

The State Vs. Ganesha and ors.

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Court : Rajasthan

Decided On : Apr-17-1967

Reported in : AIR1968Raj116; 1968CriLJ648

Judge : Kan Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190, 251A, 417, 417(1) and 423

Appeal No. : Criminal Appeal No. 368 of 1963

Appellant : The State

Respondent : Ganesha and ors.

Advocate for Def. : N.M. Tibrawal, Adv. for; O.C. Chatterjee, Adv.

Advocate for Pet/Ap. : Rajnarain, Dy. Govt. Adv.

Disposition : Appeal allowed

Judgement :

Kan Singh, J.

1. This is an appeal by the State under Section 417 Cr. P. C. and is directed against an order of acquittal passed by the Munsiff Magistrate, First Class, Bhadra, on the 14th December, 1962, in a case under Sections 326 and 323 I.P.C.

2. The prosecution story may shortly be stated thus. Khemchand P. W. 3 who lives in village Bar was going to his field on 24th October, 1961, at about 2 P. M. in the company of his sons P. W. 1 Narsiram and P. W. 4 Gulzari. When these three came near the field of P. W. 2 Maniram, they found that the accused respondents who were lying in wait attacked Khemchand. Ganeshram was armed with an axe while Ram Kishan and Ratiram had lathies. To start with Ramkishen and Ratiram gave lathi blows to Khemchand as a result of which he fell down but they continued to beat him even after he had fallen down and last of all Ganeshram hit Khemchand with the axe as a result of which Khemchand sustained an injury on his leg. Gulzari, however, was frightened and he ran away towards the village Narsiram and Khemchand raised an alarm which brought Bhaniram P. W 2 on the scene of incident. Seeing Bhaniram coming towards them, the accused ran away. Khemchand was then brought in a motor cycle taxi to Bhadra hospital. The doctor, however, was not present there, and, therefore, the first-aid was given to him by the Senior Compounder and on the following morning the doctor Roopsingh P W. 5 who was away returned to the hospital and attended to the injuries of Khemchand. P. W. Narsiram then went to police station Bhirani and lodged information of the incident. P. W. 6 S. H. O. Hukamsingh, however, could not make up his mind as to whether the facts disclosed any cognizable offence and therefore he asked Narsiram to bring the injury report from the doctor Narsiram then approached Dr Roopsingh and obtained the report. He handed over the injury report to the Sub Inspector on the 27th October 1961 In the light of the injury report, the police registered a case against all the accused for offences under Section 326 I. P. C. and investigated the matter After completing the investigations, the police put up a challan against Ganeshram and Ramakishen in the court of the Munsiff Magistrate. First Class. Bhadra In the course of the proceedings, the complainant also lodged a complaint against Ratiram The learned Magistrate eventually summoned Ratiram on 1-2-62 and tried the case in accordance with Section 251A Cr P. C.

3. The prosecution examined in all six witnesses. Of them, P. W 1 Narsiram, P W. 2 Maniram. P W 3 Khemchand and P W 4Gulzari were the eye-witnesses. P. W 5 was Dr. Roopsingh and the last witness was P. W 6 Hukamsingh the Station HOUSE OFFICER.

4. I have already given the gist of the evidence of the eye-witnesses in narrating the facts. According to doctor Roopsingh P. W. 3 Khemchand had the following eight injuries:

1. One haematoma 2' x 1' on the dorsum of right palm.
2. One haematoma 2' x 1' on the dorsum of left palm.
3. Three bruises 2' x ' each on the left gluteal region.
4. One bruise 1' x ' outer aspect of left knee.
5. One bruise 2' x ' left calf,
6. One bruise with abrasion 2' x ' left leg lower 1/3 region.
7. One bruise 2' x 1' right calf.
8. One incised wound with fracture tibia 2' x ' right leg middle 1/3 region.'

