

**Mani Ram and ors. Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Dec-06-1977

**Reported in :** 1977WLN674

**Judge :** K.D. Sharma, J.

**Appeal No. :** S.B. Criminal Jail Appeal No. 281 of 1974

**Appellant :** Mani Ram and ors.

**Respondent :** State of Rajasthan

**Judgement :**

**K.D. Sharma, J.**

1. This jail appeal by Mani Ram, Sajjan Singh and Prem Singh is directed against the judgment of the Additional Sessions Judge, Sri Ganganagar, dated 18th March, 1974, by which all the three appellants were convicted under Sections 307/34 and 394 read with Section 397, I.P.C. and each of them was sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs. 100/ in default of payment of fine to further suffer rigorous imprisonment for two months on the first count and on the second to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 100/-, in default of payment of fine to further suffer rigorous imprisonment for two months The substantive sentences of imprisonment on both the counts were ordered to run concurrently.

2. The prosecution case against the appellants was as follows: Sadhu Ram was an employee of Tirath Singh, mechanic, resident of Ganganagar. He used to drive Ambassador Car No. RSK 1973 belonging to his employer Tirath Singh On August 24, 1972 at about 5 p. m. the three appellants along with Tarsem Singh, (who has been acquitted by the trial Judge of the charges framed against him) came to the shop of Tirath Singh and hired his Ambassador car on a fare of Rs. 80/-, for going to village Budhajohar from Ganganagar. The appellants and their companion boarded the Ambassador car driven by Sadhu Singh at 6 p. m. and took it to Jhotawali village instead of Budhajohar Sadhu Ram readied Jhotawali as about 7.15 p. m. and stayed at the house of Mani Ram's brother-in-law Chothu Ram. The appellants and their companion took liquor at the house of Chothu Ram and thereafter ate food. The appellants offered wine to Sadhu Ram also but he refused to drink it. From Jhotawali the appellants and their companion started for Ganganagar for going in the car driven by Sadhu Ram At about 8 or 9 p. m. when Sadhuram was driving the car on the road at some distance from Kikarwali, the brakes of the car were jammed Sadhu Ram put the brakes in order and started the car for moving onwards. Thereupon, the appellants asked Sadhu Ram to bring the car to a halt as there was some defect in its rear wheel. Sadhu Ram stopped the car, got down from the car and began to inspect the rear wheel Meanwhile the three appellants and their companion came out of the car and struck two or three blows in quick succession upon Sadhu Rain's neck with a sharp-edged weapon. As a result of the blow, Sadhu Ram fell down and blood began to ooze out of his wounds. Then he was dragged by all the four miscreants and taken towards sand-dunes which lay at some distance from the car. He was left alone near a sand-dune by the appellants and their companions who then drove away the car. After the miscreants had disappeared from the place of occurrence, Sadhu Ram got-up and with great difficulty came to the road. After some time, he requested the driver of a Military truck to take him to hospital. The Military truck was coming from the side of Padampur and its driver acceded to his request. Sadhu Ram was thereafter taken to Raisinghnagar hospital where his statement was recorded by the Station House Officer The statement was treated as a first information report and on its basis the Station House Officer registered a criminal case Under Section 307, 394 and 397, I.P.C.. After registering the case, the Station House

Officer took-up the usual investigation and searched for the car. He found the car lying, on Padampur Ganganagar road at a distance of about two miles from Padampur. The car was seized vide memo of recovery Ex. P. 2. Sadhu Ram was medically examined as to his injuries. Dr. S.M. Sharma, Incharge, Primary Health Centre Raisinghnagar. upon medical examination of Sadhu Ram's body found the following injuries:

1. incised wound 65 x 2.2 cm. on the right cheek extending from the angle of the mandible transversely;
2. incised wound 12 x 3 x 2 cm on the right side of neck extending from the right cheek to just below the mastoid process of right side;
3. incised wound 1.5 x skin deep. No gaping just lateral to the right chin;
4. incised wound 4.5 cm. x skin deep on right side neck just below injury No. 2;
5. incised wound 3 cm. linear skin deep on the front of the neck;
6. incised wound 3.5 x 1/4 cm. skin deep on linear right side neck lateral;
7. incised wound 3.5 x 1/4 skin deep just below the injury No. 6;
8. bruise with multiple abrasion in between the bruise 12 x 6 cm, on right side shoulder and neck;
9. incised wound 2 x 1/4 x skin deep on left thumb;
10. incised wound 2 x 1/4 skin deep transverse middle finger over the second phalanx.

