

**Jam Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-03-1992

**Reported in :** 1993CriLJ2572

**Judge :** Y.R. Meena, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 326, 424, 452, and 504

**Appeal No. :** Criminal Revn. Petn. No. 4 of 1985

**Appellant :** Jam

**Respondent :** State of Rajasthan

**Advocate for Def. :** D.R. Bohra, Public Prosecutor

**Advocate for Pet/Ap. :** R.K. Charan, Adv.

**Judgement :**

ORDER

**Y.R. Meena, J.**

1. This revision petition is directed against the judgment of the learned Sessions Judge, Balotra Camp at Barmer dated 19-12-1984 whereby he has confirmed the conviction and sentence passed by the learned Chief Judicial Magistrate, Barmer.

2. Brief facts of the case are that on 20-2-1981 at 8.45 a.m. PW2 Subhan lodged a written report (Ex.P/3) at the police station, Gadra Road, wherein, he has stated that on 19-2-1981 at about 8 p.m., the petitioner along with Sachu, Hakam, Sadela came to his house; and abused him. The petitioner struck a blow on his hand with an axe and others inflicted lathi blows on him. On raising alarm, the neighbours arrived there and rescued the injured. On this information, a case was registered under Sections 452, 424/34 and 504, I.P.C. The accused was arrested. The injured was medically examined. The injury report Ex.P/1 prepared by Dr. D.L. Sharma. The arrest memo is Ex.P/4. At the instance of the accused-petitioner, a lathi was recovered. The site-plan Ex.P/9 was prepared on the spot. The statements of motbirs were recorded. The challan was filed against the petitioner Jama and Hakam. No challan was filed against Sachu and Sadela.

3. During trial, the prosecution has examined as many as 8 witnesses. In defence, Surab s/o Usman was examined as DW1. As per his version there was a dispute between the accused-petitioner Jama and Subhan on agricultural land, therefore, the accused-persons have been falsely implicated by the complainant. Considering the material on record, the learned Chief Judicial Magistrate, Barmer has convicted the accused for the offence under Section 326, I.P.C. but acquitted the accused Hakam.

4. Being aggrieved of the judgment of the learned Magistrate, the accused Jama carried the matter in appeal in the court of Sessions Judge, Balotra. The learned Sessions Judge has upheld the conviction and sentence as awarded by the learned Magistrate.

5. Being dis-satisfied with the judgment of the learned Sessions Judge, Balotra the accused-petitioner preferred this revision before this Court.

6. Mr. R.K. Charan, learned counsel for the petitioner submitted that as there was a dispute between the accused and the complainant, therefore, the accused has been falsely implicated in this case. For that, he drew my attention to the facts that he implicated to the four persons viz. Jama, Sachu, Hakam and Sadela. Out of four accused-persons, the court below has convicted the accused Jama only. There was no challan against the accused-persons Sachu and Sadela and

accused Hakam was acquitted. The prosecution has also failed to prove that the accused has committed an offence under Section 452, I.P.C. The injury report reveals that the injured has received only two injuries i.e. one injury caused by sharp-edged weapon on the right fore-arm and another injury caused by blunt weapon on the left fore-arm. The lathi was recovered from the possession of the petitioner, therefore, there is no possibility of causing sharp-edged injury by lathi. He has wrongly been convicted under Section 326, I.P.C. rather benefit of doubt should be given to the petitioner. The learned Public Prosecutor relied upon the judgments of the courts below. I have perused the injury report Ex.P/1. Subhan complainant received two injuries; one is grievous caused by sharp weapon on the right fore-arm and another is simple caused by blunt object on the left forearm. Even the son of the injured Shera has stated that Jama had inflicted lathi blow on the right hand of the injured. He improved in the court and said that the accused Jama had inflicted 'kulhari' blow on the left hand but the injury report shows that the kulhari blow is on the right hand and not on the left hand. On the left hand, only simple injury caused by blunt weapon that is possible by lathi.

7. Normally, this court should not interfere in the findings of the courts below in the revisional jurisdiction. Considering the patent error in the finding of fact, the sharp injury cannot be assigned to the petitioner. Hence, I set aside the conviction and sentence of the accused-petitioner for the offence under Section 326, I.P.C, instead in my opinion, the prosecution has proved its case beyond reasonable doubt that the accused has committed the offence under Section 323, I.P.C. by inflicting lathi blow on the left fore-arm of injured Subhan. The petitioner remained in custody from 21-2-1981 to 26-2-1981 and again from 19-12-1984 to 3-1-1985 i.e. about 20 days.

In the result, I convict the accused-petitioner for the offence under Section 323, I.P.C. instead under Section 326, I.P.C. and sentenced him to the period already undergone.