

**Chander and ors. Vs. State of Rajasthan**

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**SooperKanoon Citation :** [sooperkanoon.com/760896](http://sooperkanoon.com/760896)

**Court :** Rajasthan

**Decided On :** Feb-02-2006

**Reported in :** RLW2006(3)Raj1946; 2006(2)WLC460

**Judge :** Shiv Kumar Sharma and; Khem Chand Sharma, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 147, 149, 302, 323 and 325; Code of Criminal Procedure (CrPC) - Sections 313

**Appeal No. :** D.B. Criminal Appeal No. 580 of 1999

**Appellant :** Chander and ors.

**Respondent :** State of Rajasthan

**Advocate for Def. :** R.P. Kuldeep, Public Prosecutor

**Advocate for Pet/Ap. :** Umesh Sharma and Birisingh Sinsinwar, Advs.

**Judgement :**

**Shiv Kumar Sharma, J.**

1. The appellants, six in number, were indicted in Sessions Case No. 44/1999 before the learned Sessions Judge Alwar for having committed murder of Kishore. Learned Judge vide judgment dated September 8, 1999 convicted and sentenced them as under:

Ratti Ram, Govind Sahay, Bali, Chander and Kalu:

Under Section 302/149 IPC:

Each to suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer one month rigorous imprisonment.

Under Section 147 IPC:

Each to suffer simple imprisonment for two years.

Under Section 323 IPC:

Each to suffer simple imprisonment for six months.

Under Section 325/149 IPC:

Each to suffer simple imprisonment for one year and fine of Rs. 500/-, in default to further suffer one month simple imprisonment.

Under Section 323/149 IPC:

Each to suffer simple imprisonment for six months.

Raja Ram:

Under Section 302/149 IPC:

To suffer imprisonment for life and fine of Rs. 1000/-, in default to further suffer one month rigorous imprisonment.

Under Section 147 IPC:

To suffer simple imprisonment for two years.

Under Section 325/149 IPC:

To suffer simple imprisonment for one year and fine of Rs. 500/-, in default to further suffer one month simple imprisonment.

Under Section 323/149 IPC:

To suffer simple imprisonment for six months.

Substantive sentences were directed to run concurrently.

2. It is the prosecution case that informant Prahlad Singh (PW. 1) submitted a written report to SHO Police Station Malakhera on March 18, 1999 at 3.15 PM stating therein that around 8.30 AM while the informant along with his father Kishore (now deceased) and other family members were on their 'Khalihan' where mustard product was lying, Govind Sahay and Chander put raw of mustard on their product. When his father raised objection Ratti Ram, Raja Ram and Bali came armed with lathis and Jelly. Seeing them coming with arms the informant, his father and other family members started running towards their house. But Kishore was belaboured in front of his house by Ratti Ram and Govind Sahay. Ratti Ram then inflicted blow with Jelly and Govind Sahay gave blow with lathi on the head of Kishore, as a result of which he fell down on the ground and died on the spot. Thereafter Kalu, Raja Ram, Chander and Bali indiscriminately started beating him. Ratti Ram gave jelly blow on the hand of informant, whereas Kalu inflicted lathi blow. When Brij Lal, Mohan Singh and Kamlesh intervened they were also beaten up. Kishore, as a result of injuries died on the spot. On that report a case under Sections 147, 302/149, 323, 323/149 IPC was registered and investigation commenced. Dead body was subjected to post mortem, statements of witnesses were recorded, the accused were arrested, necessary memos were drawn and on completion of investigation charge sheet was filed. In de course the case came up for trial before the learned Sessions Judge Alwar. Charges under Sections 147, 302/149, 323, 325/149 and 323/149 IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Section 313 Cr.P.C., the accused claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions advanced before us and carefully scanned the material on record.

4. Death of deceased Kishore was indisputably homicidal in nature. As per postmortem report (Ex. P. 11) he received following injuries:

1. lacerated wound 6 x 2 cm front mid forehead, red clotted blood parietal to going towards parietal temporal region.

2. Bruise 6 x 4 cm Rt. temporal region.

3. Bruise 6 x 4 cm parietal to occipital skull.

4. Two bruises Rt. side chest.

5. Lacerated wound 2 x 1/2 x 1/2 cm

6. Bruise 6 x 4 cm 4 x 3 left mandi fosa finger of maxilla bone with tissue standing.

7. Bruise 6 x 4 with nasal bone front with tissue staining

8. Both lips swollen and frontal left lower teeth.

In the opinion of Dr. Amar Singh Rathore (PW. 13) the cause of death was head injury leading to hemorrhagic shock and coma, which were sufficient to cause death in the ordinary course of nature.