According to the doctor, injuries Nos. 1 to 7 were simple and caused by blunt weapons while injury No. 8 was grievous and caused by a sharp weapon

5. The plea of the accused was that of complete denial and they pleaded alibi. They produced two witnesses D. W. 1 Meharchand and D. W. 2 Hariram in defence. D. W. 1 Meharchand stated that Ratiram accused was known to him and he had come to the witness on the 23rd October, 1961, and had remained with him in village Dahed till 25th October, 1961. He was the nephew of Ratiram, P. W. 2 Hariram stated that he was the Sarpandi of Gram Panchayat, Kutimawali. He stated that the accused Ganeshram was in village Kutimawali on the 24th October 1961. He came there at about 9 A. M. and was in the village upto 5-20 P. M. He further stated that the certified copy of the order sheet which was Ex. D-1 had been given by him and it bore his signature. A perusal of Ex. D-1 shows that the accused and one another were found drunk and had been produced in the Panchayat as they were found exchanging abuses. The Panchayat imposed a fine of RS. 25 on the accused and he was allowed to go at about 5-15 P. M. According to the witness, no record is kept about the time of the meetings of the Panchayat

6. After considering the evidence, the learned Magistrate came to the conclusion that the prosecution case was totally false and a fabricated one. The learned Magistrate observed in the first instance that the first information report in the case had been lodged after inordinate delay. While the incident had taken place on the 24th October, 1961, at about 2 P. M. the report came to be lodged with the police on the following day that is on the 25th October 1961 at 8 A. M. According to the learned Magistrate, the prosecution had not furnished any satisfactory explanation of this delay. The learned Magistrate then pointed out some discrepancies in the evidence. While the injured Khemchand stated that his son Narsiram was present at the time of the medical examination, yet Narsiram had not taken the injury report to the police station on that day. Narsiram further stated that he had received the medical report at about 10 or 11 A. M. on the 25th October, 1961. The learned Magistrate further noted that though Narsiram had received the injury report on 25-10-61, he had not produced the same at the police station till 6 P. M. on 27-10-61. The learned Magistrate took this as a suspicious circumstance because the prosecution had not come forward with any explanation for this delay. The learned Magistrate next observed that according to the first information report only a non-cognisable offence was made out and the learned Magistrate, therefore, felt that the story of a cognisable offence was subsequently manipulated. He also felt that the first information report lodged on the 25th October, 1961, was very sketchy and had omitted to mention whether any fracture was caused to the complainant. The report also did not mention, according to the Magistrate, that Khemchand had been injured with the sharp side of the axe. The learned Magistrate was also surprised to notice that although according to the doctor, fracture was apparent and even a layman could see that Narsiram who had lodged the first information report had not mentioned it in that report. Thus there were three strong factors which went to show that the evidence was fabricated by the prosecution. The first, according to the Magistrate, was the delay in the filing of the first information report, the second was its sketchy nature and the third was the conversion of the report of a non-cognisable offence into that of a cognisable offence. To put his conclusion in his own words, it was as follows:

'The above three facts of (i) delay in F. I. R. (ii) skeleton first report and (iii) conversion of the reported non-cognisable into cognisable one are all clear

indication of the fact that the complainant, the police and the medical officer have manipulated and acted in common concert to fabricate evidence to make out a false story and to aggravate the offence. Also the above facts deprive the F. I. R. of the sanctity which the law purports to attach to it. This state of the F. I. R. must leave the court at its guard to weigh the evidence with a great caution and suspicion.'

7. After making these observations, the learned Magistrate proceeded to observe that all the eye-witnesses in the case were the mere relations of the injured Khemchand and the prosecution has not examined any independent witness. Besides this, the learned Magistrate observed that the driver of the taxi or any other villagers for that matter had not been examined to show that Khemchand was seen in an injured condition. In these circumstances, the learned Magistrate was of the opinion that it was highly inexpedient to place much reliance on the interested witnesses and to found the conviction of the accused on their evidence.

8. Having made these observations, the learned Magistrate then pointed out somemore discrepancies in the evidence. He observed that while P. W. 1 Narsa stated that he was not present at the time of the medical examination of Khemchand, P. W. 3 Khemchand stated in contradiction that P, W. Narsa was present. Then the second discrepancy adverted to by the learned Magistrate was that while Khemchand stated that he never became unconscious, P. W. 4 Gulzari stated that his father had become unconscious at the site and regained consciousness only when an injection was given to him. The third discrepancy pointed out by the learned Magistrate was that while the doctor had stated that the fracture pertaining to injury No. 8 was apparent and there was no swelling, P. W. 1 Narsa stated that the fracture was not apparent because of the swelling. In view of these infirmities in the case, the learned Magistrate was of the firm opinion that the prosecution evidence was entirely false and concocted and the witnesses were wholly untrustworthy. He, therefore, dismissed the case and acquitted all the accused.

