

Kadva Vs. State of Rajasthan

Kadva Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/756577

Court : Rajasthan

Decided On : Jul-14-1983

Reported in : 1983WLN(UC)142

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Jail Appeal No. 107/83

Appellant : Kadva

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.S. Vyas, J.

1. This is a jail appeal by accused Kadva against the judgment of the learned Sessions Judge, Banswara dated March 2, 1983 convicting and sentencing him as under:

Sections Sentences Awarded

307 IPC 3.1/2 years' RI fine of

Rs. 250/- in default of payment

of fine to further

undergo 2 1/2 months'

like imprisonment

3/25 of the Arms Act 1 year' RI with a fine of

Rs. 100/- in default of payment

of fine to further undergo

1 month like imprisonment

27 of the Arms Act -do-

2. Substantive sentences were directed to run concurrently, while those in default of payment of fine, consecutively.

3. The prosecution case is short and simple and may briefly be stated. Accused Kadva and the injured victim PW.6 Gajheng are residents of village Charkani, District Banswara. In the early hours on 24.10.82 they along with PW.3 Chamna went for hunting in the jungle situate nearby. Each of them had a gun With him while they were climbing up on the hill, the accused fired a shot at Gajheng (PW.6) with his gun. PW.6 Gajheng fell down. The shot hit him on the left side of the chest. He raised cries. PW.3 Chamna came to help him. He took him to his house. The injured asked his brother PW.2 Roopji to go the police station and make a report of the occurrence. PW.2 Roopji accordingly went to police station, Kushalgarh and lodged verbal report Ex.P/3 at about 9.30 a m. The police registered a case and proceeded with investigation. The injuries of the victim were examined by PW.8 Dr. P.L.Bhardwaj, Medical Jurist, M.G.Hospital, Banswara. He issued injury report Ex.P/6. He found a gun shot wound on the left side of the chest of the victim. The X-ray examination revealed the fractures of 9th and 10th ribs. The accused was arrested on 19.10.82. After the investigation was over, the police submitted a challan against the accused in the court of the learned Munsif and Judicial Magistrate. Kushalgrah, who in his turn committed the case to the court of learned Sessions Judge, Banswara The learned Sessions Judge, framed

charges under Sections 307, IPC 3/25 and 27 of the Arms Act against the accused. The accused denied the charges and faced the trial. He claimed absolute innocence and pleaded that he was falsely implicated. He, however, did not state the reasons for his false implication. During trial, the prosecution examined 13 witnesses, while in defence, no evidence was adduced. On the conclusion of trial, the learned Judge held all the charges duly brought home to the accused. The accused was, consequently, convicted and sentenced as mentioned above. Aggrieved against his convictions and sentences, the accused has filed this appeal.

4. I have heard the learned Amicus Curiae and the Public Prosecutor, I have also gone through the case file carefully.

5. In assailing the convictions, the first contention raised by learned Amicus Curiae is that there was no independent witness to support the prosecution case. It was argued that according to the prosecution, the victim, accused Kadva and PW. 3 Chaman went together for hunting. PW. 3 Chaman was, thus, present at the time of occurrence. PW.3 Chaman did not state that he had seen the accused firing the gun at the victim. The victim PVV.6 Gajheng was not a witness on whom reliance can be safely placed. His testimony was wrongly believed by the learned Sessions Judge. In reply the learned Public Prosecutor stated that PW.3 Chaman was at some distance away from the accused and the victim. As such, he could not see the accused firing the shot at the victim. The testimony of the victim, can not be discarded simply because he is an interested person in his case.

6. I have taken the respective contentions into consideration. The accused, the victim and P.W.3 Chamna reside in the same village. The accused has not alleged enmity either with the injured victim or with P.W.3 Chamna. It is, therefore, difficult to believe that the victim and P.W.3 Chamna would falsely implicate him.

7. P.W.6 Gajheng (the injured victim) stated that he, the accused and P.W.3 Chamna went for hunting in the early hours. While they were going up on the hill, the accused fired a shot at him with his gun. He fell down and raised cries. P.W.3 Chamna, who was a few paces away, came to help him. He tied a cloth around his wound. There was profuse bleeding from his wound. He then sent his brother

P.W.2 Roopji to make a report to the police. He was cross-examined at length, but nothing could be elicited from him, which may make his testimony un-worthy of belief. No reason appears as to why the testimony of the victim should not be accepted as true. P.W.3 Chamna stated the same facts. He deposed that when they were going up on the hill the accused fired a shot at the victim with his gun. Since he was a few steps away, he could not see the accused firing the gun. He, however, saw the accused standing near victim. He went to the victim and helped him. He tied a cloth around the victim's wound. The accused was standing near the victim. He pleaded mercy and offered a sum of Rs. 2000/- as compensation to the victim. There is nothing to discard the testimony of this witness.

8. The learned Sessions Judge accepted the testimony of the above two witnesses as true. I find no good and cogent reasons to take a different view. From what has been stated by these two witnesses, it stands proved that the accused fired a shot at the victim with his gun P.W.7 Dr. PL. Bhardawj, who examined the injuries of the victim, sated that he found a gun shot wound on the left chest of the victim. By X-Ray examination, he also discovered the fractures of 9th and 10th ribs of the victim. The doctor further stated that the injury could have caused the death of the victim.

9. For the purposes of constituting an attempt under Section 307, IPC, two things are required; first, an evil, intent or knowledge and secondly, an act done. If the accused fires a shot at a person with his gun, it would ordinarily mean that he wants to kill that person. Even if, the intention to kill is not there, the firing with the gun, prima facie implies that the accused had the requisite guilty knowledge. In the instant case, the accused fired the gun and thereby caused serious injury on the left side of the chest of the victim. It can, therefore, be safely inferred that he had an evil, intent or knowledge required to make out an offence under Section 307 I.P.C.

10. A feeble attempt was made by the learned Amicus Curiae that it was a case of accidental gun firing and as such, no offence under Section 307, I.P.C. is made out. I find no substance in the contention. The victim was not at all cross-examined with reference to this plea of accidental gun firing. He also did not state in his

statement under Section 313. Cr. P.C. that the gun firing was accidental. The contention holds no ground.

11. Lastly, it was argued that the sentences awarded by the learned Session Judge were heavy and harsh. The accused is a young man nearly 25 years in age. As such, a lenient view should be taken. I am unable to accept the contention. The offence under Section 307, IPC is a serious one. It was the good fortune of the victim that he escaped the death very narrowly. For an offence of firing with the gun and thereby hitting the victim on his chest, the sentence of 3 1/2 years can, by no means, be said to be excessive or harsh.

12. No other contention was raised.

13. From what has been discussed above, I find no force in this appeal of the accused, he has been rightly convicted and sentenced. No inference is called for.

14. In the result, the appeal of accused Kadva is dismissed. He is serving out the sentence. He be informed of the result of the appeal.