All the injuries except injury No. 8 were caused by a sharp-edged weapon. Injury No. 8 was caused by some blunt object. All the injuries except injury No. 2 were simple in nature. Injury No. 2 was grievous because sterno mastoid muscle had been cut away completely. In the course of investigation the police arrested Sajjan Singh and Prem Singh appellants on September 28 1972 and 9th October, 1972 respectively. Soon after their arrests, they were put up for test identification in a

test-parade and were correctly identified by the identifying witnesses. Tirath Singh, Ram Niwas Om Prakash and Ajmer Singh correctly identified Sajjan Singh appellant while Prem Singh was correctly identified by Ajmer Singh, Sadhu Ram, Shravan, Om Prakash, Chothu Ram and Tirath Singh. The Station House Officer recovered a sword from a place near the place of occurrence at the instance of Bajjan Singh and in consequence of his information recorded under Section 27 of the Evidence Act. The sword was wrapped and sealed in the presence of Motbirs. The Station House Officer collected other necessary evidence against the appellants and eventually submitted a charge-sheet against them and their companion in the court of the Munsiff Magistrate Raisinghnagar, under Sections 307 read with Section 34 and 394 read with Section 397, I.P.C.. The learned Magistrate, upon finding a prima facie case exclusively triable by the Court of Sessions, committed the appellants to the court of the Sessions Judge, Sri Ganganagar, where from the case was transferred to the court of the Additional Sessions Judge, Sri Ganganagar, for trial according to law. The learned Additional Sessions Judge tried the four accused and found the three appellants guilty. He convicted and sentenced the appellants in the manner stated above. Aggrieved by their conviction and sentences the appellants have come up to this court in appeal through the Superintendent, Central Jail, Jodhpur.

3. The appeal was admitted by this Court on 6th August, 1974 and notice of the date, time and place at which the appeal shall be heard was given to the Public Prosecutor and to the appellant through the jail authorities. The appellants have not appeared before me despite service of notices on them. As the appellants were not represented by any counsel, this Court appointed B. Advani as Amicus Curiae under the Legal Aid programme to represent them and to argue the appeal on their behalf without demanding any fees.

4. I have carefully gone through the record and heard Mr. B. Advani, Amicus-Curiae for the appellants and Mr. K.C. Bhandari, Public Prosecutor for the State. Upon careful review of the entire evidence on the record, I am satisfied that the three appellants were rightly convicted of the offences punishable under Section 307 read with Section 34, I.P.C.. There is reliable evidence of Sadhu Ram on the record to prove that a murderous assault was made upon him by the three

appellant when he was inspecting the rear wheel of his Ambassador car, of course, there was no other person at or near the place of occurrence who could see the appellants committing the offence of attempt to murder. The incident took place on the lonely road and Sadhu Ram injured only could say what had happened to him. He stated, in clear and definite terms, that the three appellants got down from the car and caused injuries to his person in quick succession with a sharp-edged weapon, when he was checking the rear wheel of his car at the instants of the appellants. The statement of Sadhu Ram regarding the injury sustained by him finds corroboration from the testimony of Dr. S.M. Sharma who found as many as seven incised wounds on his neck. Out of these wounds one was 12 x 3 x 2 cm. deep on the, right side of his neck extending from right cheek just below the mastoid process of right side. As a result of this injury sternomastoid muscle had been cut away completely. This injury was grievous in nature in the opinion of the Doctor. It is no doubt true that Sadhu Ram could not see which of the appellants had caused simple as well as grievous injuries to him, but he definitely stated that all the three appellants had come out of the car and assaulted him. It is further proved from his evidence that when he was taking the appellants in his car to Ganganagar from Jhotawali village, he was asked by them to stop the car as, according to them, the rear wheel of the car was rattling. At their request Sadhu Ram brought the car to a halt and got down to see why the rear wheel was rattling. When he was trying to find out whether there was any defect in the wheel, he was assaulted and injured by the three appellants. These circumstances clearly indicate that the injuries were caused to the body of Sadhu Ram by all or any appellant in furtherance of the common intention of all of them to kill him and to take away the car. The legal position that emerges is that each of the appellants must be held to have committed the entire criminal act and so the charge under Section 307 read with Section 34, I.P.C. is made out in law against all the appellants. Mr. B. Advani Amicus Curiae for the appellant contended before me that the intention of the appellants to inflict injuries sufficient enough to cause death of Sadhu Ram is not established by the prosecution and so it cannot be said that the appellants made an attempt to kill Sadhu Ram. The above contention has no force, because Dr. S.M. Sharma PW 7 clearly stated in his cross-examination that the injured was in a precarious condition at the time when his statement was

