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**(2006) 12 RAJ CK 0050**  
**In the Rajasthan High Court**

Kamal Nayan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

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**Date of Decision :** 01-12-2006

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313

Penal Code, 1860 (IPC) — Section 302, 307, 34

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —  
Section 3

**Citation :** (2007) 2 RLW 1217

**Hon'ble Judges :** Shiv Kumar Sharma, J; Khem Chand Sharma, J

**Bench :** Division Bench

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## Judgement

Shiv Kumar Sharma, J.—Challenge in these appeals is to the judgment dated May 27, 2002 of the learned Special Judge SC/ST (Prevention of Atrocities Cases) Alwar whereby Kamal Nayan 2 Bablu and Anil Kumar, the appellants herein, have been respectively convicted u/s 302/34 and 302 IPC and sentenced to suffer imprisonment for life and fine of Rs. 2000/-, in default to further suffer rigorous imprisonment for six months.

2. The prosecution story runs as under:

The informant Kamla Devi (PW-1) lodged a written report on July 11, 2000 at the Police Station Kotwali Alwar stating therein that on the said day around 2 p.m. while her husband and son were not at home Hariram, Anil and Arun Athwal gave beating to her. Against at 3.30 p.m. they came to her house, quarreled with her and told her that they had already killed her son and they would now kill her husband. On inquiry she found that these miscreants had stabbed her son near old temple of Jagannathji and he was admitted in the hospital. On that report a case u/s 307 IPC was registered and investigation commenced. The injured Rajesh was referred to Jaipur, but on the way he succumbed to the injuries and Section 302 IPC came to be added. Dead body was subjected to autopsy. Statements of witnesses u/s 161 Cr.P.C. were recorded. The appellants were

arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge SC/ST (Prevention of Atrocities Cases) Alwar. Charges under Sections 302, 302/34 IPC and 3(2)(5) SC/ST (PA) Act were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 15 witnesses and exhibited 21 documents. In the explanation u/s 313 Cr.P.C, the appellants claimed innocence. Kamal Nayan stated that he was not in a position to catch hold of the deceased since 2-3 days prior to the incident he sustained grievous injuries over his right shoulder and left ulna in a scooter accident. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated hereinabove.

3. We have heard the submissions advanced before us and scanned the material on record.

4. Prior to his death injuries sustained by Rajesh were examined. Vide injury report (Ex.P-8) Rajesh received following injuries:

1. Oblique stab wound 2.25 x 1.25 x chest cavity deep on Rt. side lower sternal area with upper end

2. Trans, stab wound 2 x 1.5 x chest cavity deep of Lt. nipple over medially

3. Stab wound oblique 1.5 x 1.25 x MD on Lt. shoulder joint lower Ant.

4. Abrasion 3.25 cm on Lt. scapular area

5. Abrasion 1 x 1 cm Lt. knee

6. Abrasion 1.5 x 1 cm on back of base of Lt. index finger

7. Abrasion 1 x 1 cm lateral Lt. elbow

8. Lenior incised wound 1 x 1/6 cm x SD Lt. Parietal area.

5. Dead body of Rajesh was subjected to post-mortem and as per autopsy report (Ex.P-9) the cause of death was syncope brought about as a result of injury to heart which was sufficient to cause death in the ordinary course of nature.

6. Shiv Lal (PW-4) and Ashok (PW-5) are the star witnesses of the prosecution. Shiv Lal in his deposition stated that on the day of incident around 2.30 p.m. while he was going along with Ashok towards his house he saw Kamal Nayan and Anil pushing Rajesh down. Kamal had caught hold of Rajesh, whereas Anil was inflicting knife blows on the abdomen and chest of Rajesh. After seeing the incident they went to the mother of Rajesh and informed her about the incident. In the cross-examination he admitted that plaster and bandages were wrapped on the right shoulder and both the hands of Kamal Nayan. He stated thus:

;g lgh gS fd dey u;u ds nk;s da/ks ij o cka;h o nka;h dykbZ ij IQsn IyKLVj ;k iV~Vh ca/kh gqbZ t:j FkhA

7. Ashok (PW-5) corroborated the testimony of Shiv Lal and deposed that Anil dragged Rajesh from Ricksha as a result of which Rajesh fell down, then Kamal caught hold of him and Anil gave four knife blows on the abdomen, chest and shoulder of Rajesh. In the cross-examination Ashok stated that Rajesh was lying straight and Kamal Nayan was standing towards his head whereas Anil was standing on his left side. He stated thus:

dey u;u jkts"k ds flj dh rjQ Fkk vfuy cka;s gkFk dh rjQ Fkka jkts"k ysVk gqvK Fkka jkts"k lh/kk ysVk gqvK Fkka

8. Pyare Lal (PW-15), who conducted investigation of the case, in his deposition stated that on the basis of disclosure statements (Ex.P-19 and Ex.P-20) of Anil, he recovered knife and clothes stained with blood vide recovery memos (Ex.P-5 and Ex.P-6). Knife and clothes were sent for FSL examination and FSL report Ex.P-21 was received. Blood smeared soil was also lifted by him and sent for FSL examination.

9. A look at the FSL report (Ex.P-21) reveals that on serological examination of blood smeared soil lifted from the place of occurrence and shirt recovered at the instance of Anil, blood stains with "A" group were found.

10. Thus having tested the prosecution evidence from the point of view of trustworthiness, we find it consistent qua appellant Anil. We are therefore of the view that charge u/s 302 IPC is proved against appellant Anil beyond reasonable doubt. We find no merit in the submission of learned Amicus Curiae that since Shiv Lal and Ashok were the chance witnesses therefore their testimony ought to have been rejected.

11. So far as charge against appellant Kamal Nayan is concerned it appears to us that although he was present at the time of incident, it could not be established that he shared common intention with Anil in making assault on Rajesh. Even according to prosecution witness Shiv Lal right shoulder and hands of Kamal Nayan were covered with bandages and in the explanation u/s 313 Cr.P.C. Kamal Nayan stated this fact. To convict a person for an offence applying Section 34 it is necessary to establish that the criminal act was done in concert, pursuant to a pre-arranged plan. Liability u/s 34 arises on proof of existence of common intention amongst the participants in crime. In the instant case the prosecution has failed to establish that Anil and Kamal Nayan had pre-arranged plan and meeting of minds to commit offence. Thus possibility of over implication of appellant Kamal Nayan in the crime cannot be ruled out and we are of the opinion that charge u/s 302/34 IPC is not proved against appellant Kamal Nayan.

12. For these reasons, we dispose of the instant appeals in the following terms:

(i) We allow the appeal of appellant Kamal Nayan and acquit him of the charges u/s 302/34 IPC. Appellant Kamal Nayan, who is in jail, shall be at liberty forthwith, if not required to be detained in any other case.

(ii) We dismiss the appeal of appellant Anil Kumar and confirm the finding of

conviction and sentence u/s 302 IPC rendered against him by the learned trial Judge.