9. I have heard the learned Deputy Government Advocate for the State and Mr. N. M. Tibriwal for the respondents. The learned Deputy Government Advocate took

me through the entire evidence on record and submitted that the judgment turned out by the learned Magistrate was most unsatisfactory that the view that he has taken of the evidence was perverse, and he has given undue importance to the circumstances which do not affect the veracity of the prosecution story. Mr. Tibriwal, on the other hand, submitted that the appeal filed by the State against Ratiram respondent was incompetent as the police had never challaned him and it was only on the complaint lodged by the injured subsequently that the learned Magistrate had summoned him. Mr. Tibriwal maintained that an appeal under Section 417 Cr. P. C. could in the circumstances have been filed by the complainant only after obtaining leave of this Court. He next urged that the proceedings taken against Ratiram were illegal, inasmuch as there being no police report against Ratiram, the learned Magistrate should have proceeded against him only in accordance with Section 252 Cr. P. C. and he was not justified in taking proceedings against him in accordance with Section 251A Cr. P. C. Mr. Tibriwal next submitted that no question of law was otherwise involved in the case and the case was one about proper appreciation of the evidence, and since it was an acquittal appeal, this Court should not interfere with the finding of the trial Magistrate. Mr. Tibriwal then tried to support the judgment of the learned Magistrate on the grounds mentioned by the learned Magistrate. Finally he submitted that it was not established by the prosecution satisfactorily that injury No. 8 sustained by Hemchand was grievous as there was no X-ray examination of this injury with a view to establishing any fractures. In the end, he submitted that the occurrence has taken place as back as October, 1961, and, therefore, if at all the accused are to be convicted, they should not be sent to jail.

10. I may first take up the objection of the learned counsel for the respondents regarding the maintainability of the State appeal against Ratiram and also the legality of the proceedings taken by learned Magistrate as the two questions are inter-related. Mr. Tibriwal invited my attention to a bench decision of this Court in *Ghisia v. State*, 1960 Raj LW 199 : (AIR 1959 Raj 266). It was observed by the learned Judges in that case that the two procedures laid down for the trial of warrant cases, one under Section 251-A and the other under Section 252 Cr. P. C., were so different in their nature, intrinsic application and their relative effect on the opportunities to an accused as respects his defence that they found it

extremely difficult to hold that the adoption of a procedure under Section 251-A for that prescribed under Sections 252 to 259 was a mere irregularity which will not amount to an illegality in the absence of proof of actual prejudice.

In Ghisia's case the learned Judges were dealing with a case under Section 54 (a) of the Rajasthan Excise Act which arose before the Rajasthan Excise Amendment Act (No. 22) of 1958 came into force. Before this Amendment Act, the report of an Excise Officer could not have been treated as one by a police officer within the meaning of Section 190 (b) Cr. P. C. It was in that context that the learned Judges had to consider whether a report by an Excise Officer for an offence under the Rajasthan Excise Act could be treated as a police report so that resort could be had to Section 251A Cr. P. C. regarding the mode of trial. The learned Judges came to the conclusion that the report of an Excise Officer could not be treated as that of a police officer. Consequently they had to examine the position as to whether a case to which Section 252 Cr. P. C. properly applies could be tried according to the procedure laid down by Section 251-A Cr. P. C. and the learned Judges held that this could not be so done. If the case that is before me were of the type dealt with by the learned Judges, I should have had no hesitation in following that view which was binding on me. But, in my opinion, the present case is not of that type and is clearly distinguishable. The police put up a challan in respect of the offence committed on 24th October 1961, though only two of the persons named in the first information report namely Ganesh and Ramakishan were challaned. Ratiram was not challaned by the police as it was thought that no offence was made out against him. To start with, the learned Magistrate took cognisance of the offence on the police challan on the 5th November, 1961, and called upon the two accused Ganeshi and Ramakishan to execute bail bonds.

Thereafter while the proceedings were continuing, on the 25th January, 1962, a request was made on behalf of the complainant that a complaint had also been filed in court that the name of Ratiram be also included. As in the challan Ratiram's name had been omitted, it was prayed that the challan and the complaint be amalgamated. The learned Magistrate adjourned the case to 1st February, 1962, for arguments, and then passed the following order:

"1-2-62, Accused and their counsel present. P. S. I. present.