5. Coming to the prosecution evidence, we notice that informant Prahlad Singh (PW. 1) in his deposition stated that blows with Jelly and lathi were dealt with by the appellants Ratti Ram and Govind Sahay and while Kishore had fallen down indiscriminately beating was given by the other appellants Raja Ram, Kalu, Chander and Bali. Injury with Jelly on the hand of informant was attributed to Ratti Ram. It was also stated that Kamlesh, Dhaula, Brij Lal and Mohar Singh were also given beating. Testimony of Prahlad Singh gets corroboration from the statements of Mohar Singh (PW. 2), Brij Lal (PW, 3), Kamlesh (PW. 5) and Dhauli (PW. 6). Mohar Singh attributed injuries on his left hand, right shoulder and right thigh to appellants Kalu, Raja Ram and Chander, respectively. According to Brij Lal (PW. 3) it was Ratti Ram, who had inflicted jelly blow on his left shoulder. Govind Sahay and Bali had caused injuries on his head and right hand whereas Chander gave lathi blows on his left shoulder and right foot. Dr. Mukesh Mishra (PW. 14)

examined the injuries of Prahlad Singh, Mohan Singh, Brij Lal and Smt. Dhauri and drew injury reports Ex. P. 2, Ex. P. 7, Ex. P. 13 and Ex. P. 14.

6. Factual situation emerges from the material on record may be summarised thus:

(i) Specific allegations for causing injuries on the head of Kishore have been levelled against appellants Ratti Ram and Govind Sahay.

(ii) In the FIR it was vaguely stated that after Kishore fell down Kalu, Raja Ram, Chander and Bali started beating him with jellies and lathis.

(iii) Prahlad Singh attributed injury on his right hand to appellants Ratti Ram and Kalu both, but vide his injury report (Ex. P. 2) he sustained only one abrasion of the size of 8 x 1.5 cm on his right forearm.

(iv) No specific allegations have been levelled against the appellants as to who was responsible for causing injuries to Brij Lal, Mohar Singh and Kamlesh. It was vaguely stated in the FIR that all the appellants caused injuries to Brij Lal, Mohar Singh and Kamlesh.

7. Having closely scrutinised the evidence adduced at the trial we find that the prosecution had failed to prove that the appellants Chander, Raja Ram, Kalu and Bali were the members of unlawful assembly at the time of the offence committed by appellants Ratti Ram and Govind Sahay. As Section 149 IPC stands the ingredients of the offence, that there was an unlawful assembly and the accused being member of assembly, knew the common object of the assembly, have to be made out by the prosecution. Undeniably deceased Kishore and appellants Chander and Govind Sahay were the neighbours. A look at the site plan goes to show that houses of Kishore, Chander and Govind Sahay situate in the vicinity of each other. Appellants Ratti Ram and Kalu are real brothers and sons of appellant Chander. Appellants Govind Sahay, Raja Ram and Bali are real brothers. In this view of the matter possibility of over implication of Chander, Raja Ram, Bali and Kalu cannot be ruled out. In our opinion the prosecution has failed to establish charges under Sections 302/149, 147, 323, 323/149 and 325/149 IPC against Chander, Raja Ram, Bali and Kalu beyond reasonable doubt.

8. For these reasons, we dispose of instant appeal in the following terms:

(i) We acquit the appellants Chander, Raja Ram, Bali and Kalu of the charges under Sections 302/149, 147, 323, 323/149 and 325/149 IPC. They are on bail, they need not surrender and their bail bonds stand discharged.

(ii) We instead of Section 302/149 convict the appellants Ratti Ram and Govind Sahai under Section 302/34 IPC and sentence each of them to suffer imprisonment for life and fine of Rs. 1000/- in default to further suffer rigorous imprisonment for one month. We also convict them under Section 323/34 IPC and sentence each of them to suffer simple imprisonment for six months. We however acquit them of the charges under Sections 147 and 325/149 IPC. Substantive sentences shall run concurrently.

(iii) The impugned judgment of learned trial Court stands modified as indicated above.

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