

**Naresh Kumar Vs. State of Rajasthan**

**Naresh Kumar Vs. State of Rajasthan**

**SooperKanoon Citation :** [sooperkanoon.com/766557](http://sooperkanoon.com/766557)

**Court :** Rajasthan

**Decided On :** Jul-06-1988

**Reported in :** 1988WLN(UC)606

**Judge :** S.N. Bhargava and; I.S. Israni, JJ.

**Appeal No. :** D.B. Cr. Appeal No. 26 of 1967

**Appellant :** Naresh Kumar

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Shri. N. C. Choudhary

**Disposition :** Appeal Dismissed

**Judgement :**

**I.S. Israni, J.**

1. This Criminal Appeal, under Section 374, Cr.PC has been filed against the judgment and order dated December 17, 1986, passed by learned Additional Sessions Judge No. 1, Jaipur City, in Sessions Case No. 13/1986, (State v. Naresh Kumar) where by the appellant has been convicted for the offence under Section 302, IPC and sentenced to imprisonment for life and fine of Rs. 500/-. In default of payment of fine, the appellant has to undergo further imprisonment for three months.

2. The incident took place on Sept. 26, 1984, at 7.45 p.m., thereupon Jugal Kishore went from the Hospital to the Police Station and lodged a report Ex P 2, on the same day at 8.30 p.m. on the basis of which Ex.P 3, FIR was chalked out. As stated in FIR deceased Kedar did work of Mistri in the factory of his brother-in-law Mangi Lal. Accused appellant was friend of Mangi Lal and both of them took drinks and moved about together. The entire expenditure was borne out by Mangi Lal. Deceased Kedar is alleged to have told the accused appellant that why he was running the home of his sister. On this account it is alleged that quarrels have taken place earlier also due to this reason the accused appellant is alleged to be bearing animosity against deceased Kedar. It is further stated in FIR that on September 26, 1984 at about 7.45 p.m. informant was standing on the shop of Parashar Pan Bhandar, situated in Barah Bhaiyou Ka-Choraha, for purchasing Pan. Deceased Kedar was standing on the shop of Hari Kishan, PW 1 for purchasing milk. In the meantime the accused appellant came on his motor cycle bearing No. RSM 4068, from the side of Chandpole and called Kedar, who came to him for a minute. When Kedar reached, accused appellant after crossing the road, put the motor cycle on its stand and gave several blows with his knife to the deceased and injured him. Kedar fell down and the accused appellant ran away on his motor cycle. Several persons had seen the incident. On the basis of the above report, a case under Section 302, IPC was registered against the appellant at Police Station Kotwali, Jaipur City and he was arrested on September 27, 1984. The Police after usual investigation submitted the charge sheet and the accused appellant was committed to the court of Sessions Judge, Jaipur City. The case was subsequently transferred to the trial court and after recording evidence both the sides and hearing the arguments, the trial court convicted and sentenced the appellant as mentioned above.

3. The main contention of Shri N. C. Choudhary, learned Counsel for the appellant is that the appellant was entitled to right of private defence as is proved from the evidence on record. The occurrence is admitted and it is also admitted that injuries were caused by the accused appellant to deceased Kedar, on account of which he died. The contention of learned Counsel is that it was deceased Kedar, who was aggressor and caused injuries to the appellant, on account of which he had to inflict the injuries on the person of deceased Kedar in self defence. Since this is

