

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR**

: JUDGMENT :

KUNDANMAL

Vs.

STATE OF RAJASTHAN

S.B.CRIMINAL APPEAL NO.109/1987

against the judgment dated 25.03.1987 passed
by the Additional Sessions Judge, Rajsamand
in Criminal Original Sessions Case
No.33/1986 State Vs. Kundanmal.

Date of Judgment : 28th October, 2004.

HON'BLE MR.JUSTICE DALIP SINGH

Mr.T.S.Champawat, for the appellant.
Mr.J.P.S.Choudhary, Public Prosecutor.

BY THE COURT :

1. The present appeal has been filed against the judgment of Additional Sessions Judge, Rajsamand dated 25.03.1987 passed in Criminal Original Sessions Case No.33/1986 State Vs. Kundanmal whereby the appellant was held guilty and convicted for the offence under Sections 307, 326 and 324 I.P.C. Learned Additional Sessions Judge passed the following sentences for the offences:-

(i)Under Section 307 I.P.C. : To serve seven years rigorous

imprisonment and a fine of Rs.1,000/-; in default of payment to serve two months simple imprisonment.

(ii)Under Section 326 I.P.C. : To serve three years rigorous imprisonment and a fine of Rs.500/-; in default of payment to serve two months simple imprisonment.

(iii)Under Section 324 I.P.C. : To serve six months simple imprisonment and a fine of Rs.100/-; in default of payment to serve fifteen days simple imprisonment.

All the sentences were to be run concurrently. The accused appellant being aggrieved by the aforesaid judgment of conviction and sentence awarded to him has preferred this appeal.

2. In brief, the facts of the case are that on 27.05.1986 at about 10:10 AM, a First Information Report was lodged by Subhash Chandra (PW-1) at Police Station Rajsamand alleging that at about 10:00 AM while his brother Satya Narayan (PW-2) was coming to the shop on a bicycle, in the market the accused-appellant struck him with his scooter. It is alleged that as a result of the aforesaid collision both Satya Narayan and the accused fell down. It is further alleged that accused wanted to take out a knife from the scooter but as the tool-box did not

open, the accused ran to his shop and brought a sword. It is further alleged that accused was shouting that he will kill Satya Narayan so that everyday altercation and trouble would be eradicated. It is further alleged that the accused inflicted injuries on the back of shoulder of Satya Narayan with the sword and gave another blow on the hand of Satya Narayan. It is alleged that while the accused was inflicting aforesaid injuries, father of the injured Fateh Lal (PW-3) who saw his son Satya Narayan (PW-2) being subjected to the injuries by the accused, came to rescue him. It is alleged that accused inflicted the blow with sword on Fateh Lal (PW-3) as well, as a result of which Fateh Lal received injuries on the hands. This report was lodged by Subhash Chandra (PW-1) at about 10:10 AM and a case under Sections 307, 326 and 324 I.P.C. was registered by the police.

3. After the registration of the aforesaid case, police started investigation. The accused-appellant was arrested on the same day and after completion of the investigation, police submitted the charge-sheet against the accused-appellant.

4. The case was tried by the learned Additional Sessions Judge, Rajsamand who framed the charges under Sections 307, 326 and 324 I.P.C. In all, fourteen witnesses from the side of prosecution were examined. The accused-appellant was examined under Section 313 Cr.P.C. The accused-appellant also led defence evidence of Hastimal (DW-1) and Jawahar Singh, Asstt. Sub-Inspector

(DW-2) and submitted Exhibit D-5 as documentary evidence in defence which is Injury Report of accused-appellant who received four injuries i.e., Injury No.1, which is lacerated wound 3"x 1/2 x 1/4 x scalp deep on the right parietal region caused by blunt weapon, Injury No.2 which is incised wound 2" x 1/2 x 1/2 on the ring finger caused by sharp weapon, Injury No.3 which is bruise 3" x 2" on the left scapular region caused by blunt weapon and Injury No.4 which is bruise 1" x 1" on the left forearm caused by blunt weapon. The accused also submitted Exhibit D-7 which is F.I.R.No.93/1986 lodged on 27.05.1986 at 10:25 AM of the same incident against the injured Fateh Lal (PW-3) and Satya Narayan (PW-2) for the offence under Sections 324 and 323 I.P.C. Exhibit D-8 was also filed which is challan submitted by the police against Satya Narayan and Fateh Lal in respect of F.I.R. No.93/1986. Among the other documentary evidence filed by the accused, Exhibit D-9, D-10, D-11 and D-12 are some of the documents relating to the cases against Satya Narayan (PW-2) and Fateh Lal (PW-3) for various offences which alleged to have been committed by them and for which they are being prosecuted.