recorded by the Station (SIC) Officer. It is further proved by his evidence that when Sadhu Ram injured was brought to the dispensary, he was in a semi conscious condition and he regained consciousness on the following day in the morning when a pathodine injection was given to him Hence it is established from the nature of the injuries that the intention of the appellants was to kill Sidiu Ram, because, as many as seven injuries were inflicted on the vital part of his body, i. e. neck with a sharp edged weapon Apart from this, it may be observed that in order to secure conviction under Section 307, I.P.C. all that is material is the intention or the knowledge of the doer of the act and not the consequences that flow from the actual act done. It is immaterial whether any injury was caused to the person whose murder was attempted. The act contemplated under Section 307, I.P.C. is an act which is done with an intention or knowledge of causing death but which fails to bring about the intended consequence on account of some unforeseen cause or intervening factor that operates independently of the door of the act If injuries are caused, the person doing the act with the intention of knowledge of doing the act is liable to enhanced punishment under the latter part of Section 307, I.P.C.. Hence, the consequence of the actual act done is relevant only for the purpose of deciding the quantum of sentence to be awarded

5. Mr. B. Advani further contended that the evidence of Sadhu Ram, driver, cannot be relied upon so far as it implicates Mani Ram appellant in the commission of the crime. The above contention is based on the ground that Sadhu Ram admitted in deposition at the trial that Mani Ram was not known to him at the time of occurrence or at the time when his statement was recorded by the Station House Officer, and he was not called upon to identify this appellant in any test-identification parade prior to his identification in the trial court Mr. B. Advani contended on the strength of the above admission that the investigating agency ought to have put up Mani Ram in a test-identification parade with a view to ascertaining whether Sadhu Ram was able to identify him to be one of the persons who had assaulted him and taken away his car. The above contention has no force Mani Ram appellant was the person who had hired the Ambassador car from its owner Tirath Singh in the presence of Ajmer Singh, & Ram Niwas. Tirath Singh, Ajmer Singh & Ram Niwas knew Mani Ram well prior to the date of hiring of the car. There is no reason to disbelieve the evidence of these witnesses, especially

when it has not been shaken at all in cross-examination by counsel for the appellant. From their evidence it is proved to the hilt that the car, of which Shadu Ram was the driver, was hired by Mani Ram from its owner Tirath Singh for a sum of Rs. 80/-. Shadu Ram also deposed that he was directed by Tirath Singh to take Mani Ram and his companions to village Budha Johar. According to him, when he took the car to Tirath Singh's shop, the appellants were already there and Tirath Singh told him to go to village Budha Johar as the ambassador car had been hired by the appellants. The trial court rightly observed that Sadhu Ram had ample opportunity to come into close contact with the appellants who were taken by him to his car to Jhotawali village and from there to the road where the incident took place. During this period Sadhu Ram had a good opportunity to associate himself with the appellants & to see their faces. Hence, I do not find any infirmity in his evidence relating to identification of Mani Ram in the trial court. His evidence of identification of Mani Ram cannot be discarded merely because he was not called upon previously to identify him in a test identification parade.

6. Sadhu Ram correctly identified Prem Singh in the test-identification parade and, later on, in the trial court to be one of the miscreants. He could not identify Sajjan Singh in the test identification parade but Sajjan Singh was identified by him in the trial court and by Tirath Singh, Shravan Ram Niwas and Ajmer Singh to be one of the persons who were with Mani Ram at the time when the Ambassador car was hired from its owner Tirath Singh. Ajmer Singh and Ram Niwas had seen the appellants going in the hired car driven by Sadhu Ram from Ganganagar. Mr. B. Advani could not assail the evidence of these persons relating to the identification of Prem Singh and Sajjan Singh. Consequently, I have no hesitation in holding that the appellants boarded the car driven by Sadhu Ram to village Jhotawali, started from there after some time for going to Ganganagar in the same car and assaulted Sadhu Ram in the way with an intention to take away his car after killing him.

