

**Amarsingh Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/752458](http://sooperkanoon.com/752458)

**Court :** Rajasthan

**Decided On :** Oct-10-1950

**Reported in :** AIR1951Raj42

**Judge :** Dave and; Mehta, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 300, 307, 324 and 449

**Appeal No. :** Criminal Appeal No. 88 of 1950

**Appellant :** Amarsingh

**Respondent :** State

**Advocate for Def. :** Radhakishan Rastogi, Government Adv.

**Advocate for Pet/Ap. :** Premnath Dutt, Adv.

**Judgement :**

**Dave, J.**

1. This is an appeal by the accused Amar Singh, who has been convicted by the Additional Sessions Judge, Nim Ka Thana, on 19-5-1950 under Sections 449 and 307, Penal Code and sentenced to seven years' rigorous imprisonment and a fine of Rs. 250 or six months simple imprisonment in default of its payment on each count. Both sentences have been ordered to run concurrently.

2. The facts of this case are that on 20-9-1949 at about 5 P. M. one Gopal Singh Rajput, resident of Bagoll village, lodged a report at the police station, Torawati. It was alleged that the accused, who was an absconder and an associate of dacoits, had made a criminal trespass in their house (Raola) at about 3 P. M. that day armed with a gun. It was further alleged that the accused was labouring under a suspicion that the informant and other occupants of that house had given shelter to his aunt and concealed her in their house and, therefore, he told them that she should be brought out. An effort was made to convince the accused that his aunt was not present in that house but the accused abused them and fired a gunshot at Indar Singh, who was injured. It was also reported that the accused was overpowered by them, his gun was seized and he was closed inside a room in that house. On this information the police reached the scene of occurrence the same day, arrested the accused and seized the gun and cartridges which were produced by Indar Singh. The accused has admitted in the trial Court that he was arrested by the police in the said house but he denied having committed any offence. It was pleaded by him that the complainant had laid a trap for him and got him arrested on a false accusation. According to him he was playing cards in his house when one Kalyan Singh came to him and told him that he should accompany him and receive his share of profits of Raghunathpura village, so he went with him to that house and as soon as he reached there he was caught and closed inside a room. The trial court did not believe the story given out by the accused and convicted and sentenced him as mentioned above.

3. The learned advocate for the appellant has contended that the only evidence against the appellant is that of Gopalsingh, Amarsingh and Indarsingh, who belong to the same group of complainants, that their statements are full of discrepancies and contradictions and the prosecution evidence is neither sufficient nor reliable enough for maintaining his conviction.

4. I have carefully gone through the whole record of this case and it cannot certainly be denied that the police investigation in this case is rather poor but there is little reason to doubt the truth of the prosecution story. The discrepancies or contradictions pointed out by the learned advocate are such as are usually found in most of the cases and they do not necessarily show that Gopalsingh, Amarsingh

and Indersingh are not trustworthy witnesses. All the three of them have deposed that they were present in the house when the accused entered into it armed with a gun, He told them that his aunt was concealed in the house and she should be brought out. They tried to convince him that she was not there but he kept on abusing them and went over one of the roofs of the house. Those persons also followed him there and tried to persuade him that he should leave the premises but instead of being pacified he shot his gun at Indar Singh who received injuries on both of his legs between his knee and ankle.

5. It is pointed out by the appellant's advocate that according to the witness Gopal Singh all the three persons had reached the roof by different stair-cases while according to Indarsingh they went there by the same stair-case and this is a serious contradiction. To my mind this discrepancy is not material because P. W. 4 Amarsingh has corroborated Indar Singh by saying that they had gone by the same staircase. It further appears from the statements of these witnesses that they did not reach the roof at one and the same time and they have deposed this fact only on the basis of impressions left in their mind. It is again pointed out that according to Amarsingh the accused was standing in the middle of the door while Indarsingh says that he was 12 or 15 paces from that door. In the first place Indarsingh also says that the accused was in the centre of the door of the door but even if it be taken that there is some discrepancy it is not possible for every witness to remember all the details. Some differences and discrepancies in details are generally found even in the case of honest witnesses and unless the contradictions are material they need not necessarily be disbelieved. In the present case it is established beyond doubt that Indarsingh did receive injuries by gun fire shortly before the report was lodged in the police.

6. Dr. Parmanand, who was examined in the committing Magistrate's Court and whose statement, Ex. P-7, has been brought on the record of the trial Court has verified the truth of his injury reports, Exs. P1 and P2. Exhibit P1 relates to Indarsingh's injury and P-2 to Gopalsingh's injury. He stated that he had found multiple bruises  $1/16'$  x  $1/16'$  on the post surface of both legs of Indarsingh and in his opinion they were caused by scattered masses of lead shots of a gun. He has been cross-examined by the accused and he has definitely stated that they could

not be self-inflicted injuries. It has been argued by the appellant's advocate that injuries on Indar Singh's legs were caused on the back side while they should have been ordinarily caused on the front side if the accused had fired when Indar Singh was facing him. The reason why Indarsingh got injuries on the back side has been explained by himself in his statement where he says that when the accused aimed his gun at him he had turned round and therefore he was hit on the back side. This is not an unreasonable explanation, because it was not unnatural for him to avoid the aim of the accused so far as he could. The fact that the injuries were found on the back of his legs show that they could not be self-inflicted in any case. If these injuries were caused by some person other than the accused, I see no reason why Indarsingh, Amarsingh and Goparsingh would have left that person and shifted the blame on to the accused. The accused himself does not say that there was any enmity between him and these persons. If, on the other hand, his own story were to be believed, it goes to show that he expected to get a share of produce from these persons and he was not entertaining any suspicion of foul play against them.