5. The submission of the learned counsel for the appellant is that learned trial court has erred in convicting the appellant for offence under Sections 307, 326 and 324 I.P.C., inasmuch as, the prosecution witnesses have failed to explain the injuries caused to the accused-appellant in the same incident for which the First Information Report (Exhibit D-7) was filed by the accused-appellant on the same day i.e., 27.05.1986 at 10:25 AM immediately after the incident and

further that in respect of the said First Information Report, chargesheet (Exhibit D-8) was filed by the police after the investigation in the court and for which Satya Narayan and Fateh Lal are being prosecuted. It was stated by the learned counsel for the appellant that both the cases ought to have been tried together so as to reach the truthfulness of the entire incident. Be that as it may, the prosecution witnesses have failed to explain the injuries on the person of the accused. The case of the accused Kundan Mal was that he is real brother of Fateh Lal (PW-3) and they both are sons of Ganesh Lal. There is enmity between them. Several cases have been going on between them and the injured Satya Narayan (PW-2) and Fateh Lal (PW-3) in fact caused the injuries to the accused on account of the incident which took place in the market due to collision between the scooter and bicycle. The accused has stated in his statement under Section 313 Cr.P.C. that he snatched sword from the injured prosecution witness Satya Narayan (PW-2) who was holding a sword and wanted to strike the accused. The accused had also been assaulted by Satya Narayan (PW-2) and Fateh Lal (PW-3). The accused snatched the sword and was flashing it only with a view to save himself from the assault by Satya Narayan (PW-2) and Fateh Lal (PW-3) and it was in the course of aforesaid incident that both Satya Narayan and Fateh Lal received injuries. It is, thus, submitted by the learned counsel for the appellant that prosecution case as relied upon by the learned trial court hinges upon the testimony of Subhash (PW-1) S/o Fateh Lal, Satya Narayan (PW-2) S/o Fateh Lal and Fateh Lal (PW-3) S/o Ganesh Lal. Other independent witnesses are Paras Mal (PW-4), Mangi Lal (PW-5) and

Mohan Lal (PW-8) who have not supported the prosecution case and were in fact declared hostile by the prosecution. It is, therefore, submitted by the learned counsel for the appellant that Subhash (PW-1), Satya Narayan (PW-2) and Fateh Lal (PW-3) are highly interested witnesses. They are inimical to the appellant, inasmuch as, there are serious disputes relating to the property left behind by Late Ganesh Lal i.e, father of Fateh Lal (PW-3) and the accused-appellant Kundan Mal. It is further submitted that there are criminal cases pending against the injured persons, documentary proof thereof has been submitted by the accused in the defence evidence. There has been challan in the cross cases and the injuries on the person of the accused have not been explained by the prosecution witnesses or by the injured themselves, therefore, the submission of the learned counsel for the appellant is that the prosecution has not come out with correct version of the incident and has not explained the injuries on the person of the accused, therefore, it cannot be ruled out that what has been stated by the accused in his statement under Section 313 Cr.P.C. is all together false but is probably correct version and the prosecution story as narrated by the prosecution witnesses No.1, 2 and 3 is, therefore, doubtful and consequently, the benefit of doubt may be extended to the accused-appellant.

6. It is further submitted by the learned counsel for the appellant that it is highly improbable that after the collision between the the scooter driven by the accused and the bicycle by Satya Narayan in front of the shop of Fateh Lal (PW-

3), the accused having gone to his own shop which is alleged to be about 60-70 yards away and on having returned, Satya Narayan was still standing outside when the accused came back with the sword. All this while, ample time was there for the injured Satya Narayan (PW-2) who was involved in the collision to have come to the shop rather than having remained standing outside in the main market in front of the shop. Learned counsel submits that it is highly improbable that while the accused went to his own shop to fetch the sword, injured Satya Narayan (PW-2) remained outside and PW-1 Subhash, brother of the injured who was sitting on the chabutra/shop and working on the ornaments which he was preparing along with his father Fateh Lal (PW-3) remained on the shop/chabutra and did not go to assist and bring Satya Narayan inside. The learned counsel submits that even assuming that the accused went to his own shop to fetch the sword, it would have taken him considerable time to go and come back and bring the sword after opening the shop and during this time it is highly improbable that injured Satya Narayan (PW-2) was waiting for accused to come back. Thus, the aforesaid improbability as per the learned counsel for the appellant shows that prosecution has not come out with the correct facts and has suppressed the actual incident.

7. Learned counsel for the appellant further submits that prosecution has not been able to produce any independent witness even though the incident occurred in the market during day time and the witnesses Paras Mal (PW-4), Mangi Lal (PW-5) and Mohan Lal (PW-8) who were independent witnesses which

includes neighbours of the shop of Fateh Lal have not supported the prosecution case and have denied having witnessed the incident, therefore, according to the learned counsel independent witnesses who were available were not produced and those who have been produced have not supported the prosecution case and the case is wholly based upon the testimony of the interested and inimical persons who have caused the injuries on the person of the accused. The learned counsel, therefore, submits that on such testimony, learned trial court has erred in convicting the accused-appellant.

8. The learned counsel for the appellant further submitted that in the instant case where there were cross cases including the F.I.R. Exhibit D-7 and the challan (Exhibit D-8) based upon the said F.I.R. filed by the appellant against Satya Narayan and Fateh Lal with regard to the same incident, the two cases ought to have been tried together and on the account of separate trials, the case of the accused-appellant was seriously prejudiced. Learned counsel for the appellant submits that investigating agency has itself come out with two contradictory findings as a result of the investigation (i) in which the accused appellant has been chargesheeted for the assault on Satya Narayan (PW-2) and Fateh Lal (PW-3) and (ii) in the other Satya Narayan (PW-2) and Fateh Lal (PW-3) have been chargesheeted for the assault on the accused-appellant.

