

**Khatanmal Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Nov-17-1988

**Reported in :** 1988WLN(UC)247

**Judge :** Gopal Krishan Sharma, J.

**Appeal No. :** S.B. Cr. Appeal No. 91 of 1980

**Appellant :** Khatanmal

**Respondent :** State of Rajasthan

**Judgement :**

**G K. Sharma, J.**

1. This appeal is directed against the judgment dated 1st Feb. 1980 passed by the Sessions Judge Ajmer, convicting the accused appellant under Section 307, IPC and sentencing him to 3 years' rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to further undergo 1 month's rigorous imprisonment. The appellant has also been convicted under Section 324, IPC and sentenced to 3 months rigorous imprisonment and fine of Rs. 25/- and in default of payment of fine, to further undergo 15 days rigorous imprisonment; and under Section 323 IPC to 1 month's simple imprisonment. All the substantive sentences were however ordered to run concurrently.

2. According to the prosecution story, Parmanand used to carry business of selling utensils. Some 3-4 days prior to 30th Sept. 1978 accused Khattan had come to Parmanand to purchase some utensils, on credit. Parmanand refused to sell it on credit, which irritated Khattan, who became angry. Thereafter, on the night of 30th Sept. 1978 at about 9/9-15 o'clock Parmanand and Heera were going together through Nala-Bazar towards the house of Parmanand. In the way, near the shop of a goldsmith, accused Khattan met them. Seeing them, Khattan started abusing to which, Parmanand and Heera asked him not to utter abuses. At this, Khattan took out a knife, and all of a sudden, inflicted one knife blow on the left abdomen of Parmanand. He then gave a second blow by knife on the eyes of Parmanand. When Heera tried to rescue him, Khattan inflicted one knife-blow on his left leg and then one another blow on his lips. After that, Khattan ran away from the place of occurrence. The injury in the abdomen of Parmanand was a serious one, therefrom blood was coming out, and so, his bush shirt was tied around the wound. Parmanand fell down no sooner he reached his house. Hundaldas, brother of Parmanand was called from the upstairs who was then told the entire incident. Hundaldas then took Parmanand to hospital where the latter became unconscious. The injuries of Parmanand were examined on 30th Sept. 1978, in the night at about 11.15 o'clock by Dr. A.N. Mathur. The doctor then informed about the case to PS-Gunj, on telephone. SI, Anand Singh came to the JLN Hospital on the information of the doctor, after entering a report in the 'Roznamcha'. On the same night at about 1-30 o'clock, Hundaldas lodged an FIR at the police station. The injuries of Heera were also examined by the doctor on 1st Oct. 1978. After completing usual investigation, the police submitted a challan against the accused, who was committed to the court of sessions, by the Magistrate.

3. The learned Sessions Judge framed charges against the accused Khattan, under Sections 307, 324 and 323, IPC. The accused pleaded not guilty and claimed trial. After concluding the trial, the learned Sessions Judge found the accused guilty of the charges and he sentenced him as mentioned above.

4. The learned Counsel for the appellant did not argue the entire case on merits. His only argument was that from the statement of the doctor and the injury-report, no case is made out under Section 307, IPC, and according to him, there is

nothing on the record to show that the act of the accused was dangerous to life and that the act that he committed, was done with the intention or knowledge that if by that act death was caused, he would be held guilty of murder. So, according to the learned Counsel, the ingredient of Section 307, IPC, is not established by the evidence on record.

5. I have perused the statement of the doctor. Dr. A.N. Mathur PW 9, and also the injury-report of Parmanand Ex.P. 7. Dr. Mathur, in his statement, has stated that the injury in the ordinary course of nature, could cause death, if the victim remained unattended by a surgeon, in time. He has further stated that the stab-wound was 4' x 1-1/2' X paritoneal deep on the left side of the abdomen. After narrating the dimension of the stab-wound, the doctor has given this statement that in the ordinary course of nature this injury could cause death. If we look into the injury-report Ex.P. 7 of Parmanand, we find that by mistake the dimension of the injury has been stated by the doctor. According to Ex,P. 7 this injury (stab-wound) is 1 4'x 1-1/2' X paritoneal deep. Either by mistake, the doctor has stated it or by mistake, it has been typed that this wound was 4', while it was only 1.4' and not 4'. So that opinion of the doctor that the injury was sufficient in the ordinary course of nature to cause death was on account of the injury having been treated as 4'. But, the position is quite different. This mistake could not be detected either by the court or by the counsel for the accused in the lower court. The doctor also could not clarify the said mistake, with the result that no question was put to the doctor about the injury as 1 4' x 1-1/2' X Paritoneal deep. It is admitted that a knife was used by the accused. It was also not disputed that the stab-wound was inflicted by the knife which was produced in the court. But, the point to be seen is whether this injury was so dangerous that it could be sufficient to cause death in the ordinary course of nature, and whether now looking to the dimension of the stab-wound, it can be said that the injury was sufficient in the ordinary course of nature to cause death. Now, as observed above, tin he changed circumstances, it cannot be said that the injury was sufficient in the ordinary course of nature to cause death. Therefore, in my view, a case under Section 307, IPC, is not established. The accused had used a sharp-edged weapon a dangerous weapon, but, without any provocation, voluntarily, he had inflicted the injuries to Parmanand. Parmanand and Heera were going along the way, and then without

exchange of any words, the accused took out his knife and inflicted blows to Parmanand. So, obviously, there was no provocation, nor was there any altercation, and as such, causing injury by a knife, in such circumstances would be voluntary causing an injury, and that too by a dangerous weapon, because, knife is a dangerous weapon. So, in my considered opinion, a case under Section 326, IPC, is made out instead of under Section 307, IPC and I hold accordingly.

6. It has been established that the accused had inflicted knife-blows to Heera also, who had received simple injuries, and so, the conviction of the accused under Sections 324 and 323, has been rightly passed. After going through the entire evidence and the judgment of the lower court, I see no reason to interfere in the order of conviction of the accused-appellant under Sections 324 and 323, IPC.

7. It was argued by the learned Counsel for the appellant that the accused has remained in jail for about 2 months. The incident had taken place in the year 1978. Now, the appellant is on bail. So, it would be unfair and unjust if the appellant is sent back to jail to undergo the sentence awarded to him by the lower court. More over, during these 10 years, no report against the conduct of the accused has been made. Stating all these circumstances, the learned Counsel prayed that a lenient view may be taken.

8. I have considered the arguments of both the learned Counsel. A case under Sections 326, 324 and 323, IPC, has been made out against the appellant. The present incident had taken place on 30th Sept. 1978; and now 10 years have elapsed after that. It would be unjust if after a lapse of 10 years, a person is sent back to jail for an offence committed by him. No doubt, he has been found guilty, but instead of sending back to jail, if the fine imposed upon him is enhanced and the period for which he has been in jail is treated to be sufficient, that, in my opinion, would meet the the ends of justice.

9. The appeal is, therefore, partly accepted. The appellant is found guilty of offences under Sections 326, 324 and 323, IPC. He has been in jail for about 2 months. So, the sentence of imprisonment which he has already undergone, is awarded to him for offences under Sections 326, 324 and 323, IPC. How ever for the offence under Section 326, he is sentenced to pay a fine of Rs. 500/-, in

default of payment of fine, he shall undergo 2 months' rigorous imprisonment; and for offence under Section 324, IPC, he is sentenced to pay a fine of Rs. 100/-, and in default, he shall further undergo 1 month's rigorous imprisonment. Both the sentences awarded to the appellant by this Court in default of payment of fine, shall, however, run concurrently. Two months' time is granted to the accused-appellant, to deposit the fine.

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