upon. Furthermore, the prosecution did not examine any independent witnesses and, therefore, the

prosecution has failed to establish its case beyond reasonable doubt. This argument is again without much substance. Firstly, there is no bar in law

in examining family members, or any other person, as witnesses. More often than not, in such cases involving family members of both sides, it is a

member of the family or a friend who comes to rescue the injured. Those alone are the who take the risk of sustaining injuries by jumping into such

a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is

credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the

prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was a family member or

an interested witness or a person known to the affected party. *Mano Dutt and Another Vs. State of U.P.*, be referred here.

10. Then we will examine statement of PW-8 Shanker Lal. He says that he used to treat Smt. Madan Kanwar as his sister though not related by

blood. He corroborates the testimony of Achal Nath. He says that the assailants were running after Achal Nath and out of them, accused-appellant

Shrawan Nath was having knife in his hand. He says that when he asked Achal Nath about the cause of sequence of events, then Achal Nath told

him that Shrawan Nath had killed Smt. Madan Kanwar with a knife. He says that he had also seen Shrawan Nath attacking Smt. Madan Kanwar

with the help of a knife.

11. PW-9 Om Nath is real brother of Smt. Madan Kanwar. He also corroborates the statement of Achal Nath. He states that when he saw the

assailants running towards his sister Smt. Madan Kanwar, then he asked Shanker Lal to accompany him but then Shrawan Nath and his other

companions ran away from the spot. He says that there was an existing enmity between Shrawan Nath and Achal Nath and in that court case,

Smt. Madan Kanwar was supposed to appear as a witness and so she was killed by accused-appellant Shrawan Nath.

12. In the circumstances of the case and by the statements of Achal Nath, Om Nath and Shanker Lal, it is apparent that the fatal knife injury was

caused only by accused-appellant Shrawan Nath and Smt. Madan Kanwar died only because of that stab wound and that too soon after the

attack on her.

13. Other witnesses of the case are PW-2 Ganga Giri, PW-3 Ghanshyam Puri, PW-4 Doongar Ram, PW-5 Smt. Dariyav Kanwar, PW-7 Indra

Singh, PW-10 Jitendra Singh, PW-14 Bhawani Singh, PW-15 Bhura Ram, PW-16 Sahi Ram and PW-18 Om Prakash. Out of them, PW-2

Ganga Puri, PW-3 Ghanshyam Puri and PW-4 Doongar Ram are the formal witnesses of Panchnama of dead body etc. PW-18 Om Prakash is a

formal witness of site plan Ex. P. 27.

14. PW-5 Dariyav Kanwar is mother of deceased Smt. Madan Kanwar. She proves enmity between accused-appellant with the complainant

party. PW-7 Indra Singh, S.I. and the then S.H.O. of Police Station, Ossian proves the formalities of FIR and different seizure memos which were

prepared by him soon after the incident. He had submitted the supplementary charge-sheet against accused-appellant Shrawan Nath. PW-10

Jitendra Singh is police photographer, who had exhibited photos Ex. P. 12 to Ex. P. 16. PW-14 Bhawani Singh and PW-15 Bhura Ram are

carriers of samples of seized articles to FSL. PW-16 Sahi Ram was Malkhana Incharge. He was examined to prove that samples were kept "seal

intact" in the Malkhana.

15. In his examination under Section 313 of the Code of Criminal Procedure, accused-appellant Shrawan Nath has put forward no defence story.

He has simply denied the incident.

16. In the circumstances of the case and after perusal of the site plan, seizure memos and other record of the case and after going through the

statements of Achal Nath and other witnesses, we are fully convinced that accused-appellant Shrawan Nath had committed murder of Smt.

Madan Kanwar because of previous enmity with her. In a single and pre-planned attack by a push-button Rampuri knife, he was able to take life of

a helpless lady and for this intentional killing, he cannot be punished in any section of the Indian Penal Code other than Section 302 of the Indian

Penal Code.

17. In Virsa Singh Vs. The State of Punjab, , it was held by the Hon"ble Supreme Court that ""whether the injury intended by the accused and

actually inflicted by him is sufficient in the ordinary course of nature to cause death or not, must be determined in each case on the basis of the facts

and circumstances of the case. In the instant case, the injury caused was the result of blow with a knife in the stomach which was given with such

force that the weapon had penetrated the abdomen and had injured the bowels. According to the doctor, the injury was sufficient in the ordinary

course of nature to cause death. Therefore, in the absence of any circumstances to show that the injury was caused accidentally or unintentionally,

it had to be presumed that the accused had intended to cause the inflicted injury and the condition of clause (3) of section 300, IPC were satisfied.

Conviction under Section 302 upheld."" In view of the above, the appeal of accused-appellant Shrawan Nath deserves dismissal which is hereby

dismissed and accordingly, conviction and sentence of accused-appellant Shrawan Nath under Sections 302 and 341 of Indian Penal Code

passed by the trial court is upheld as such. The accused-appellant is in jail, so two copies of this judgment be sent to the Superintendent, Central

Jail, Jodhpur, out of which one copy of the judgment be kept for office use and other copy be given to accused-appellant Shrawan Nath. Record

of the case along with one copy of the judgment be sent to the trial court immediately.