the main contention raised on behalf of the appellant, it is not necessary to go through the entire evidence to prove that the occurrence had taken place as per version of the prosecution. The next contention raised by the learned Counsel is that the prosecution has failed to explain the injuries sustained by the accused appellant during the occurrence, therefore, he is entitled to be acquitted on this ground also. It has been pointed out by the learned Counsel that PW 1, Hari Kishan has stated in his statement that appellant came from Chandpole Bazar on his motor cycle on opposite side of the road on his shop. He got down from the motor cycle and kept it on its stand. He has also stated that occurrence took place all of a sudden, therefore, he became nervous. He has further stated that deceased Kedar came to buy milk from his shop but he had, no utensil with him. He further stated that when the accused appellant was running, at that time some one from the persons who had gathered at the spot, gave him a blow on his head. However he is not able to say how many injuries were caused to the accused appellant by the persons who had gathered at the spot. He has denied the suggestion in cross examination that persons accompanying deceased Kedar gave Lathi blow on the head of the appellant in the first instance and simultaneously deceased Kedar also gave Lathi blow on the head of the appellant, on account of which the appellant received injuries. It is also pointed out by the learned Counsel that this witness had also stated that Mangi Lal brother-in-law of the deceased and appellant were friends and used to move about together and also took drinks together, the expenses of which were borne by Mangi Lal. Deceased Kedar used to tell the appellant that he should stop doing so and should not ruin the home of his sister like this. On this account, on earlier occasions also, quarrels have taken place between them. It is further pointed out by the learned Counsel that PW 2 Gopal Lal has stated in his statement that when the accused appellant was going away on motor cycle, he fell on the road, on account of which his foot was injured. It is pointed out that however, in Ex P2 this version has not been given by the witness when his statement under Section 161 Cr.PC was recorded. PW 3 Ramakant, in the first instance has stated that he had seen the clothes of accused, which were blood stained but he has subsequently stated that he had seen the clothes of deceased Kedar with blood and not of the appellant. He had also stated that when the appellant was running away after causing injuries to the deceased, some one

of the person who had gathered there gave a Lathi blow on the head of appellant. PW 5 Jugal Kishore has stated that the appellant and Kedar deceased continued to fight for few minutes. During the scuffle, appellant took out some thing from the bag, attached with his motor cycle. He has stated that he did not see any one causing injuries to the appellant. He has also stated that in the first instance, he verbally informed the Police about the incident and thereafter gave the same in writing. He has also stated that his verbal version was not written down by the Police. This witness has also stated that deceased had been telling the appellant not to take drinks with Mangi Lal, his brother-in law, as he was ruining the home of his sister in this way. On this account, quarrels have taken place earlier also between the appellant and the deceased. On the above evidence, it is contended by the learned Counsel that the witnesses are not giving true version of the incident. According to him, it is unnatural that when appellant was passing on his motor cycle, he would stop and call deceased Kedar to his side of the road. It is stressed that it was Kedar and his friends, who stopped the appellant while he was passing on the motor cycle and went to him and assaulted him. They were aggressors and injuries were caused by deceased Kedar and his friends in the first instance on the appellant, thereafter, as per the learned Counsel, the appellant took out a paper-cutter from the bag, attached with his motor cycle and caused injuries to the deceased Kedar in his self defence. It is also pointed out that the prosecution witnesses have not explained the injuries caused to the appellant. The version given by this eye-witness is unreliable and unnatural. It is also stressed that the verbal version of the information given by the informant PW 5 Jugal Kishore has been suppressed by the prosecution which makes the whole version of the prosecution doubtful. It is also pointed out that Mangi Lal brother-in-law of the deceased has been examined as PW 6, who has clearly stated in his statement that the liquor was purchased by the appellant himself from the shop. It is pointed out by learned Counsel that DW 1 Basant Kumar stated that he asked appellant to stop when he found him passing on the motor cycle on the outside of the shop where the deceased was standing. Thereafter the deceased moved towards appellant and picked up quarrel with him. Similarly DW 2 Sunil Kumar has also stated that when appellant was passing on his motor cycle, some one from five persons standing outside the shop, asked him to stop and went towards him. It is,

therefore, urged by the learned counsel that it is deceased Kedar and his other friends, who are aggressors and deliberately stopped appellant while he was passing on his motor cycle and they had conspired together to cause injuries to him and with this object inflicted Lathi blows on his head, on account of which the appellant had to take out the paper cutter from his bag, for his self defence.