9. Learned counsel for the appellant further submits that in the

alternative and without prejudice to the submissions made hereinabove, the learned trial court erred in holding the accused-appellant guilty of the offence under Sections 307 and 326 I.P.C., inasmuch as, the injuries as per the Exhibits P-8 and P-9 on the persons of Satya Narayan (PW-2) and Fateh Lal (PW-3) is enough to show that all the injuries of Satya Narayan were simple except Injury No.9 which was mentioned as grievous by the Doctor in Injury Report Exhibit P-8 which is reportedly a fracture of first metacarpal of right hand. Similarly, so far as Fateh Lal (PW-3) is concerned, injury No.1 and 3 were simple in nature and only injury No.2 was mentioned as grievous by the Doctor which is a fracture of first metacarpal of left hand. The submission of the learned counsel is that from the Injury Reports Exhibit P-8 and P-9 and the statement of Doctor PW-12, it has not been indicated that any of the injuries aforesaid either individually or cumulatively were sufficient in the ordinary course of nature to cause death or that any of the aforesaid injuries were dangerous to life. In this view of the matter, the learned counsel submits that learned trial court erred in convicting the accused-appellant for offence under Sections 307 and 326 I.P.C. Learned counsel further submits that so far as injuries No.9 and No.2 received by Satya Narayan and Fateh Lal respectively which are fractures of metacarpal of right hand and left hand respectively are concerned as per the prosecution witnesses were caused when they tried to avoid the blow which was alleged to be inflicted by the accused while flashing the sword while defending himself. It is, therefore, submitted that accused did not intend to cause the said injuries. On the contrary, learned counsel for the

appellant submits that as per the statement of accused given under Section 313 Cr.P.C., he was only flashing the sword which he had snatched from Satya Narayan in order to save himself from the assault being made by Satya Narayan and Fateh Lal. Therefore, as per the submission of the learned counsel, learned trial court erred in convicting the accused for the offence under Sections 307 and 326 I.P.C. Learned Public Prosecutor has supported the judgment of the trial court and has argued that the accused has been rightly convicted.

10. I have considered the rival submissions submitted at Bar and considered the judgment cited by the learned counsel for the appellant i.e., Lakshmi Singh and Others Vs. State of Bihar reported in 1976 Cr.L.J. 1736 and State of Rajasthan Vs. Rajendra Singh reported in JT 1998 (5) SC 193 on the ground of non-explanation of injuries on the person of the accused relating to discarding the prosecution version and the benefit of doubt being given to the appellant. In State of Rajasthan Vs. Rajendra Singh (supra) the Hon'ble Supreme Court at para 7 of the judgment has held as under:-

“In our opinion this contention is of no help to the appellant because their evidence has not been discarded on the ground that they were not present. Their evidence was discarded because they were found not telling the truth before the Court.”

11. On the basis of aforesaid reason, in para 8 of the judgment the Hon'ble Supreme Court was held as under:-

“All the witnesses had categorically stated that they had not beaten the respondent and seen any injury on the accused. But the evidence establishes that the respondent had two contused lacerated wounds; one on his face and one on his head. The injuries were bleeding injuries and visible and yet the witnesses stated that they had not seen any injury on the person of the respondent. That would mean that neither the family members of the Harveer nor the two independent witnesses were willing to give a true version and had tried to suppress the part played by some of them which had resulted in causing injuries to the respondent. The High Court was, therefore, justified in not placing reliance on their evidence.”

12. In the present case also, in my considered view the present dictum of the Hon'ble Supreme Court squarely applies, inasmuch as, prosecution witnesses have failed to explain the injuries on the person of the appellant which have been proved vide Exhibit D-5 which are four in number and caused by sharp as well as blunt weapon including the wound on the right parietal region. The aforesaid injuries also find corroboration from the fact that vide First Information Report (Exhibit D-7) which was lodged by the accused appellant on the very same day at 10:25 AM immediately 15 minutes after the incident, the investigating agency found prima facie case made out by the appellant to be correct and on the basis of the said statement of the accused-appellant, Satya Narayan (PW-2) and Fateh Lal (PW-3) they were chargesheeted which is corroborated by the Challan (Exhibit D-8) filed against them for the said incident.

13. In view of the aforesaid, in the facts and circumstances of the case, I

am inclined to extent the benefit of doubt to the accused appellant taking into consideration the fact that injuries of accused have not been explained by the prosecution witnesses which resulted into discrediting the witnesses as they have not come out with the true and complete story regarding the incident and suppressed the genesis of the incident which would result in not only discarding their testimony but also probablising the defence of the appellant set up by him in his statement under Section 313 Cr.P.C.

14. Consequently, this appeal is allowed. The judgment of conviction and sentence passed by the learned trial court is set aside. The accused was enlarged on bail by this court by order dated 02.04.1987. The bail bonds and surety bonds are discharged.

(DALIP SINGH),J.

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