

**Devi Singh Vs. the State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Oct-03-1983

**Reported in :** 1983WLN(UC)311

**Judge :** M.C. Jain, J.

**Appeal No. :** S.B. Criminal Appeal No. 441 of 1977

**Appellant :** Devi Singh

**Respondent :** The State of Rajasthan

**Advocate for Pet/Ap. :** Shri. M.S. Singhvi

**Judgement :**

**M.C. Jain, J.**

1. Five accused persons namely, Devi Singh, Laxman Singh, Phakira, Manak Chand and Karni Dan, were tried by the Sessions Judge, Churu, for the offences Under Sections 395, 294 323 and 341, IPC. However, all the accused persons except Devi Singh were acquitted of all the offences. Devi Singh was also acquitted of the offences Under Sections 294 and 395, IPC. He was, however, convicted of the offences Under Sections 323 and 341, IPC. He was sentenced to three months, rigorous imprisonment and to pay a fine of Rs 31/-, in default, to undergo further rigorous imprisonment for a period often days for the offence

Under Section 23, IPC. and for the offence, Under Section 341, IPC he was sentenced to 15 days, rigorous imprisonment and to a fine of Rs 51/- in default to further undergo ten days' rigorous imprisonment. Both the substantive sentences were ordered to run concurrently vide judgment dated 30-9-1977.

2. The prosecution case may briefly be stated as follows: Anil Aira (PW 7) with his younger sister Minakshi Airan were returning, after seeing the second show at Vishma Joti Cinema House in the night of 11-6-1976. Both of them were returning on a scooter. At about 12.30, a.m. they found the gate at the railway crossing closed, so they stopped at the gate. The gate was opened. They proceeded. A car no. RSM 9868 was following that scooter and that car even struck against the scooter twice, even when the scooterist was giving sides to the car. The boarders of the car were teasing Minakshi. This was also observed by Flight Lieutenant Shri P.K. Roy (PW 3), who was also returning with his Mrs. Anita Roy (PW 4) on a scooter. There were five boarders of the car. Anil Airan thinking that it would be unsafe, stopped his scooter at Darani Petrol Pumps where the car was also stopped. Mr P.K. Roy offered his help to Anil Airan and questioned the boarders of the car, who had come out of the car. One of the boarders of the car caught hold of him by his collar and others started misbehaving with him. One of them struck a blow on his temple, whereby he fell down. The boarders of the car started assaulting. Mrs. Anita Roy, in order to rescue her husband, intervened. Thereupon, she was also be laboured Mr. P.K. Roy asked Anil Airan to inform the police, whereupon Anil Airan informed the Police Station, Kot-gate at about 1.05, a.m. on receipt of the telephonic message that a quarrel has taken place at Darani Petrol Pump. Sujansingh, SHO, along with the police party, proceeded to the spot and he recorded the statement of Anil Airan. On the basis of that report case Under Section 294, 394 and 341. IPC, was registered. Mr. P.K. Roy and his Mrs. Anita Roy, were medically examined and the investigation was conducted. After completion of the investigation, charge-sheet was put up against the five accused persons before the Chief Judicial Magistrate, Bikaner, who committed the case before the learned Sessions Judge, Bikaner. The Sessions Judge, Bikaner, transferred the case to the Additional Sessions Judge, Churu, to be tried at Bikaner, but the Additional Sessions Judge, Churu, could not complete the trial and the Court of Additional Sessions Judge, Churu, was upgraded as sessions

Court. After trial by the Sessions Judge, Churu, the learned Sessions Judge, convicted and sentenced the appellant Devi Singh, as aforesaid, and acquitted the other four accused persons of all the offences and he also acquitted the appellant of the offences Under Sections 294 and 295, IPC.

3. I have heard Shri M.S. Singhvi, learned Counsel for the appellant and Shri Niyazudin Khan, Learned Public Prosecutor, for the State and perused the record of the case.

4. The appellant has been found guilty of the offences Under Sections 323 and 341, IPC. As regards the offence Under Section 323, IPC, it may be mentioned that in the incident Mr. P.K. Roy and Mrs. Anita Roy were injured. They had inflicted the fist blow behind his ear. It is true that from his statement it is not established that the appellant Devi Singh was one of his assailants, but there are statements of other witness, who have deposed that all the five boarders assaulted Shri P.K. Roy. Mrs. Anita Roy has deposed that when her husband had fallen, all the accused persons started pulling him and beating his with fists. In her examination-in-chief, she stated that all the five accused persons participated in the assault and dragging of her husband. It is significant to note that the appellant Devi Singh was apprehended by Mr. Anita Roy followed by her husband Mr. P.K. Roy and the appellant was not allowed to move and immediately handed over to the police and the police appeared soon after the occurrence on receipt of the telephonic message. This fact is well proved that the appellant was one of the boarders of the car, as he was caught hold of at the time of the incident, Minakshi (PW 6) corroborated the testimony of Mrs. Anita Roy. She has deposed that the boarders of the car assaulted Mr. Roy. My attention was invited to the cross-examination of Minakshi, where she stated that she cannot say as how many persons were palling Mr. Roy after he had fallen down on the ground. It may be mentioned that this part of the statement does not refer to the actual assault. It only relates to the act of pulling or dragging. Thus, from the evidence on record, in my opinion, it is established that one of the miscreants was Devi Singh appellant and he was one of them, who also participated in the assault of Mr. Roy, so, offence Under Section 323, IPC, is proved against him.

5. With respect to the offence Under Section 341, IPC there is a clear and categorical statement of Shri P.K. Roy. He has deposed that when he tried to get up, he was not allowed to do so and was prevented from moving after he had fallen down. Mrs. Anita Roy as not stated in so many words, but she does state that after her husband hid fallen, the boarders of the car started dragging him. From the statement of Mr. P K. Roy himself, in my opinion, offence Under Section 341, IPC, is proved against the appellant. The charge Under Section 341, IPC, relates to causing of wrongful restraint to Shri P.K. Roy as well as to Mrs. PK Roy. Even if it is established in relation to Shri P.K. Roy, then for him alone the appellant can be held guilty of the offence Under Section 341, IPC.

6. In my opinion, the learned Sessions Judge was right and justified in convicting the appellant for the offences Under Sections 323 and 341, IPC.

7. Coming to the question of sentence, it may be mentioned that more than seven years lapsed, so it would not be proper to send the appellant behind the bars and it would be appropriate that he may be given the benefit of probation.

8. In the result, the appellant's appeal is partly allowed The convictions of the appellant are maintained. His sentences, however, are set aside and Instead of sentencing him it is ordered that he shall be released on probation on his furnishing a personal bond for a sum of Rs 2,000/- (rupees two thousand) with one surety in the like amount to the satisfaction of the Sersions Judge, Churu, to appear and receive sentences whenever he is called upon to do so during the period of six months and to keep the peace and be of good behaviour.

9. The learned Counsel for the appellant prays for one month's time to submit the requisite bonds. Time prayed for is allowed.