

**Ashok Kumar Vs. State**

**Ashok Kumar Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/695435](http://sooperkanoon.com/695435)

**Court :** Delhi

**Decided On :** Feb-23-1994

**Reported in :** 1995(1)ALT(Cri)2; 54(1994)DLT638

**Judge :** V.B. Bansal, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 323

**Appeal No. :** Criminal Appeal No. 407 of 1976

**Appellant :** Ashok Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** O.R. Dutta and; N.K. Handa, Advs

**Judgement :**

**V.B. Bansal, J.**

(1) Ashok Kumar son of Rishi Parkash resident of RanaMampur, Narela, Delhi, was tried for the offence under Section 307, Indian Penal Code in Fir No. 167/75, Police Station Narela, Delhi, with the allegations that on 1.8.75 at about 6.30 p.m. Ashok Kumar inflicted head injury with a sharp pointed weapon to Rajesh son of Hari Chand, complainant, near House No. 1921, Mamurpur, within the jurisdiction of Police Station Narela and also on the head of Kumari Khazani daughter of Hari Chand, with such intention or knowledge and under such circumstances that if by

that act she had died, he would have been guilty of murder and, thus, committed an offence punishable under Section 307, Indian Penal Code.

(2) Ashok Kumar pleaded not guilty to the charge and claim trial. In support of its case the prosecution examined Bhagwat Saroop, PW/1; Khazani Devi, PW/2; Channo Devi, Public Witness /3; Hari Chand, PW/4; Constable Kali Ram, PW/5; Constable Urned Singh, PW/6; Head Constable Shodan Singh, PW/7; Dr. Renu Behl, PW/8; Khazan Singh, record Clerk, Irwin Hospital, PW/9; Dr. S.K. Mathur, PW/10; and S.I. Kishori Lal, PW/11. Statement of the accused Ashok Kumar was recorded on 30.6.76 in compliance of the provisions contained in Section 303 of the Code of Criminal Procedure when a chance was given to him to explain the incriminating evidence produced against him by the prosecution. He has denied all the allegations and claimed that it was a false case and witnesses deposed against him on account of enmity. It was also pleaded by him that on 1.8.75 he was passing by the shop of Hari Chand when after calling him in the shop he was given abuses for having given bearings to Rajesh son of Hari Chand and that he was, thereafter, dragged inside the house by Hari Chand, Kazani, Dhanno and Bhagwat Saroop. He has also claimed that he tried to free himself and in that process Khazani Devi received a push on account of which her head struck against a pillar causing injury. He examined Diwan Singh DW/1 and Ram Nath DW/2 in his defence. After hearing arguments Ashok Kumar was convicted under Section 307 and sentenced to R.I. for three years with a fine of Rs. 200.00 or in default to undergo further R.I. for two months by the Additional Sessions Judge, Delhi vide judgment dated

(3) Feeling aggrieved from his conviction and sentence Ashok Kumar filed this appeal which was admitted on 7.12.1976 and he was ordered to be released on bail.

(4) The case was registered on the statement of Hari Chand son of Shri Dhanna Ram, who had inter alia stated that he along with his family was residing in village Mamurpur and was employed as a conductor. It was also pleaded by him that he was running a vegetable shop on the ground floor of his house and during his absence the said business was being looked after by his wife and children. He

went on to state that on that day he had gone to his duty in the morning at about 5.00 am. and on coming back to the house at 4.30 pm. he came to know from his wife Smt. Chano about a quarrel between their son Rajesh and Ashok Kumar, residing in the neighborhood and about the giving of fist and slap blows by Ashok to Rajesh. It was also stated by him that on that day in the evening at about 6.30 p.m. Ashok Kumar came to his shop giving abuses to his children and gave threat of killing them. It was further stated by him that he requested Ashok Kumar not to give abuses and in the meantime he went away giving threats and came back with a Dadrili with which he inflicted injury on the head of his daughter Khajani Devi, aged about 16 years.

(5) The matter was investigated and after recording the statement of the witnesses Ashok Kumar was arrested. Opinion of Doctor was obtained with regard to the injuries of Khajani Devi, which were declared to be grievous, caused by blunt weapon.