4. The contention of Shri G.C. Chatterji, learned Government Advocate and Shri N.L. Tiberwal, appearing for the complaint is that the contention of the appellant that no explanation has been given regarding the injuries caused to him is factually incorrect. All the eye-witnesses have given proper explanations regarding the injuries caused to the appellant as is evident from the statements discussed above. It is further pointed out that in the facts and circumstances of the case, when it is proved beyond any shadow of doubt that the appellant was author of the fatal injuries caused to the deceased Kedar it is not necessary for the prosecution to explain the injuries caused to the appellant, even though as stated above the same has been done. It is further pointed out by the learned Counsel that all the eyewitnesses have correctly stated that the alleged injuries caused to the appellant were given by some one of the persons, who gathered on the spot while the appellant after fatally injuring the deceased was trying to run-away on his motor cycle. It is also pointed out that the witnesses have given correct version of the incident when they have stated that in the first-instance the appellant tried to start his motor cycle but he could not do so and the motor cycle fell on the road injuring his own foot. Thereafter the appellant, without starting the motor cycle tried to run away along with motor cycle on foot. It is further pointed out that presence of DW 1 Basant Kumar, at the time of the occurrence took place, has not been suggested to any of the eye-witnesses produced by the prosecution. This witness was also not examined by police under Section 161 Cr. PC It is, therefore, for the first time that he has appeared in Court to give his statement in favour of the appellant. Similar is the case of DW 2 Sunil Kumar, whose presence was also not suggested to any of the prosecution Witness while they were examined. It is further pointed out that this witness, in his examination-in-chief has stated that the accused appellant inflicted injuries on deceased Kedar with a leaver of the motor cycle. It is pointed out that the injuries sustained by deceased include six stab and two incised wounds, which cannot be caused by a leaver of motor cycle, which is a

blunt object. It is, therefore, contended that the version given by the defence witnesses is unreliable. Their presence is doubtful. In view of the true version given by the eye-witnesses produced on behalf of prosecution, it is fully proved beyond any shadow of doubt that it was appellant, who stopped his motor cycle and deliberately called deceased Kedar and caused fatal injuries to him.

5. We have heard learned both the counsel and also gone through the judgment of the trial court as well documents and statements on record. The contention of learned Counsel for accused appellant that the injuries of the appellant have not been explained, is factually incorrect as is evident from the statements of various eye witnesses. The learned Counsel has pointed out certain paras from these statements out of context and has tried so show that the injuries have not been explained PW 1 Hari Kishan has stated that after injuring Kedar. appellant tried to start his motor cycle run-away but he could not do so and the motor cycle fell on the ground which caused injury to his foot. Thereafter, the appellant ran away with motor cycle on foot. He has also stated that some one from the people, who gathered on the spot gave the appellant a blow on his head He has also stated that when the motor cycle fell on the foot of the appellant, he also fell down along with motor cycle. He has denied that deceased Kedar or any other person alleged to have accompanied him, caused any Lathi blow on the head of the appellant, on account of which he received injuries. PW 2 Gopal Lal has also given the similar statement and said that when the appellant wanted to run away from the spot while starting the motor cycle, it fell down and caused injury on his foot thereafter the appellant ran away from the spot on foot with his motor cycle without starting the same. He has further stated that while he has running with motor cycle on foot, some person from the people, who gathered on the spot gave a Lathi blow on the head of the appellant. He has also stated that he cannot say who was the person in particular, who gave Lathi blow to the appellant but he felt that someone from the people standing on the spot has given Lathi blow to the appellant on his head. He has also denied the suggestion that deceased Kedar or any other person alleged to be along with him gave any blow or any beating to the appellant. Same is the statement of PW 3 Rama Kant. He has also stated that since a knife was in the hand of appellant, therefore, he did not try to catch hold of him. He has also denied the suggestion that deceased Kedar or any other persons alleged to be