Arguments heard, A perusal of the F.I.R. and police diary shows that besides the two accused present one more person Ratiram is cited by the witnesses in their statements and the F.I.R. I feel that the police has unjustly failed to charge-sheet this person. I, therefore, order that Ratiram be summoned as an accused in the case. Copies of documents under Section 173 Cr. P. C. shall be furnished to him. Put up on 15-2-62. Order announced.

Sd/-

First Class Magistrate

Bhadra.'

In the present case, therefore after the learned Magistrate had taken cognisance of the case on the police report, he had thought fit to summon the accused Ratiram whom, in his opinion, the police unjustly left out.

11. In a very recent case *Raghubans Dubey v. State of Bihar*. Criminal Appeal No. 189 of 1964 D/- 19-1-1967 :(reported in AIR 1967 SC 1167), their Lordships of the Supreme Court had to consider as to how the cognisance will be deemed to have been taken where the police omits certain persons in the challan and subsequently the court thinks that they have been wrongly left out and it then decides to summon them Their Lordships pointed out that once cognizance is taken by a Magistrate, he really taken cognizance of an offence and not of the offenders and it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. Their Lordships added that the summoning of the additional accused is part of the proceedings initiated by the Magistrate taking cognizance of an offence. The relevant observations are quoted below:

'In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders. Once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to

the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.'

In my view, therefore, from what the learned Magistrate has said in his order dated the 1st February, 1962, it is clear that it was after perusal of the first information report and the police statements that he came to the conclusion that the police had unjustly left out Ratiram's name. Accordingly he summoned him and lastly ordered that the copies of the documents be furnished to Ratiram under Section 173 Cr. P. C. This leaves no room for doubt that the learned Magistrate was really taking cognizance of the case even qua Ratiram under Section 190 (1) (b) Cr. P. C. and not under any other sub-clause of that Section. That being so, the case could have been proceeded against Ratiram too under Section 251-A, Cr. P.C. This necessarily leads me to the inference that the State could file an appeal against Ratiram's acquittal. That being so, I overrule the objection of the learned counsel for the respondents.

12. It is true that this is an appeal against an order of acquittal and the case by and large depends on appreciation of evidence. It has, however, been well settled since *Sheo Swarup v. Emperor*, AIR 1934 PC 227 (2) and as pointed out by their Lordships of the Supreme Court in several cases and I need cite only one namely *Sanwat Singh v. State of Rajasthan* AIR 1961 SC 715 that in an appeal against acquittal, the appellate court has full power to review the evidence upon which the order of acquittal founded. Their Lordships affirmed that the principles laid down in *Sheo Swarup's* case, AIR 1934 PC 227 (2) (*supra*) afford a correct guide for the appellate court's approach to a case in disposing of such an appeal and the different phraseology used in the judgments of the Supreme Court such as (i) 'substantial and compelling reasons' (ii) 'good and sufficiently cogent reasons' and (iii) 'strong reasons' is not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion though in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal in its arriving at a conclusion on

those facts but should also express those reasons in its judgment which lead it to hold that the acquittal was not justified. In *Surjan v State of Rajasthan*. AIR 1956 S.C 425 their Lordships of the Supreme Court pointed out that where the view taken by the trial court about the appreciation of evidence is unsatisfactory, the High Court is not only entitled but bound to give effect to its own independent conclusion on evidence, however, giving due weight to all the circumstance which have normally to be kept in view in cases of this kind