(6) I have heard Shri O.P. Dutta, learned Counsel for the appellant and Shri N.K. Handa, learned Additional Standing Counsel for the State. I have also gone through the record.

(7) Learned Counsel for the appellant has submitted that the finding of the learned Trial Court with regard to the inflicting of the injury with a dadrili on the head of Khajani Devi is not contested. Even otherwise, I have perused the statements of Bhagwat Swaroop, PW/1; Kumari Khajani Devi, PW/2 and Hari Chand, complainant, PW/4, who have made categorical statement with regard to the inflicting of injury on the head of Khajani Devi, Smt. Chano Devi, PW/3 has made a statement with regard to having seen the injury on the head of other daughter when she came out on hearing the alarm.

(8) The question now for consideration is as to what offence is proved against the appellant. Learned Counsel for the appellant has submitted that none of the eyewitnesses, including the injured, has made a statement on oath with regard to the appellant having given any threat of killing and, thus, has submitted that the nature of injury may be considered on the basis of the medical evidence brought on record. I have gone through the statements of the witnesses with the assistance

of the learned Counsel for the parties and find force in the submission of the learned Counsel for the appellant. There is no doubt that in his statement, which forms the basis of the Fir, Hari Chand has stated with regard to the giving of threats of being killed to Khajani Devi by Ashok Kumar but the same has not been deposed by any of these witnesses while appearing in the witness box.

(9) In order to prove the nature of the injuries sustained by Kumari Khajani Devi, prosecution had placed reliance on the statements of Renu Behl, PW/8, Khazan Singh, Record Clerk, Irwin Hospital, PW/9; and Dr. S.K. Mathur, PW/IO. Dr. Renu Behl has stated that on 8.8.1975 Khajani Devi daughter of Hari Chand was examined by her in the Irwin Hospital and has proved the Mlc, Exhibit PW/8/A correctly prepared by her. She has also stated that the weapon used was blunt and that injured was kept under observation. She had found lacerated wound on the skull which was kept under observation. Khazan Singh, PW/9 has stated that Dr. D.P. Garg was working in the Irwin Hospital and has proved the X Ray report Ex. PW/9/A to be in the hand of Dr. D.P. Garg whom he had seen writing and signing and that Dr. Garg had gone abroad. He has admitted that he has no personal knowledge with regard to the contents of the report. Dr. S.K. Mathur, PW/IO has stated that on the basis of X Ray Report of Dr. D.P. Garg he made an endorsement at point 'A.' on Mlc Exhibit PW/8/A and declared the injury to be grievous.

(10) The short question for consideration is as to what offence would stand proved against the appellant from the aforesaid evidence. Admittedly, Dr. D.P. Garg who had given the opinion about the fracture could not be examined and even the X Ray has not been produced. The prosecution did not examine any other Radiologist so as to get the opinion of the Doctor on the basis of the X Rays. Khazan Singh, Record Clerk, has no knowledge about the contents of the report of Dr. D.P. Garg and PW/IO, Dr. Mathur has also not said anything about the basis on which Dr. Garg gave his opinion. Dr. Mathur has given the nature of injury to be grievous only on the basis of the opinion of Dr. D.P. Garg, which, in my opinion, has not been proved on record. I find support for this view from the case *Shanti v. State* 1991 (2) Ccc 27. In these circumstances the offence proved against the petitioner would fall only under Section 323, IPC. The next question for

consideration is about the sentence which should be awarded to the appellant. Learned Counsel for the appellant has submitted that Ashok Kumar had just completed 16 years at the time of this incident which took place on 1.8.75 and that it would not be in the interest of justice to send him to jail after more than 18 years of the date of incident. He has further submitted that the appellant has already been in custody for about 15 days and that the amount of fine has already been deposited. Keeping in view all these facts, I am clearly of the view that ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone by the appellant. As a result, the appeal is accepted in part. Conviction of the appellant is modified to Section 323, Ipc, and the substantive sentence is reduced to the period already undergone. The amount of fine, if not already paid, to be paid within one month.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**