

**Kalya and ors. Vs. the State**

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**Court :** Rajasthan

**Decided On :** Jul-06-1954

**Reported in :** 1955CriLJ579

**Judge :** Ranawat, J.

**Appellant :** Kalya and ors.

**Respondent :** The State

**Judgement :**

ORDER

**Ranawat, J.**

1. This is a revision petition by Kalya and 6 others against the judgment of the Additional Sessions Judge at Gangapur of 30-4-1952, confirming on appeal the judgment of the Sub-Divisional Magistrate, Gangapur, of 15-4-1952, by which Kalya was convicted Under Section 325, IPC and sentenced to 2 months' R. I. and the other 6 accused were convicted Under Section 147, IPC and sentenced to a fine of Rs. 75/- each or in default they were ordered to suffer 3 weeks' further simple imprisonment.

2. The prosecution case was that on 13-2-1951, Arnba and Pheli threw dust at Mst. Sunder while she was going out for some 'Puja'. She complained to Mst. Paran about this and Paran thereupon used abusive language and called Kalya

and others to beat Sunder. Kalya and others rushed with lathis and gave her a beating. She received 7 injuries on her person out of which one was on her head which caused a fissured fracture of the skull.

The defence of the accused was that they did not take part in this occurrence. The learned Sub-Divisional Magistrate, after holding a trial, held that the injury on the head with fissured fracture was caused by Kalya and the other injuries on the person of Sunder were caused by other accused persons. Kalya was, therefore, convicted Under Section 325, IPC and the others Under Section 147, IPC as stated above. The learned Additional Sessions Judge agreed with the findings of the first Court and upheld the convictions of the accused.

3. Three points have been agitated in this revision petition by the learned Counsel of the accused:

1. According to the statement of Sunder, Goora and Nathi did not hit her before she became unconscious. Whereas according to the other eye-witnesses namely Birdhi and Sukhi both Goora and Nathi took part in beating Mst. Sunder. It is urged that Sunder's statement should have been believed and both Goora and Nathi should have been given the benefit of doubt.

2. The injury on the head of Sunder has been held to be of the nature of grievous hurt because doctor perceived a crack on the skull bone. No measurements of the crack were given by the doctor in his certificate and he could not give any on being questioned. The crack, under these circumstances, should not be, it is stated, considered to be a grievous hurt, as it has not, been proved that the crack was across the bone.

3. The sentence passed by the Court below is severe and should be reduced.

4. It may be noted that it is true that Sunder has stated that both Goora and Nathi did not hit her while she was standing and before she became unconscious. She, however, has stated that Goora and Nathi also came along with other accused armed with lathis. The 2 eye-witnesses Birdhi and Sukhi, who reached the spot after Sunder had fallen down, have stated that they saw all the 7 accused persons

beating Sunder.

There is no inconsistency in the statements of Sunder and the 2 eye-witnesses. The evidence of Sunder relates to the time before she fell down and the evidence of the 2 eye-witnesses is of the time after Sunder had fallen down. It appears from the evidence of Sunder and the eye-witnesses that Goora and Nathi actually participated in beating Mst. Sunder after she had fallen down and not before it. This, however, does not make any difference. The conviction of Goora and Nathi is, therefore, not bad.

5. As regards the second point it has been argued by the learned Counsel of the accused that the medical evidence which has come on the record only shows that a crack was observed on the skull of Mst. Bunder. The doctor has not been able to give any details of the crack. He could not, state whether it was merely on the outer surface of the skull bone or whether it had reached its inner surface. As such it is urged that the crack has not been proved to be on the inner surface of the bone as well and unless the crack is proved to be both on the outer as well as the inner surfaces of the skull bone, the injury cannot be said to be one of grievous nature. The following observations of Spargo J. in - 'Maung Po Yi v. Ma E Tin', AIR 1937 Rang 253 A) are relied on:

The primary meaning of the word 'fracture' is 'breaking' though it is conceded that it is not necessary in the case of a fracture of the skull bone that it be divided into two separate parts because it may consist merely of a crack, but the point is that if it is a crack it must be a crack which extends from the outer surface of the skull to the inner surface.

The observations, referred to above, in AIR 1937 Rang 253 (A) were followed in - 'Mutukdhari Singh v. Emperor' AIR 1942 Pat 376 (B).

6. The learned Deputy Government Advocate has replied to the above argument of the learned Counsel of the accused by saying that a skull bone consists of two tables, outer and inner, which are separated from each other by a layer of loose cancellous bone known as the diploe and the fracture of the outer table or the inner table itself should be considered to be a fracture within the meaning of

Section 320, IPC The two authorities cited on behalf of the petitioners are distinguished on the ground that in those cases the injuries were caused by sharp-edged weapons and they amounted to cuts or scratches on the outer surface of the skull bone only.

It is urged, therefore, that the two authorities cited on behalf of the petitioners do not directly apply to the facts of this case. It is further urged that the term 'fissured fracture' which has been used in the evidence of the doctor means a fracture of at least one of the tables of the skull bone and as the doctor, in the present case, observed a crack on the outer table of the skull, it is evident that the outer table at least had been fractured.

