

**Samadukhan Vs. State of Rajasthan**

**Samadukhan Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/757490](http://sooperkanoon.com/757490)

**Court :** Rajasthan

**Decided On :** Jul-11-1978

**Reported in :** 1978WLN(UC)281

**Judge :** C. Honniah, C.J.

**Appeal No. :** S.B. Criminal Appeal Nos. 515, 610, 611, 612 and 657 of 1975

**Appellant :** Samadukhan

**Respondent :** State of Rajasthan

**Disposition :** Appeal dismissed

**Judgement :**

C. Honniah, C.J.

1. On October 20, 1974 deceased Jabar Khan along with his son Chhote Khan (P.W 1), Rama (P,W. 2), Deva (P.W. 3) and Abdul Rehaman (P.W. 4) was coming from the side of Akhesagar tank in the afternoon. When they came near the platform of Bhercnji. all the accused armed with deadly weapons attacked Jabar Khan and in flirited injuries on him. On the next day Jabar Khan died. In support of its case the prosecution relied upon the evidence of Chhote Khan (P.W. 1), Rama (P.W. 2), Deva (P.W. 3) and Abdul Rehman (PW. 4), and the dying declaration of Jabar Khan. (P W. 1) to (P. W. 4) did not support the case of the prosecution. The learned Judge relying upon the dying declarations convicted the accused under

Section 304, Part 11, and Sections 147 and 148, Indian Penal Code, and sentenced them to various terms of imprisonment, the maximum being five years. There is consistent evidence that the deceased made two statements before his death implicating the appellants Nos. 1 to 4, and 6, therefore, the conviction passed against them, in my opinion, cannot be interfered with. So far as the sentence is concerned, they have undergone various terms of imprisonment and in my opinion, it is sufficient to meet the ends of justice.

2. Accordingly, I reduce the sentence of appellants Nos. 1 to 4 and 6 to the period already undergone by them. I am told that the appellant No. 1 is in jail, & I direct that he be set at liberty forthwith.

3. So far as appellant No. 5 is concerned, the only part attributed by the deceased to him was that he instigated the other accused to attack Jabar Khan, No doubt the deceased, in the first dying declaration implicated him but in the second dying declaration he did not implicate him, therefore, the learned Judge was not justified in basing conviction against the appellant No. 5. I, therefore, set aside the conviction and sentence passed against him and acquit him.

4. In the result, the appeal of appellant No. 5 Shahi Mohammed is allowed, and the appeal of other appellants is dismissed with modification in sentence.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**