

**Kala Khan Vs. the State**

**Kala Khan Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/688265](http://sooperkanoon.com/688265)

**Court :** Delhi

**Decided On :** Apr-21-1980

**Reported in :** 18(1980)DLT65

**Judge :** G.B. Luthra, J.

**Acts :** [Arms Act, 1959](#) - Sections 27

**Appeal No. :** Criminal Appeal No. 270 of 1974

**Appellant :** Kala Khan

**Respondent :** The State

**Advocate for Pet/Ap. :** S.K. Jain, Adv

**Judgement :**

**G.R. Lathra, J.**

(1) Two appeals of Kale Khan appellant (being. numbers 270 & 271 of 1974) are being decided together and the present judgment is being written in appeal No. 270 of 1974. The case of the prosecution is as follows :

(2) The father of Sudershan Kumar was dealing in grocery at shop No. 122, Parwana Road, Radhey Sham Park, Gandhi Nagar Delhi.. On the night between 19th and 20th July) 1971 as usual, the shop was locked and Sudershan Kumar

slept on a cot on the road in front of the shop. At about 1.30 A. M. he heard some sound of falling down of some articles in the shop. He felt alarmed. He got up and saw that the door of the shop was open and two men were standing near his cot. Feeling terrified Sudershan raised an alarm 'Chor' 'Chor' on account of which the two young men standing near his cot ran away. Sudershan Kumar recognised them as Ramesh and Khalil. The third person who was inside the shop picked up a transistor and started running. Sudershan Kumar chased him. In the mean time Ram Kishan P. W. 2, who was a Head Constable of Delhi Police and who was residing nearby house No. 66, Radhey Sham Park came out. When Ram Kishan and Sudershan Kumar tried to over power Kale Khan, latter took out a knife and threatened the former that the former would be given knife stabs. Ram Kishan struck a danda blow on the hand of Kale Khan on account of which knife fell down on the ground. He was apprehended along with the transistor. Search of Kale Khan was made and lock of the shop and a bunch of keys was found from one of the pockets of his pants. Manohar Lal, father of Sudershan Kumar who was sleeping at his house received information from some one in respect of the occurrence. He reached the spot and rang-up the police. On receipt of information Head Constable Mukand Singh went to the place of occurrence followed by Sub-Inspector Gopi Chand. Kale Khan was produced along with the transistor, lock, bunch of keys and knife before Gopi Chand, Sub Inspector Police, who took the same into possession and recorded the statement of Sudershan Kumar and sent the same for recording of first information reports.

(3) After the completion of investigation two cases were instituted against Kale Khan. One of them was under Section 27 of the Arms Act. That case was against him alone. The appeal in connection with the said case is 271 of 1974. The other case against Kale Khan was as one of the accused along with Ramesh and Khalil in respect of commission of offences punishable under Section 457 and 380 1. P. C., the appeal in respect of which case is 270 of 1974.

(4) The aforesaid two cases were tried separately. Kale Khan was convicted under Section 27 of the Arms Act and sentenced to under-go rigorous imprisonment for one year. In respect of commission of offence punishable under Section 457 and 380 1. P. G., he was sentenced to undergo rigorous imprisonment for one and a

half year and one year. A direction was given that the sentence in respect of all the offences punishable under Section 457 and 380 I. P. C. and 27 of the Arms Act shall run concurrently.

(5) Practically the same set of witnesses were produced in both the cases. First of all I will deal with the case under Section 457 and 380 I. P. G. Ten witnesses were produced. Sudershan Kumar and Ram Kishan supported the entire prosecution story as well as overpowering Kale Khan. Gurcharan Dass P. W. 3, brother of Sudershan Kumar deposed in respect of purchase of the transistor which was stolen by Kale Khan vide Ex. Public Witness . 3A issued by Super Bazar. The said Gurcharan Dass P. W. 3 and Manohar Lal Public Witness . 4 supported the version of the prosecution to the extent that when they reached the spot they found that Kale Khan had been apprehended.

(6) The remaining two accused Ramesh and Khalil were given benefit of doubt by the Court on the ground that Sudershan Kumar was the only person who deposed against them and that it was possible that he might have erred in recognition on account of darkness. Accordingly, they were acquitted.

(7) In the case under Section 27 of the Arms Act reliance was also placed on the statement of Sudershan Kumar and Ram Kishan Head Constable. In all 9 witnesses were produced.

(8) The appellant did not appear on March 5 and March 6, 1980. Arguments of counsel for the State were heard.

(9) There is no reason to disbelieve Sudershan Kumar and Ram Kishan who had apprehended Kale Khan at the spot with the knife. It may be mentioned that during investigation on account of inadvertence the knife which was recovered from Kale Khan was lost. Evidence in the shape of Harish Chander, A. S. I. Police and H.D. Kaushik, District Nazir was produced for proving the destruction of the knife. On account of the loss of the knife it is not possible to maintain the conviction of the appellant on the charge under Section 27 of the Arms Act. But the remaining charges under Section 457 and 380 I. P. C. stand fully established.

(10) The contention of Kale Khan in a statement under Section 342 of Code of Criminal Procedure, 1898 was that he had been falsely implicated by Manohar Lal. He explained that he worked as a Mason for repairs at the shop of Manohar Lal on account of which latter owed Rs. 3000.00 to the former which were not paid and instead of plying the same former had been falsely implicated in connivance with the Investigating Officer Gopi Chand S. I. Police. But that version is hardly believable. Why should Ram Kishan unnecessarily help a wrong cause of Manohar Lal and Sudershan Kumar

(11) In view of the above circumstances, I accept the appeal No. 271 of 1974 and acquit the appellant in respect of the charge under Section 27 of the Arms Act. I, however, dismiss the appeal No. 270 of 1974 and maintain the conviction and sentence of the appellant in respect of charges under Section 457 and 380 I. P. C. The net result is that the appellant is to undergo rigorous imprisonment for one and half years in respect of commission of an offence punishable under Section 457 I. P. C. and rigorous imprisonment for one year in respect of commission of offence punishable under Section 380 I. P. C., and both the sentences shall run concurrently. Copy of this judgment be sent to the trial court concerned for taking immediate action for arresting the appellant and sending him to jail for.