

## Narayan Nathu Naik vs State Of Maharashtra on 25 March, 1970

**Equivalent citations:** 1971 AIR 1656, 1971 SCR (1) 133, AIR 1971 SUPREME COURT 1656, 1971 (1) SCJ 72, 1971 (1) SCR 133, 1971 MADLJ(CRI) 43, 1970 SCD 697, 1971 ALLCRIR 156, 1970 SC CRI R 516, 1971 MADLW (CRI) 71(2)

**Author:** M. Hidayatullah

**Bench:** M. Hidayatullah, A.N. Grover

PETITIONER:

NARAYAN NATHU NAIK

Vs.

RESPONDENT:

STATE OF MAHARASHTRA

DATE OF JUDGMENT:

25/03/1970

BENCH:

HIDAYATULLAH, M. (CJ)

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HIDAYATULLAH, M. (CJ)

GROVER, A.N.

CITATION:

1971 AIR 1656

1971 SCR (1) 133

1970 SCC (2) 101

ACT:

Code of Criminal Procedure (Act 5 of 1898)--High Court--Recording of reasons in appeals.

First Information Report--Written on plain paper, and then copied into register--Propriety.

HEADNOTE:

The first information report in a murder case was written on a piece of paper, and was copied into the register for first information reports. The Sessions Judge convicted the appellant on the evidence, even though the first information report was not recorded in the prescribed form. His appeal to the High Court was summarily dismissed although the High Court recorded a brief note of the arguments which were raised before it and the replies to those arguments repelling them. Dismissing the appeal, this Court

HELD : The High Court need not have recorded reasons if it was satisfied that the case was one for dismissal but if it thought that it had to go into the evidence and had to discuss it, the proper course would have been to set the case down for a proper bearing and to give a considered judgment in the case. The first information report was properly written. Several first information reports are recorded on plain pieces of paper and then transcribed into the first information report register. In fact if a written report is brought, it is verbatim copied into the first information report register. In this case there was no time to bring a false case against the appellant and to let the real assailant escape. [134 C; 135 E-F] On the evidence, the appellant was rightly convicted.

JUDGMENT :

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal. No.97 of 1968.

Appeal by special leave from the judgment and order dated April 24, 1967 of the Bombay High Court in Criminal Appeal No. 317 of 1967.

R. M. Hazarnavis, K. L. Hathi and P. C. Kapoor, for the appellant.

M. S. K. Sastri and S. P. Nayar, for the respondent, The Judgment of the Court was delivered by Hidayatullah C.J.-This is an appeal by Narayan Nathu Naik who was tried by the Sessions Judge, Thana for the murder of one Rattan on the night following 18th March, 1966 at about midnight. He was convicted by the Sessions Judge under S.

302. of the Indian Penal code and sentenced to imprisonment for .life. His appeal to the High Court was summarily dismissed .although the High Court recorded a brief note of the arguments which were raised before it and the replies to those arguments repelling them. It is contended in this case that the appellant was entitled to at least one appeal and that his first appeal should have been properly considered in the High Court and the judgment of the High Court,, which according to the .learned counsel, reads like a dialogue between the court and counsel, is no judgment at all. It appears that special leave was probably granted in this case, because of the unsatisfactory manner in which reasons were recorded. The High Court need .not have recorded reasons if it was satisfied that the case was ,one for dismissal but if it thought that it had to go into the . evidence and to discus it, the proper course would have been to set the case down for a proper hearing and to give a considered judgment in the case. We have considered this case on the evidence brought against the appellant and we are satisfied that the appeal must fail. We give our reasons briefly.

There is some evidence that the appellant Narayan Nathu Naik and the deceased Rattan had some quarrel over property. This, it is contended, was somewhat old and not very serious and that nothing untoward had happened, for the appellant to .have suddenly embarked upon the murder of rattan.

We need not consider the question of motive in this case if we are satisfied that the evidence that Narayan Nathu Naik was the assailant of Rattan, is acceptable. The Medical evidence showed that Rattan died of a single injury which was a stab wound through the heart. The left ventricle was cut and the heart was drained of all blood. The pericardium had also a tear but on its upper reach and the evidence of the doctor who performed the autopsy shows that the pericardium was full of blood. The clothes of the deceased were also profusely stained but no blood was found inside the house where the deceased was first sleeping, but some blood was found at the Ota where the dead body was found but the source of the blood could not be identified. From this the learned counsel raised the contention that the scene of offence was probably not what the prosecution case described and his contention is wound up with the rest of the story given by the eye witnesses particularly the wife who named the appellant as one of the assailants. Therefore we must turn to that story.

