

Ram Kishan Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/757759

Court : Rajasthan

Decided On : Feb-27-1997

Reported in : 1997CriLJ2143

Judge : A.S. Godara, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4(1) and 5(1); Code of Criminal Procedure (CrPC) - Sections 313, 374, 421 and 422; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 307, 323, 324, 325, 326 and 341

Appeal No. : Criminal Appeal No. 430 of 1994

Appellant : Ram Kishan

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, Public Prosecutor

Advocate for Pet/Ap. : G.R. Punia, Adv.

Disposition : Appeal allowed

Judgement :

A.S. Godara, J.

1. This appeal has been filed under Section 374, Cr. P.C. by the appellant against the judgment and order dated 21-7-94 passed by the Addl. Sessions Judge,

Nagaur in Sessions Case No. 10/94.

2. Briefly stated, the prosecution story giving rise to the present appeal is that PW-7 Kesav Das (Kesa Ram), who is brother of injured PW-11 Nenu Ram lodged verbal report with the police station, Mundwa on 22-4-93 at 6.15 p.m. alleging that the accused (appellant). Ram Kishan was inimical to him for about last four years and, as a result, there were number of litigations pending in various Courts between the parties. On 22-4-96 itself at about 5 p.m. he along with his brother PW-11 Nenu Ram, while returning from Nagaur after having purchased goods, alighted from the bus at Balanda and had hardly covered a distance of 10 to 15 paces from the border of Balanda, accused Ram Kishan and his sons Kailash and Om Prakash suddenly appeared on the scene and they were surrounded by them. Ram Kishan and Kailash were armed with lathis while Om Prakash had a 'farsi'. Ram Kishan gave a lathi blow on the skull and forehead of Kesa Ram as a result of which he fell down. Ram Kishan yet gave second blow and to ward off the same with his left hand, he further got his left hand hurt. Kailash and Om Prakash assaulted his brother Nenu Ram with a lathi and a farsi as a result of which Nenu Ram also received simple injuries on his both hands as well as both legs Kesa Ram was apprehending more danger, escaped from there while Nenu Ram was felled on the ground and subjected to more injuries. He, lastly, reached his well and Aaidan Ram was informed about this incident and, lastly, took Nenu Ram to the hospital on a tractor.

3. It was also alleged that accused-persons had taken away Rs. 50/- from the pocket of Kesa Ram at the time of the alleged incident. The clothes and goods which they had purchased from Nagaur and were taking to their house at the time of the incident, were also alleged to have been taken along with by the assailants.

4. On the basis of this report, PW-15 Mange Ram registered Ex. P. 13 FIR and investigation was taken up.

5. Both Kesa Ram as well as Nenu Ram were medically examined by PW-9 Dr. Ram Vilas Chaudhary, M.O. Incharge, Government Hospital, Mundwa. He found as many as 17 injuries on the person of Nenu Ram, out of which four injuries were inflicted by a sharp edged weapon while rest of the injuries were caused by a blunt

weapon. Besides, PW-1 Dr. J. N. Mathur, Radiologist, Government Hospital, Nagaur X-rayed left hand and both legs of Nenu Ram and as a result it was found that the left ulna, left tibial bone and the third metatarsal bone of left leg were fractured and, as a result, these three injuries were confirmed to be grievous in nature. Besides, two simple injuries caused by blunt weapon vide Ex. P. 15 M.L.R. were found on the person of Kesa Ram.

6. After completion of investigation, PW-15 Mange Ram presented charge-sheet under Sections 307, 326, 325, 341, 323, 324 read with Section 34, I.P.C against Ram Kishan as well as his son Kailash in the Court of Munsif & Judicial Magistrate, Nagaur, who in turn, committed the case to the Court of Addl. Sessions Judge, Nagaur, who completed this trial.

7. Accused-appellant Ram Kishan was charged with the commission of offences punishable under Sections 341, 307, 326, 325/34 and 323/34, I.P.C. while Kailash was charged with the commission of offences under Sections 341, 326/34, 324/34, 325 and 323, I.P.C. to which both of them pleaded not guilty and claimed to be tried and hence the trial was completed.