with him gave any lathi blows to the appellant. PW 5 Jugal Kishore in his cross examination has also dented the suggestion of deceased Kedar and any persons accompanied him to have caused injuries to the appellant. PW 5 Jugal Kishore is the person who took the injured Kedar to hospital. The contention of the learned Counsel for appellant that this witness has stated that he did not see any injuries caused to the accused appellant, goes to prove that the other eye witnesses were not speaking truth, has no force. This witness has clearly stated that he was looking after the injured Kedar, who had fallen down and did not give any attention to the appellant or to the behaviour of the people who had gathered on the spot. He has stated that in the beating four or five persons were there but after some time several other persons had also collected there. He has further stated that he was not present when several people gathered there as he immediately removed injured Kedar to the Hospital which took about ten minutes. In this time of ten minutes, he did give any attention to the appellant as to whether he was standing or gone away. He has also stated that he did not hear the sound of starting of the motor cycle. He has also stated that he did not see any person causing injuries to appellant or any blood coming out from his person. This statement speaks volumes about what happened immediately after Kedar was injured. This witness was fully involved only in making an effort to take the injured to the hospital immediately with a view to save him. Therefore naturally he did not give attention as to what was happening to the appellant at that time. The statement of this witness and other witnesses discussed above inspire confidence and we are of the opinion that the true version of the incident has been given out by them. It may also be pointed out that in the statement of accused appellant recorded under Section 313 Cr.PC even he has not stated that deceased Kedar gave him any Lathi blow on the head. He has only stated that some person gave Lathi blow on his head. This does not go to prove that this was Kedar or any other person at his instance, who gave Lathi blow to the appellant. The statement of D W. 2 Sunil Kumar does not inspire confidence and even his presence on the spot is quite doubtful. He has in his statement stated that injured Kedar was standing with empty hands on the shop of halwai, which is also corroborated by DW 1 Hari Kishan. Even DW 1 Basant Kumar does not say that injured Kedar caused any Lathi blow on the head of appellant and has clearly stated that he cannot say who

caused Lathi blow on the head of appellant. He has also stated that quarrels took place only between the appellant and deceased Kedar. The presence of these witnesses is also quite doubtful at the time of incident as both these defence witnesses have, for the first time been examined in court. None of the eye witnesses were given suggestion during the cross examination that these witnesses were also present at the time when the incident took place. It may be pointed out that in a case in which the prosecution has come out with a specific case alleging that the offence was committed by the accused appellant and has proved the same beyond reasonable doubt, it is not necessary that in such cases also injuries sustained by the accused appellant may be proved. We are fortified in our opinion by authority of Hare Krishana Singh and Ors. v. State of Bihar : 1988 CriLJ925 in which it was held by the Apex Court that if the witnesses examined on behalf of the prosecution are believed by the court in proof of the guilt of the accused beyond reasonable doubt, the question of the obligation of the prosecution to explain the injuries sustained by the accused will not arise.

6. In Bhaba Nanda Sharma and Ors. v. State of Assam : 1977 CriLJ1930 it was held that the prosecution is not obliged to explain the injuries on the person of an accused in all cases and in all circumstances. This is not the law. It all depends upon the facts and circumstances of each case whether the prosecution case becomes reasonably doubtful for its failure to explain the injuries on the accused. Therefore, we do not find any force in this contention of the learned Counsel and are of the opinion that even though it was not necessary for the prosecution to have explained the injuries sustained by the accused appellant, still the same have been fully explained, which will have no doubt bearing on the manner the same were caused to the appellant. The next plea raised by the learned Counsel is that the accused appellant, almost every day used to pass from the same road or not some time which was known to deceased Kedar. On the day of occurrence it is put forth by the learned Counsel that while the appellant was passing on his motor cycle deceased Kedar along with his few friends was standing duly armed with Lathies etc. and called the appellant to stop when he saw him passing on his motor cycle on the other side of the road where he was standing outside the shop of Halwai. It is further argued that deceased Kedar, along with friends went towards the appellant and all of them started giving him blows with Lathies on

