

State of Rajasthan

Vs

Satyanarayan

Criminal Appeal No. 614 of 1990

(G. T. Nanavati, V. N. Khare JJ)

21.01.1998

JUDGMENT

NANAVATI, J.-

1. Aggrieved by the judgment and order of acquittal passed by the High Court of Rajasthan in Criminal Appeal No. 368 of 1981, the State has filed this appeal. The respondent was convicted by the trial court for the offence punishable under Section 302 IPC and sentenced to suffer imprisonment for life.
2. The prosecution case was that relations between Satyanarayan - the accused and Bhima - his neighbour were not good as they had a dispute with respect to construction of a boundary wall and previously there was some litigation also between the parties. On the day of the incident, that is, on 26-11-1980, at about 7.00 a.m., Bhoridevi, wife of Bhima, was sweeping in front of her house. At that time, accused Satyanarayan was standing near the window on the first floor of his house and spat out water on Bhoridevi. That led to an exchange of words between her and the accused Satyanarayan. The accused came down and continued quarreling with her. By that time, other inmates of Bhima's house also came out. The accused then attacked PW 2 Satyanarayan @ Kaliya, a relation of Bhoridevi, with an iron pipe. He also injured Ram Gopal (PW 9) and Bhoridevi (PW 5) and then went back to his house. Kesar Lal, brother of Bhima, then went near the house of the accused and started questioning the accused as to why he was quarreling like that in the morning. Thereupon, the accused came out of his house with a knife and inflicted a blow on the abdomen of Kesar Lal as a result of which his intestines came out. The accused then ran away from that place. It was the prosecution case that as a result of that injury Kesar Lal died and that during the investigation that knife was discovered by the accused.
3. In order to prove its case the prosecution had examined nine eyewitnesses, out of whom four were injured during the incident. Out of the remaining eyewitnesses - PW 1 Sitaram, PW 4 Kaluram and PW 12 Rajdevi were the neighbours who had seen the incident. The trial court accepted the evidence of the injured witnesses as they received corroboration from PWs 1, 4 and 12 against whom nothing could be alleged by the defence. The houses of the accused and Bhima were adjacent to each other and, therefore, presence of the injured witnesses was natural. As it was established that the accused has come out with a knife and given a blow to Kesar Lal the trial court convicted him for the offence punishable under Section 302.
4. Aggrieved by the conviction and sentence, the appellant preferred an appeal to the Rajasthan High Court. Strangely, without discussing the prosecution evidence, the High Court held that the defence version, that the complainant and his family members had come to his house to attack him,

that at that time PW 2 Satyanarayan had a knife, that when PW 2 tried to inflict a blow on him, he moved aside and it landed on Kesar Lal and that Kesar Lal was injured not by him but by his own son, PW 2 Satyanarayan, was more probable.

5. The High Court has neither discussed the prosecution evidence nor has it given reason for disbelieving it and holding that the defence version was more probable. It was, therefore, submitted by the learned counsel for the appellant that the judgment of the High Court deserves to be set aside.

6. As observed earlier, the houses of Bhima and the accused were adjoining and the incident took place in front of their houses. That PW 2 Satyanarayan, PW 5 Bhoridevi, PW 9 Ram Gopal and PW 11 Phoolchand were injured during the incident, is proved by their evidence and the evidence of the doctor who had examined them on that very day. The fact that they were injured ensures that they had seen the incident. They have stated that after causing injuries to them with an iron pipe, the accused had entered his house and closed the door. At that time, Kesar Lal had come there and started complaining as to why the accused was quarreling like that in the morning. The accused came out with a knife and inflicted a blow on the abdomen of Kesar Lal. However, it appears from the FIR filed by PW 2 that the accused had really aimed the blow at PW 9 Ram Gopal but as Ram Gopal moved away, it hit Kesar Lal on his stomach. This version in the FIR is also supported by PW 9 Ram Gopal. Except this improvement, the evidence of the injured witnesses does not suffer from any infirmity. Moreover, their evidence is also supported by the evidence of three independent witnesses, PW 1 Sitaram, PW 4 Kaluram and PW 12 Rajdevi. Their evidence does not suffer from any infirmity and nothing could be urged as to why they were likely to depose falsely against the accused. We find no reason whatsoever for discarding their evidence. Once their evidence is believed, it will have to be held that the respondent caused injuries to PW 2 Satyanarayan, PW 5 Bhoridevi, PW 9 Ram Gopal and PW 11 Phoolchand with an iron pipe and later on gave a fatal knife blow to Kesar Lal.

7. Merely because no blood was found near the house of the respondent, it cannot be said that no incident took place there. The fact that Kesar Lal had received a knife blow near his house was admitted by the accused though according to him the knife was with PW 2 Satyanarayan and not with him. As the trial court has pointed out, the place was a public road and there was a lot of traffic on that road. That could have been the reason why no blood was found when the spot panchnama was made after a few hours. Moreover, the evidence discloses that the intestines of Kesar Lal had come out and that could have blocked the flow of much blood. Some blood was absorbed by the clothes. Therefore, the circumstances that not sufficient blood was noticed when the spot panchnama was made should not have been utilised by the High Court for holding that the prosecution version was not correct and that the defence version was more probable.

8. In our opinion, the prosecution had established beyond doubt that the respondent had given a knife blow to Kesar Lal and that he died as a result of the injuries caused by that blow. Though the injury was sufficient in the ordinary course of nature to cause death, the evidence discloses that the respondent had not aimed the blow on any vital part of Ram Gopal or Kesar Lal. The blow was aimed at Ram Gopal but as he moved aside, it landed on the stomach of Kesar Lal. The dispute was not such which would have prompted the accused to cause the death of Kesar Lal, particularly when he had no dispute with Kesar Lal. The dispute was with Bhima, the brother of Kesar Lal. This aspect was not at all considered by the trial court or by the High Court. In our opinion, in view of the facts and circumstances of the case, the appellant should have been convicted under Section 304 Part I IPC and not under Section 302.

9. We accordingly allow this appeal, set aside the judgment and the order of acquittal passed by the High Court and convict the respondent for the offence punishable under Section 304 Part I IPC and sentence him to suffer rigorous imprisonment for seven years.

10. The respondent was released on bail during the pendency of the appeal. Therefore, his bail is cancelled and is ordered to surrender to custody to serve out the remaining part of the sentence.