8. The prosecution examined as many as 15 witnesses. PW-9 Dr. Ram Vilash Choudhary, who examined the injuries of Ram Kishan, as above, stated that he found as many as 17 injuries on the person of Nenu Ram as are borne out of injury report Ex. P. 14. He further stated that he had referred injured Nenu Ram to the Radiologist for X-ray of injuries serialised Nos. 1, 7, 8, 9 and 17 to find out nature of the injuries. Dr. J. N. Mathur took X-rays of various parts of hands and legs of Nenu Ram vide Ex. P. 2 to Ex. P. 5 and, as a result of X-ray reports, he confirmed the aforesaid three injuries resulting in fractures of ulna bone of the left hand, left tibial bone besides the third metatarsal bone of the left leg, to be grievous in nature.

9. Besides, out of the prosecution witnesses, presently, relevant for this decision, since PW-2 Mangal Bharti, PW-3 Pooma Ram, PW-4 Nema Ram and PW-5 Kailash, though examined as eyewitnesses, did not support the prosecution story and were declared hostile, it has relied mainly on the statement PW-7 Kesa Ram and PW-11 Nenu Ram besides PW-12 Aidan Ram.

10. After the prosecution completed its evidence, both the accused were examined under Section 313, Cr.P.C. and they denied that they had assaulted Nenu Ram and Kesa Ram resulting in their injuries and instead they have pleaded that they were subjected to an assault at the hands of Nenu Ram and Kesa Ram etc. and they had also lodged a report and Nenu Ram, Kesa Ram etc. were also facing trial at the same time. They examined DW-I Jagram in their defence.

11. Lastly, hearing both the sides, the learned Addl. Sessions Judge, vide his impugned judgment gave benefit of doubt to the accused Kailash and he was acquitted of all the offences charged with but, however, the present accused-appellant Ram Kishan while being acquitted of offences punishable under Sections 341, 307, 326 and 324, I.P.C, he was held guilty of commission of offences under Sections 323 and 325, I.P.C and, consequently, he was extended benefit of the provisions of Section 4(1) of the Probation of Offenders Act and so he was released on probation of good conduct for a period of one year on his furnishing a personal bond in the sum of Rs. 1000/- along with a surety of the like amount. However, it was further ordered that the appellant was also be liable to pay a sum of Rs. 3000/- as compensation to the injured Nenu Ram and in default of payment of this amount of compensation, it was further ordered that the appellant would undergo one month's simple imprisonment as well. Being aggrieved, the accused-appellant has preferred this appeal, as above.

12. I have heard the learned counsel for the appellant as well as the learned P.P. for the State and have also considered the relevant record of the trial Court along with the impugned judgment and order under appeal.

13. The learned counsel for the appellant while assailing the impugned judgment and finding of guilty against the appellant submitted that PW-7 Kesa Ram alleged in Ex. P. 13 FIR. So lodged that besides the accused-appellant, his son Om Prakash and Kailash were also involved in the incident and that Kailash is alleged to have been armed with 'farsi' and the medical evidence also,, as above, showed that there were as many as 4 injuries caused by sharp edged weapon and. Om Prakash was also alleged to have participated in the alleged assault thereby inflicting injuries with lathi on the person of Nenu Ram as well as Kesa Ram.