account of which the appellant received injuries. It is further stressed that with a view to save himself, the appellant took out a paper cutter from the bag, attached with the motor cycle and only in self defence caused injuries to Kedar, which resulted in his death. It is, therefore, urged that the injuries caused were in self defence and at the most the appellant can be said to have used excess force in defending himself. While making this contention, learned Counsel has mainly relied on statements of DW 1 and 2, who have stated that some one from the few persons standing outside the shop of Halwai along with Kedar, called the appellant while he was passing on his motor cycle to shop and thereafter all of them went over to him and they were the aggressors in causing injuries to the appellant. However, as discussed above, all the eye-witnesses, examined by the prosecution have clearly stated that it is the appellant who stopped his motor-cycle on seeing deceased Kedar standing outside the shop of a Halwai. Even DW 2 has admitted in cross-examination that deceased Kedar was standing empty handed outside the shop. Therefore, the theory put forwarded by the learned Counsel for the appellant falls to the ground by the evidence of his own witnesses. All the eye-witnesses examined by the prosecution are independent witnesses, whose presence was natural at the time of occurrence. The learned Counsel insisted that the weapon of offence was only paper cutter, the weapon was actually called and examined in court. This is a weapon, which has sharp edges on both sides and is 6' long and in the handle, has two small knives also. The 6' blade of this weapon is in fact more dangerous than ordinary knife in as much as the knife is not sharp object on both its sides. It may be pointed out that even in Ex. P. 16, the memo of information given by the accused to the police regarding recovery of knife, it is stated that he has informed the police that he had used knife in causing injuries to the appellant, which he can get them recovered. Ex P. 12 is recovery memo, in which also the weapon is described as knife. In any case the paper cutter is not sharp edged from any side and question of its being sharp on both sides does not arise.

7. It may be pointed out that before a person is justified in putting forward plea of self defence, following conditions should exist:

[1] The behaviour of the accused should be such that he is not accused of being aggressor in the encounter.

[2] There must be ample evidence to prove that his life was in danger and it became absolutely essential for him to have caused injuries in self defence to save from any harm to his body and life;

[3] It must be shown that there was no way for the appellant to go away from the spot in order to save him self but the only way out for him was to cause injuries to the other side in order to save his own life and body.

8. Keeping the above principles in view we do not find any one to exist in the case under consideration. The facts as gathered from the evidence on record show that it was the accused appellant, who stopped and called deceased Kedar, who was standing, unarmed outside the shop to purchase milk. It is the accused appellant, who took out a knife like from bag, attached to his motor cycle and inflicted several blows on the person of Kedar which resulted in his death. There was no question of any danger to his life from deceased Kedar who was unarmed and was called by accused appellant himself, Thus from no angle, it can be said that accused appellant caused fatal injuries to the deceased with a view to save his body and life. In the case of Hare Krishna Singh (supra), the Apex Court has observed that the accused may take the plea of the right of private defence which means that he had inflicted injury on the deceased or the injured person in exercise of his right of private defence. His plea may be that the deceased or the injured person was the aggressor and inflicted injury on the accused and in order to defend himself from being the victim of such aggression, he had inflicted injury on the aggressor in the exercise of his right of private defence. As has been held in Munshi Ram's case (AIR 1968 SC 702) the burden of establishing the plea of private defence is on the accused and the burden can be discharged by showing preponderance of probabilities in favour of that plea on the basis of the material on record. From the material on record, we are of the considered opinion that the appellant has failed completely to discharge the burden of showing preponderance of probabilities in favour of the plea of self defence raised by him. The judgment of the trial court is in details, in which the evidence has been fully discussed, we therefore, do not

want to burden this judgment with discussioa of evidence any more.

In the result, the appeal is dismissed.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**