7. The appellants advocate has argued that the prosecution has not tried to examine any independent witness although their presence was mentioned by the above mentioned three persons. It would have certainly added greater strength to the prosecution case if some one of these persons were also examined but the mere fact that they were not produced by the prosecution does not raise a presumption that they would have deposed against the prosecution story if they were called. It is not necessary for the prosecution to examine every witness relating to a certain occurrence. Their names were not concealed and if the accused thought that any of them could help him he could as well request the Court to summon them.

8. The accused had called three witnesses in his defence to support his story but they were disbelieved by the trial Court and it has given detailed reasons for not relying upon their evidence. The appellant's learned advocate himself has not placed any stress on that evidence and, therefore, it is not necessary to discuss it here.

9. So far as the occurrence goes, there is no reason to doubt that the accused entered the complainant's house armed with a gun and also caused injuries to Indarsingh, by firing his gun at him.

10. The real point for consideration to my mind is as to what offence has been committed by the appellant. The learned Additional Sessions Judge has convicted him under Section 449, Penal Code on the assumption that he made the criminal tree pass in order to commit an offence punishable with death. In his opinion the very firing of the gun by the appellant amounted to an offence of attempt to murder punishable under Section 307, Penal Code. the learned Government Advocate is also of the same view and in support of it he has referred to *Sudhindra v. Emperor*, A.I.R. (20) 1933 Cal. 354 : (34 Cr.L.J. 611), *Emperor v. Munshi*, A.I.R. (23) 1936 Oudh 294 : (37 Cr. L. J. 787) and *Parcho Kewal Ram v. Emperor*, A. I. R. (31) 1944 Sind 83 : (45 Cr. L. J. 598 F. B.). I think these cases can be easily distinguished from the present one. In the first case the accused were being pursued by the complainant and a police constable and in order to avoid their apprehension they had turned round and fired at them. In the second case also the accused who were wanted in a case of dacoity had fired his pistol in the direction of the police party to avoid his pursuit though it did not hurt any one. Similarly, in the last case the accused had fired when he was being pursued as a thief. When a thief or a dacoit is pursued for his arrest and when he turns round and fires at the pursuer it may be inferred that he intended either to murder him or to cause him injuries with the intention or knowledge given in Sections 299 and 300, Penal Code. But the same intention cannot be inferred in a case like the present one. In every case the intention of the accused should be judged by taking into consideration all the circumstances of the case. Simply because a gun is fired, it is not necessary to infer that it was done with no other intention except that of committing murder. It is clear in the present case from the evidence of Indarsingh, Amarsingh and Gopalsingh that the accused was only at a distance of about 10 or 12 paces from Indarsingh. It is also clear that he had no previous enmity and he had not come with the mere intention of killing or injuring any one of them. All that he wanted was that they should turn out his aunt if she was concealed by them. For that purpose he certainly wanted to overawe them by show of his arms. When these persons persuaded him to go out of the house he

was not satisfied that his aunt was not concealed by them and it appears that since he got infuriated by their persistent demands to clear out of their house, he fired his gun. The cartridges produced by the prosecution itself show that the accused had bullets also in his possession, still he used only one cartridge with small shots. It seems that he had knowingly fired the gun pointing it downwards only towards the legs of Indarsing to cause him minor injuries. The medical report shows that he received only bruises although the gun was fired from a very short distance. If the accused had any intention of killing Indar singh or to cause him such grievous injuries as were sufficient or likely to cause his death, then it was not difficult for him to hit him on the upper part of his body. Under the circumstances, it seems proper to infer that he intended to cause only that injury which he actually did and no more and, therefore, he should be convicted with the offence under Section 324 and not Section 307, Penal Code. The offence under Section 324 is not punishable with transportation for life and, therefore, his conviction under Section 449, Penal Code also cannot be maintained. It is no doubt proved that he had made a house trespass having made preparation for causing hurt or assault and therefore he is guilty of the offence under Section 452, Penal Code. Although he has not been charged under this section, it being a minor offence as compared to that under Section 449 he can be convicted of that section by virtue of Section 238, Criminal P. C. Since the accused is found guilty of less serious offence his sentence also deserves to be reduced.

11. The appeal is, therefore, partly allowed and the conviction of the accused is altered horn the offences under Sections 307 and 449 to those under Sections 324 and 452, Penal Code respectively and he is sentenced to suffer three years' rigorous imprisonment and a fine of Rs. 100 on each count. In default of the payment of fine he will undergo further rigorous imprisonment for three months each. The substantive sentences of imprisonment will run concurrently.

**Mehta, J.**

12. I agree.