

**Suwalal Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/754576](http://sooperkanoon.com/754576)

**Court :** Rajasthan

**Decided On :** Feb-13-1953

**Reported in :** 1953CriLJ1192

**Judge :** Nigam, J.C.

**Appellant :** Suwalal

**Respondent :** The State

**Judgement :**

ORDER

Nigam, J.C.

1. Suwalal has been found guilty of an offence under Section 278, I.P.C. He was sentenced to a fine of Rs. 550/-. He appealed to the Sessions Judge and the learned Sessions Judge, by his order, dated 14.6.1952, dismissed the appeal and maintained the fine of Rs. 350/-. Against that order, Suwalal has come up in revision. I have heard the learned Counsel for the applicant and the learned Public Prosecutor.

2. The prosecution case against the accused was that he was using two open compounds situated in Khazanehi Gall, Beawar as open latrines for himself and his family and was thus polluting the atmosphere to such an extent as to amount to a public nuisance. He was asked by the Municipal Board to desist and to construct a latrine. Three months time was granted to him but he persisted in

using the open compounds as latrine.

3. The learned Counsel for the applicant has urged that no offence was actually committed by the applicant inasmuch as there is no evidence to prove that a public nuisance was committed. The learned Counsel pointed out that two of the neighbours have stated that they have not been inconvenienced and there is no obnoxious smell coming from the latrine. I am unable to accept the statements. What they state is against the natural order of things. If the open compound is used as open latrine without any shod, obnoxious smell is bound to emanate from it. In that view, I am of opinion that the learned Sessions Judge was quite right in holding that the accused had committed an offence punishable under Section 278, I.P.C. I am also unable to attach any weight to the learned Counsel's contention that he has been using these compounds since the year 1907 thereby suggesting that probably the neighbouring houses were constructed at a later date. I am of opinion that the mere fact that the houses were constructed at a later date will not detract from the present nuisance even though the other houses may have been constructed after the nuisance had commenced and with full knowledge of its existence.

4. The only other point urged by the learned Counsel is as to the sentence. The learned Counsel has urged that after his conviction, the accused has constructed the tin sheds as directed by the Municipal Board. The learned Counsel informs me that these tin sheds were constructed about November 1952. This was about five months after the dismissal of the appeal. I am prepared to take a somewhat lenient view and I, accordingly, reduce the sentence of fine from Rs 350/- to Rs 200/-.

5. With that amendment, I dismiss the revision application.