However, Om Prakash was not challaned at all and so the investigation did not find the allegations of FIR to be wholly truthful. Besides, Kailash has also been acquitted by the learned trial judge and, as a result, as per the initial prosecution story, there were as many as three assailants who conjointly resorted to a murderous assault on Nenu Ram but, lastly, as a result of investigation and subsequent trial, Om Prakash and Kailash were not proved to have been involved in the incident. Instead, the present appellant alone has been held to be guilty. Neither the property alleged to have been taken away from the spot or the amount of Rs. 50/- alleged to have been stolen from the pocket of Kesa Ram, were recovered nor there was any charge of commission of any theft or robbery. As a result, since almost all the independent witnesses of the alleged occurrence did not support the prosecution story and instead they have been declared hostile and their testimony does not help the either party and, therefore, there is only testimony of PW-11 Nenu Ram and PW-7 Kesa Ram who also admitted in Ex. P. 13 FIR itself that, apprehending more danger to his person, he escaped from the alleged scene of occurrence while the alleged assailants were still in the process of assaulting Nenu Ram and, therefore, he himself could not see the whole occurrence. Nenu Ram has also given a self-contradictory statement and the testimony of Nenu Ram does not inspire confidence. The same runs counter to his previous statement given before the police as well as to the FIR lodged by his brother Kesu Ram. As a result, admittedly, there was staunch animosity between the family of Nenu Ram as well as Kesa Ram on the one side and family of Ram Kishan on the other hand and that is why Kesa Ram implicated the accused-appellant besides his both the sons in the alleged incident too. The substratum of the prosecution story has also been substantially changed during the course of trial by both the witnesses and there is no other reliable independent evidence in corroboration of the prosecution story and, as a result, the learned trial judge took erroneous view of the statements of Nenu Ram as well as Kesa Ram holding the accused-appellant guilty of the offences punishable under Sections 325 and 323, I.P.C. resulting in conviction, as above.

14. Lastly, on the basis of decision rendered in *Laxman v. State of Rajasthan* 1995 Cri LR (Raj) 279 : (1995 Cri LJ 3952), it has also been contended that the learned trial judge imposed a sum of Rs. 3000/- as compensation to be payable by the

appellant, as above, and the same could have been realized keeping in view the provisions of Sections 421 and 422, Cr. P.C. and so it was incompetent for the learned trial judge to have awarded any sentence in default of payment or realization of the amount of compensation so ordered to be paid to the injured Nenu Ram.

15. As regards the validity and justification for holding the accused-appellant liable for commission of the offences, as above, the conviction is mainly based on the testimony of Nenu Ram and besides that of Kesa Ram.

16. As regards the nature of injuries suffered by PW-11 Nenu Ram besides PW-7 Kesa Ram, having regard to their statements besides the testimony of PW-9 Dr. Ram Vilas Choudhary and PW-1 Dr. J.N. Mathur, as stated above, there is no scope for challenging the conclusion of the learned trial judge that PW-11 Nenu Ram suffered grievous and simple injuries caused by blunt as well as sharp weapons while Kesa Ram suffered only 2 simple injuries caused by a blunt weapon.

17. Presently, the point to be adjudicated remains whether it was the accused-appellant Ram Kishan who inflicted these injuries either alone or in complicity with his sons Kailash or Om Prakash in furtherance of their common intention to cause such simple and grievous injuries to them.

18. PW-11 Nenu Ram as supported by Kesa Ram stated that, while returning from Nagaur in a bus, they alighted at the bus stand of Balanada at 5 p.m. They started from the bus stand towards their village and, hardly after coverage of distance of 15 to 20 paces from there, they were intercepted in the way itself by the accused-appellant Ram Kishan and his sons Kailash and Om Prakash. Ram Kishan was armed with 'tarsi' while Om Prakash and Kailash were armed with lathis. He further stated that Ram Kishan gave a blow of 'farsi' on the head of Kesa Ram which landed from its reverse side on his head. Ram Kishan gave another lathi blow which fell on right hand of Kesa Ram. On the contrary, PW-7 Kesa Ram stated that it was Ram Kishan who gave first lathi blow on his head while another blow was also given by Ram Kishan on his left hand. As a result, meaning thereby that after receiving two first injuries at the hands of Ram Kishan alone, he escaped

from the scene of occurrence. It clearly shows that he could not have thereafter seen the injuries being inflicted on the person of his brother Nenu Ram. However, thereafter, he further stated that he also received an injury of 'farsi' at the hands of Om Prakash. However, it may be appreciated that Om Prakash was not challaned and, therefore, his statement does not find corroboration either by way of result of investigation or the findings of the trial Court.