On the day in question, the deceased Rattan had gone to make some purchases. At night he had not returned when the family took their meals and lay down to sleep. In the house at that time were Rattan's mother, Rattan's wife and Rattan's brother. There were three students who had come to this house and were staying to appear at the S.S.L.C. examination. The family distributed themselves as follows. Inside the house Rattan's wife lay down on the ground on a bed with her infant child. The bed for Rattan was made on a swing nearby. A lantern was burning and the door of the house was open. Rattan returned at about 10 P.M. in the night. As food had been taken by the rest of the family, a portion was set apart for Rattan. According to his wife, Vimalabai, he took his meals without waking her up and after he had washed his hands, he threw some water on her face which woke her up. He then lay down on the swing to sleep. Vimalabai says that she also lay down to sleep and presumably she must have slept, because she says that she was woken up in the middle of the night by shouts from her husband. Vimalabai's evidence is that when she woke up, she found that her husband was in the grip of the appellant Narayan Nathu Naik at the door near the ota. Rattan's brother Kamlakar who had also been awakened by the shouts of the deceased also arrived there, but the appellant had stabbed Rattan. Kamlakar caught hold of the appellant from behind around his waist, but when Rattan fell on the ground the appellant broke loose and ran away. On their shouting and wailing, Jairam the uncle of Rattan (P.W.1.) and two other brothers of Rattan came on the scene. They were living at a distance of about 1-1/2 furlongs from the house of Rattan. Rattan is said to have spoken to his mother before he died that it was Narayan Nathu Naik who had attacked him. The evidence is that it was Narayan Nathu Naik and this is borne out by the statements of Kamlakar (P.W.3), Manibai (P.W.4) and Vimalabai (P.W.5). The two students who were also witnesses in the case made a statement before the police involving Narayan Nathu Naik, but they later changed in the court and were declared hostile and cross-examined. We shall refer hereafter to their testimony in so far as they have admitted facts in support of the prosecution case.

The story therefore is of an attack in the middle of the night upon Rattan by the appellant at the door of his hut. The incident is said to have been witnessed by three persons whom we have mentioned and who are close relations of the deceased. The argument is that the evidence of these witnesses should not be accepted because of their interest in Rattan and also because of certain contradictions in their testimony.

Apart from the fact that the High Court and the Court of Session have accepted their testimony and this Court does not go into evidence for the third time, we have read the evidence of these witnesses and we have thoroughly checked it and we are satisfied that what has been stated by these witnesses is the true version of what happened on that fateful night. The story is a simple one, of an attack in the middle of the night by an assailant who was not only grappled with but was seen and identified in the light. The witnesses who have resiled have also stated that the occurrence took place at the door of the cottage. They have also stated that there was sufficient light for them to see although they changed that they did not see the assailant nor heard what the victim stated to his mother about the appellant having assaulted him. This version comes from the witnesses who no doubt are interested, but they are not interested enough to let the real assailant escape and charge someone else. Report of this case was made almost immediately and in fact the police arrived within a couple of hours and the statements were recorded the very next morning. There was no time available to concoct a false case with such details against the appellant.

It was argued that the first information report was not properly recorded in the prescribed form but was written down on a piece of paper and it was copied into the register for first information reports. At first it was suggested that the first information report in the printed form was not produced in the case, but we find that it was so produced and that the Sub-Inspector stated that he had copied it from a plain paper. In our experience, we have seen several first information reports recorded on plain pieces of paper and then transcribed into the first information report register. In fact if a written report is brought, it is verbatim copied into the first information report register. There is no doubt that this was the first version of the incident given out by P.W. 1 Jairam when he went to the police station house to report about the occurrence. There was no time to bring a false case against the appellant and to let the real assailant escape. On the whole, we are satisfied that the evidence of the eye witnesses is believable.

The witnesses who resiled were the two students who were present at the house for the purpose of appearing at an examination. They have answered a number of questions which clearly corroborate the evidence of the other witnesses. For example, P.W. 7-Chintaman Gangaram Kulkarni stated that the light of some lamp was coming outside the door of the house and that when Kamlakar caught hold of the assailant Rattan fell down on the ground near the door of the Ota. He also stated that Rattan's mother went inside the house, brought water, tried to give water to Rattan, but he did not drink. He also stated that after hearing the cries, Rattan's uncles, his sister and her husband came there. He admitted that Kamlakar told his uncle what had happened, he did not hear it. He admitted that it was true also that thereafter one of the uncles of the deceased Rattan. went to the police station to make a report. The other witness (P.W. 10) also stated quite clearly that at about 3 or 4 A.M. the police came to the house and that his statement and those of two companions were recorded by the police at 7 A.M. the next morning. He also admitted that they all woke up when they heard the cry in the middle of the night and that Rattan's wife had also awakened and she had stood in the door of the house. He admitted that the light was burning in the house and the door of the house was open and that the light of the lamp. had spread over the ota of the house through the open door.. He also admitted that Rattan's mother brought water from the house and poured in into the mouth of Rattan but he did not drink and all the inmates were crying aloud with the result that Rattan's uncle Jairam, his two brothers, Rattan's sister and her husband came there immediately

after the crime. Jairam made enquiries with Kamalakar and Naibai how it had happened and that Kamalakar told something to Jairam but he said that he did not hear it. All this corroborates the evidence of the, three eye witnesses except as to the identity of the appellant. We accept the evidence of the eye-witnesses.

The medical evidence was used to challenge the scene of offence on the ground that there were no blood marks found, but, in our opinion, the man might bleed internally after receiving, stab wound in the heart. The witnesses have stated that Rattan was stabbed on the spot where the body was found after the occurrence took place. Blood was in fact found at the spot but the source of the blood could not be ascertained There is no, reason to think that it was blood of some animal. On the whole we are satisfied that this case was proved satisfactorily.- The appeal. therefore, fails and is dismissed.

Y.P.  
11sup.CI-10

Appeal dismissed'.