7. The prosecution has further led cogent and reliable evidence to show that the three appellants robbed Sadhu Ram of the Ambassador car which he was driving immediately before the occurrence. Sadhu Ram driver was assaulted for the purpose of committing theft of the car, as is evident from his statement. Sadhu Ram's evidence is that the appellants first asked him to bring the car to a halt on

the false pretext that its rear wheel was producing a rattling sound and when he acceded to their request and got down from the car to find out whether there was any defect in the wheel, the appellants also came out of the car and made a murderous assault upon him from the back side with a sharp-edged weapon and then dragged him towards a sand-dune, left him there and took away the car. His evidence clearly establishes that the injuries were caused to him with an intention to kill him for the purpose of committing the theft of the car. As the beating of Sadhu Ram was primarily for the theft of the car. the three appellants were rightly held guilty under Section 394 I.P.C. as they were jointly concerned in committing robbery. The evidence of Sadhu Ram, as stated earlier, is free from infirmity & the trial court committed no error in placing reliance upon it in convicting the appellants under Section 307 read with Section 34 and 394, I.P.C..

8. Lastly, it was argued by Mr. B. Advani appearing on behalf of the appellants that the trial Judge went wrong in holding all the three appellants liable to the minimum sentence laid down in Section 397, I.P.C. on the ground that grievous hurt was caused by any one of them. In support of his above contention, he invited my attention to the words 'such offender' used in Section 397, I.P.C. and urged that these words must be construed to mean only that person who uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to that person. According to him, these words do not apply to person taking part in the robbery or dacoity along with person who use deadly weapons or cause grievous hurt or who make an attempt to cause death or grievous hurt to any person. The above contention is well-founded. No substantive offence is created by Section 397, I.P.C.. This section is only a rider to Section 394 I.P.C. and no conviction is possible under this section alone. It prescribes minimum sentence for the offences of robbery and dacoity if at the time of committing thereof the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person. In the present case Sadhu Ram injured could not say which of the three appellants had used sharp-edged weapon or caused grievous hurt to his body. The reason appears to be that he was attacked from his back side while he was finding out whether there was any defect in the rear wheel. However, he definitely stated that all the three appellants had come out of the car and had attacked him while he was inspecting

the rear wheel of his car. In the absence of any definitely evidence as to which appellant or appellants was or were responsible for causing the grievous hurt or using the deadly weapon, i. e. sword, none of them can be held liable to the minimum sentence laid down in Section 397, I.P.C. although grievous hurt was caused by one of them Reference in support of my above view may be made to an authority of the Supreme Court reported as Phool Kumar v. Delhi Administration 1975 Cr LJ 778 wherein the following observations were made by their Lordships of the Supreme Court on the point in issue:

The sentence of imprisonment to be awarded under Section 392 cannot be less than 7 years if at the time of committing robbery the offender uses any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person; vide Section 397. A difficulty arose in several High Courts as to the meaning of the word 'uses' in Section 397, I.P.C. The term 'offender' in that section, as rightly held by several High Courts, is confined to the offender who uses any deadly weapon. The use of a deadly weapon by one offender at the time of committing robbery cannot attract Section 397 for the imposition of the minimum punishment on another offender, who had not used any deadly weapon. In that view of the matter use of the gun by one of the culprits whether he was accused Ram Kumar or some body else (surely one was there who had fired three shot) could not be and has not been the basis of sentencing the appellant with the aid of Section 397.

Consequently, I am reluctant to uphold the conviction of the appellants under Section 394 read with Section 397, IPC. They are no doubt guilty under Section 394, I.P.C. simpliciter, and under Section 307 read with Section 34, I.P.C.. The appellants have already undergone rigorous imprisonment for more than three years and eight months. Besides, they have been undergoing detention during investigation, inquiry and trial of this case from September, 1972 to March, 1974. In this manner, they have been in jail for more than five years. The ends of justice would be met if each of them is sentenced under Section 394, I.P.C. to a term of sentence already undergone by him The sentence passed against the appellants under Section 307, read with 34 I.P.C. is not excessive in the circumstances of the case. Hence, it is maintained

9. The result of the above discussion is that I partly accept the appeal filed by Mani Ram, Sajjan Singh and Prem Singh and while maintaining their convictions and sentences under Section 307 read with Section 34, I.P.C. set aside their convictions and sentences under Section 394 read with Section 397, I.P.C. and convict each of them under Section 394, I.P.C. simpliciter and sentence them each under Section 394, I.P.C. to a term already undergone by them. The appellants are in jail. They shall be released forthwith, if not required in connection with any other case.

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