19. Nenu Ram further stated that Om Prakash and Kailash started beating him and a sum of Rs. 4400/- was taken away by the accused Kailash from his pocket. However, as per the version of Ex. P. 13, based on the information of PW-7 Kesa Ram, as above, it was alleged that only a sum of Rs. 50/- was taken away by the accused-persons from the pocket of Kesa Ram himself whereas, presently, both Kesa Ram as well as Nenu Ram have falsely stated that a sum of Rs. 4400/- was stolen from the person of Ram Kishan. Nenu Ram stated that this amount was stolen by Kailash whereas PW-7 Kesa Ram stated that this amount was taken away by the accused Ram Kishan himself.

20. Nenu Ram further stated that Ram Kishan gave a blow of reverse side of the 'farsi' on left leg as a result of which its bone was broken, at the same time, Kailash accused inflicted a lathi blow on his hand fracturing the same. Thereafter, both Ram Kishan and Kailash brought juice of 'Aak' tree and the same was dropped into his eyes. However, the medical evidence does not support this allegation.

21. He further stated that Aaidan Ram, who was grazing his herd nearby, came to the spot and lastly, he was taken to Mundwa and Nagaur hospitals.

22. He also maintained in his cross-examination that the first injury was caused by Kailash on his left hand while Om Prakash also inflicted two injuries with a lathi on his hand. He further stated that he received three or four injuries at the hands of Om Prakash including those which were inflicted on his right leg. He further stated that he regained consciousness on next day of the occurrence while he was admitted in Nagaur hospital. He further admitted that a similar incident took place about four years before this incident between them. He could not deny that he denied the alleged any injury to have been caused by Om Prakash in Ex. D.2

police statement and besides there was also no mention of taking away a sum of Rs. 4400/- from his person in the same police statement.

23. As regards the statement of Kesa Ram, as stated above, besides, he also maintained that it was Om Prakash who was also assaulting Nenu Ram and that the injuries on the left leg of Nenu Ram were inflicted by Kailash. Though he has clearly admitted that receiving first two injuries at the hands of the assailants, as above, he immediately fled away from there and he could not have, thereafter, seen injuries being inflicted on the person of Nenu Ram. However, he has also tried to give an impression that he also saw the assailants inflicting injuries on the person of Nenu Ram as an eye-witness. However, on careful perusal of the statements of Nenu Ram as well as Kesa Ram, the same are self-contradictory besides being contrary to their police versions as well as the first version given in Ex. P. 13 FIR before PW-15 Mange Ram.

24. Though PW-11 Nenu Ram has falsely denied it, PW-7 Kesa Ram was forced to admit that a criminal case arising out of this very incident lodged at the instance of Ram Kishan is pending trial in the Court.

25. The prosecution also examined PW-12 Aidan Ram as an eye-witness of the occurrence. He stated that he was grazing his herd near the alleged place of occurrence. Keshav Das came to him and alleged that his brother Nenu Ram was being assaulted by the accused-persons. He went towards the place of occurrence but he was threatened by the assailants-Kailash, Ram Kishan and Om Prakash that in case he tried to approach them for intervention, he would be killed and so he did not dare to go nearby and to intervene in the matter. Consequently, he also ran away from there. He stated that Nenu Ram was being assaulted with lathis by Ram Kishan, Kailash and Om Prakash and there was no other armed with them. Therefore, it cannot be believed that Aidan Ram was actual witness of the occurrence. He also saw as many as 3 persons assaulting Nenu Ram. Besides, since Kailash has already been acquitted, as above, after trial and, as regards Om Prakash, the investigation does not establish his involvement in the incident. Besides, the medical evidence clearly shows that there were as many as four injuries caused by a sharp weapon on the person of Nenu Ram but, Aidan Ram

did not see anybody being armed with any sharp or cutting weapon as a result of which Nenu Ram could have received any injury as such and, therefore, when Aaidan Ram struck to his statement till last that none was armed with tarsi, his presence at the place of occurrence cannot be believed.