13. Therefore I now propose to deal with the various reasons given by the learned Magistrate.

14. Now to start with, the learned Magistrate has observed that there was delay in the lodging of the first information report and the same has not been satisfactorily explained. I am afraid, the learned Magistrate was in error in thinking so. It has to be remembered that the injured was first taken to the hospital at Bhadra but the doctor was not available there. The son of the injured had, therefore, to wait for the arrival of the doctor and in case he did not arrive then they were to think of removing the injured to another hospital at Nohar. It has also to be borne in mind that the police station was at a distance of about 18 miles from the village of the complainant. The son of the injured set out for the police station the following morning at about 7 A.M. from Bhadra. On the morning of the 25th October 1961, Doctor Roopsingh who had gone to Nagaur for giving evidence returned and he then attended to the injuries of the deceased. Thus the so-called delay in the lodging of the first information report has been satisfactorily explained. The learned Magistrate also observed that according to Khemchand injured, his son Narsa was present at the time of his medical examination and yet there was no reason why Narsa did not take the injury report to the police station at the first instance specially when according to Narsa himself he had received the medical report at about 10 or 11 A.M. Presenting the injury report on 27th October, 1961, according to the learned Magistrate involved a great delay. This, according to my mind, is a most superficial view and devoid of any substance. The injury report is sent by the doctor to the police and the relatives of the injured only carry it if it is convenient. Any way, this cannot affect the truthfulness of the prosecution case.

15. The learned Magistrate then observed that the first information report was sketchy. He points out in this connection that the first information report only disclosed a non-cognizable offence and, therefore, subsequently according to the learned Magistrate, the offence has been converted as a cognizable one by manipulation. To say the least, the reasoning is faulty and the learned Magistrate was uncharitable in casting aspersions on the doctor and the police I have perused the first information report. It mentions all the material facts. It was clearly stated therein how Khemchand was attacked by the three accused when he was going to his field. It also recited that two of the accused namely Ramakishen and Ratiram had lathies and Ganesha had an axe. It is also stated therein that Hamakishen and Ratiram beat Khemchand with lathies and Ganesha struck him on his leg with his axe. What was necessary for the informant was to mention all the material facts. What offence would be made out was one for the police to consider. On receipt of the first information report, the Sub-Inspector naturally wanted the injury report for making up his mind as to what offence was disclosed. This action of the Sub-Inspector was straightforward. In cases of beating, it is only on the injury report or where the Sub-Inspector had himself the occasion to see the injuries that he forms the opinion whether the offence is a non-cognizable or a cognizable one. The injured had been directly taken to the hospital and was not taken to the police station. It was only the son of the injured who had made the report at the thana. It was, therefore, quite natural for the Sub-Inspector to await the result of the 'medical examination of the injured before he could make up his mind whether the offence was a cognizable or a non-cognizable one. The learned Magistrate then points out certain omissions in the first information report and characterises it as a sketchy one. He observed in that connection that the report did not mention that Khemchand had got any fracture. He also points out that the first information report did not state whether Khemchand was struck with the sharp side or the wrong side of the axe.

The learned Magistrate also observed that according to the doctor. It was apparent even to a layman whether there was a fracture of the leg of the injured. Here again, I must say that the learned Magistrate has made a superficial examination of the circumstances. It may be evident to the doctor's eye even without an X-ray examination whether there was any fracture as a result of the cut-wound received

by the injured and yet it may not be clear to an ordinary person. It has to be remembered that as a result of the cut-wound, lot of blood would be flowing and on account of the profuse bleeding, the bare bone would not be visible to villagers. But the doctor by clinical examination or by seeing the wound may be able to know that the bone had been cut and fractured. Moreover, the absence of these details in the first information report was of no consequence

The main prosecution story had been narrated in the first information report and that is all that was necessary. Furthermore, it was unnecessary for the informant to say whether the accused was hit with the sharp edge or the wrong side of the axe. Normally when a person says that he was hit by an axe, it means that he was hit by the sharp edge of the axe. I have already reproduced above the conclusion reached by the learned Magistrate in his own words and that speaks for itself. It shows confusion of thought in the mind of the learned Magistrate and his inability to come to grips with the crux of the matter.

16. Then the learned Magistrate proceeded to discuss the direct evidence. He pointed out that all the eye-witnesses were very near relations of the injured and no independent witness had been produced.

This is true. But it has again to be remembered that the incident had taken place away from the village Abadi near the field of the brother of Khemchand, P. W. 2 Chaniram. If at that place no other witness was available on account of the seclusion of the site of the incident, then no blame can be laid on the prosecution for producing only the relatives of the accused if they alone were present. This, however, calls for a cautious approach but is no ground in itself for discarding the prosecution evidence. It has to be kept in view that the occurrence had taken place in broad day light and Khemchand was certainly able to see who the assailants were. He would not be likely to leave out the real culprit or culprits and substitute wholly different set of persons for the real culprits. Now from the medical report it is quite clear that two kinds of weapons were used namely lathies and an axe. Thus, the surrounding circumstances of the case instil belief in the testimony of the eye-witnesses. It is evidence from the statement of Khemchand that there was ill-will between him and the accused on account of some elections. The cross-

examination by the accused was also suggestive of the fact that there was such an ill-will. While the complainant suggests that he had been beaten because of enmity engendered as a result of the elections, the accused seem to suggest in cross-examination that they had been implicated falsely as a result of that animosity. Thus there appears to be common ground between the parties that there was animosity between them on account of the elections. It was, therefore, likely that the injured and his relatives would name only such persons as were the real assailants of the injured.