7. The term 'fracture' has not been defined in] the Penal. Code, Ordinarily, fracture means 'breaking' of a bone. Fissured fracture, which is' the term used by the doctor in the present case, has been described'in the Science and Practice of Surgery by W. H. C. Romane and Philip H. Mitchiner (Vol. II--8th Edition) at page 67 as follows:

A fissured fracture is one in which there is no] displacement of the fragments, and this condition may be caused by direct or indirect violence, usually resulting from a fall or a blow from a blunt object. These fissures may extend far and wide from the point struck, may implicate one or both tables, and not infrequently run down into the base.

A scratch or a cut which does not go across the bone cannot be said to be a fracture of a bone within the meaning of S, 320, IPC The two cases cited by the learned Counsel of the petitioners also lay down the same principle, but the observations in - 'Maung Po Yi v. Ma E Tin (A)' which have been reproduced above go much further than this. There it has been held that a crack on the skull bone cannot be considered to be a fracture unless it is found both on outer as well as the inner surface of the skull bone.

The learned Dy. Government Advocate urges that these observations have been made without considering the anatomy of the skull bone and they are obiter because in that particular case the injury was a cut on the surface of the skull bone

only and no question, therefore, had arisen in that case about the fracture of the outer table of the skull bone. In the Science and Practice of Surgery by Romanie, the anatomy of the skull bone has been given as follows at page 64:

The skull consists of two tables, an outer and inner, separated from each other by a layer of loose cancellous bone, known as the diploe. The thickness of the whole skull varies enormously in different parts and in different patients. The outer table is the most elastic portion, is smooth, and derives its blood supply partly from the pericranium and partly from the diploe. The inner table is thinner and more fragile, is grooved on its inner surface by certain arteries and venous sinuses, and it derives its blood supply from the diploe. The diploe is very vascular and contains within its substance enormous arteries and veins; of these latter, some drain into veins outside the skull, others into the intra cranial venous sinuses, while still others drain into the emissary veins. The existence of these emissary veins renders it possible to reduce the vascularity of the structures within the skull by leeching or bleeding.

8. The difference between the two sets of arguments which have been advanced on behalf of either side is due to the different meanings attributed to the term 'bone'. The learned Counsel of the petitioners think that the skull bone is one and consists of outer as well inner tables and unless both the tables are broken there is no fracture. The prosecution side on the other hand thinks that each table of the skull bone is a bone by itself and fracture of one table of the skull bone should be regarded to be a fracture of a bone. In view of the description of the skull bone given by the learned authors in their treatise referred to above, both outer and the inner tables of the skull bone may be considered to be bones by themselves and fracture of outer or the inner table by itself can be taken to be a fracture of a bone in the meaning of Section 320, I.P.C.

The observations in - 'Maung Po Yi v. Ma B Tin (A)' cited above are, however, against this view. But it seems the learned Judge who decided that case did not take into account the anatomy of the skull bone and as there was a mere scratch on the skull bone the question did not arise whether a fissured fracture of the outer table of the skull bone amounted to a fracture of the bone. It is urged by the

learned Counsel of the petitioners that as the doctor has not been able to give depth of the fracture, the crack should not be held to be of the outer table of the skull bone.

It is difficult to find out the depth of a crack unless a case is examined under an X Ray, and whether XRay can be helpful is a matter which is not free from doubt. In the opinion of the doctor in the present case there was a fissured fracture on the skull bone of Mst. Sunder. The fissured fracture would mean either fracture of outer or inner table of the skull bone or of both the tables. In any case there is a fracture of the bone, and the argument that the crack may not have proceeded deeper enough so as to involve the outer table itself does not take into account the definition of a fissured fracture which is given in the medical text books. It is evident that a crack which does not involve both the tables of the skull bone may amount to a fracture of a bone.

9. It has also been argued by the Deputy Government Advocate that when force is applied from outside the skull bone, ordinarily inner table would break first and the outer table would break thereafter and as a blow was hit on the head of Sunder ordinarily there must have been a crack in inner table also which could not be perceived by the doctor. The existence of a crack on the outer table should give rise to an inference of there being a crack in the inner table. This argument is based on the following observations made in Taylor's Principles and Practice of Medical Jurisprudence (Vol. 1-10th Edition) at page 362;

2. Splintering of the tables:-In local fractures the table of the skull which at the moment of impact is farthest from the force is splintered to a larger extent than the table nearer the force, owing to the fact that it is, qua the force, unsupported. This fact enables us to ascertain the direction in which a solid object has passed through the skull, the fracture of entrance having the inner table, the fracture of exit having the outer table, more extensively splintered. The direction, too, in which the splinters are bent corroborates the inference.

It may be observed that the doctor was not questioned about this aspect of the case, and it would be difficult to presume the existence of a crack on the inner table merely on the basis of there being a crack on the outer table, when it is

possible in a fissured fracture that only one table of the skull bone may be involved. The conclusion, therefore is that fissured fracture of the outer table of the skull bone would bring the case within the definition of a grievous hart. Kalya has, therefore, been rightly convicted of an offence; Under Section 325, I.P.C.

10. Lastly, it has been urged that the sentence awarded is severe. This case has taken very long in its disposal and in view of the delay, the sentence of imprisonment already undergone by Kalya should be considered sufficient to meet the ends of justice. The sentence of fine of other six accused Jaila, Nathi, Mohanpal, Phaliya, Goora and Mst. Paran is also reduced from Rs. 75/- to Rs. 25/- each. The accused Kalya is on bail and need not surrender to it.

11. This revision is partly allowed and the sentences are altered as mentioned above.

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