26. As a result, since rest of all the alleged eyewitnesses have turned hostile and did not lend corroboration to the prosecution story, therefore, having regard to the fact that the parties were inimical to each other and there were number of litigations going on between them and because of their strained and inimical relationship, (sic) initially involvement of as many as three persons was alleged in Ex. P. 13 and, as a result of investigation,, involvement of Om Prakash was found to be false. Subsequently, both Kailash as well as accused-appellant Ram Kishan were prosecuted and. ultimately, Kailash also stood acquitted of the offences charged with. However, on the basis of the same evidence, the learned trial judge held the accused-appellant guilty for the commission of the aforesaid offences. There are material contradictions in regard to use of weapons and the injuries alleged to have been inflicted to PW-II Nenu Ram as well as PW-7 Kesa Ram, as above. As a result, whether the alleged injuries were caused by either Om Prakash or Kailash or Ram Kishan, since Kailash stands acquitted and Om Prakash was even not challaned by the prosecution, having regard to the aforesaid circumstances and the nature of the evidence, there being a strong motive for Nenu Ram as well as Kesa Ram to implicate as many as members of the family of Ram Kishan to wreak vengeance on them because of previous pending litigations, it cannot be denied that true version of the prosecution story resulting in injuries to Nenu Ram has not been unfolded and, instead, since Ram Kishan was also subjected to an assault and, consequently. Ram Kishan was also assaulted by Nenu Ram etc. and, as a result, PW-15 Mange Ram also admitted that FIR No. 31/93 was registered on the information of Ram Kishan and, as a result, as per even admission of Kesa Ram, a case against them is pending for causing injuries to Ram Kishan as well.

27. In the result, the testimony of PW-11 Nenu Ram, though injured seriously, was full of contradictions, improbabilities as well as untruths and half truths resulting in changing the substratum of the prosecution story itself and there was a staunch

animosity between the two parties and, therefore, when almost all the independent witnesses have not supported the prosecution story, the learned trial judge seriously erred on relying on the sole testimony of PW-11 Nenu Ram himself. Besides, his interestedness and being inimically disposed of against the accused-appellant, his testimony did not stand the test of being either wholly or even partly reliable as regards the author of his injuries and, therefore, the prosecution story being wholly unreliable and not proved beyond reasonable manner of doubt, the learned trial judge erroneously relied on the ocular testimony of Nenu Ram besides Kesa Ram who could not have been eye-witnesses to the injuries alleged to have been caused to PW-11 Nenu Ram and, therefore, the finding of guilty and consequential conviction of the accused-appellant cannot be sustained.

28. Before parting with this appeal, it may also be mentioned that having regard to the observations made in the decision of, Laxman's case (1995 Cri LJ 3952) (Raj) (supra), the learned trial judge was within her competence to have awarded compensation under Section 5(1)(a) of the [Probation of Offenders Act, 1958](#) but, the same could only have been realized as per the provisions of Sections 421 and 422, Cr. P.C. and not as a fine imposed in addition to sentence of imprisonment. Therefore, the learned trial judge committed serious illegality while ordering imposition of one month's S.I. in default of payment of amount of compensation so awarded to Nenu Ram as well. However, in the present case, since this appeal is being accepted on merit, there is hardly any justification, simultaneously, for awarding any compensation and the order of compensation also deserves to be set aside.

29. On the basis of aforesaid discussion, this appeal is accepted. The impugned judgment of conviction of the accused-appellant under Sections 323 and 325, I.P.C. is set aside. Consequently, the order of release of accused-appellant under the provisions of Section 4(1) of the Probation of Offenders Act as well as awarding compensation, as above, is also set aside. The accused-appellant stands acquitted of the offences punishable under Sections 325 and 323, I.P.C. The amount of compensation, if realized, shall be immediately refunded to the accused-appellant.