17. Then the learned Magistrate observed that there was a material contradiction between the statements of P. W. 1 Narsa and that of P. W. 3 Khemchand the Injured. While the former stated that he was not present at the time of the medical examination of Khemchand, the latter stated to the contrary that he was so present. The learned Magistrate then says that while the injured stated that he had never become unconscious, P. W. 4 Gulzari stated that the injured became unconscious at the site and regained consciousness only when he was injected at the hospital. Lastly, the learned Magistrate returned back to the so-called discrepancy that while the doctor stated that the fracture of injury No. 8 was apparent and there was no swelling, P. W. 1 Narsa stated that the fracture was not apparent because of the swelling. This narration of discrepancies hardly needs any comment. This only shows that the learned Magistrate had not the correct perspective to see the effect of discrepancies as have been pointed out by him. Human mind is not like a recording machine as would enable persons to give a narration of events with that mechanical accuracy as is the result of re-production after a proper recording of statements and speeches on a tape recording machine as it were. Thus, in my view, the learned Magistrate has wholly misappreciated the evidence in the case. It has been clearly established by the prosecution evidence that Khemchand P. W. 3 was attacked by the three accused on the 24th October, 1961, in the manner stated by the prosecution.

18. Now I may here refer to the defence evidence. D. W. 1 Meharchand has stated that accused Ratiram had come to his village on the 23rd October, 1961, and remained upto the 25th. His village was at a distance of 12 or 13 miles from village Bar where the incident had taken place. It was, therefore, not improbable that the

accused could have gone there after committing the crime. Nor was it impossible for him to come to village Bar, commit the crime and then go back to village Dahed. D. W. 2 Hariram has stated that the accused Ganesh was present at village Kutimawali on the 24th October, 1961, at about 9 A.M. and had remained there up to 5-20 P.M. I have carefully perused his statement and have also gone through the contents of Ex. D-1. It has also to be remembered that this village is six or seven miles from Bar. It was, therefore, not impossible that in between the accused could come to village Bar, commit the crime and then return to Kutimawali. Apart from this, in his statement the accused had not stated in so many words that he was in a state of drunkenness at village Kutimawali and was, therefore, produced before the Panchayat who had detained him throughout the day. All that he stated in his statement was that he was at village Kutimawali in connection with a case before the Panchayat. I am, therefore, not impressed by this defence evidence either. Consequently I am satisfied that the acquittal of the accused was wrong.

19. The last question that merits consideration is as to what offence has been made out against the three respondents. It is true that all the three accused were seen armed with lathies and an axe. But it has to be kept in view that the accused Ganesh was the last of all to hit Khemchand on his leg. It will not, therefore, be safe to infer that all the three accused shared the common intention to cause grievous hurt to Khemchand with a sharp edged instrument. Thus, in my view, Ramkishen and Ratiram cannot be held liable for the grievous injury found on the person of Khemchand and Ganesh alone is responsible for the injury. It cannot also be forgotten that the incident had taken place almost six years back, and, therefore, a heavy sentence will not be justified.

20. In view of what I have said above, accused Ramkishen and Ratiram are hereby convicted of an offence under Section 328 I. P. C. only. They will be sentenced to a fine of, Rs. 100/- each and in default to one month's simple imprisonment. Accused Ganesh is convicted of an offence under Section 326 I.P.C. and is hereby sentenced to six months' rigorous imprisonment.

21. In the result, the judgment of the learned Magistrate dated 14th December, 1962, is set aside and the accused respondents are convicted and sentenced as above. One month's time is allowed to the accused who have been sentenced to fine to pay the fine. The District Magistrate Ganganagar shall take steps to arrest the accused Ganeshto make him serve the sentence awarded by this Court.

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