

State of Maharashtra v. Kailash Singh

Presented on	03.09.2022
Registered on	05.09.2022
Delivered on	26.06.2024
Duration	1Y 9M 21D

	IN THE COURT OF 8th JUDICIAL MAGISTRATE FIRST CLASS, THANE Present: Smt. Ruchi Bhagat (RCC No. 3043/2022)
Details of FIR	FIR CR No. 334/2020
Prosecution	State of Maharashtra Through Kashimira Police Station
Represented by	A.P.P Smt. Kiran Vekhende
Accused	Kailash Ilakar Singh Age: 65 years; Occ:Driver ; R/o: Amantran building, Room no.E/102, Nityanand Nagar, Mira Road (East) Tal and Dist. Thane.
Represented by	Adv. Shri S.K.Pandey

Part-B

Date of Offence	23.04.2020
Date of FIR/Complaint	24.04.2020
Date of Charge sheet	05.09.2022
Date of Framing of Charge	05.09.2022
Date of Commencement of Evidence	07.10.2022
The date on which Judgment is reserved	—
Date of Judgment	26.06.2024
Date of Sentencing Order, if any	26.06.2024

Accused Details

Rank of Accused	Name of Accused	Date of Arrest	Date of Release on bail	Offences Charged with	Whether Acquitted	Sentence Imposed	Period of Detention Undergone during Trial for purpose of Section 428, Cr.P.C.
1	Kailash Singh			Sections 429 IPC, section 11 of Prevention of Cruelty to Animal Act, 1960.		A fine of Rs.30,000/-	

Part 'C'-LIST OF WITNESSES**A. Prosecution:**

Rank	Name	Nature of evidence
PW1	Peter James Pathet	Informant
PW2	Francis D'souza	Eye Witness
PW3	Baburao Gavai	Spot Panch
PW4	Sudhir Shetty	Seizure Panch
PW5	Vijay Gambhirrao	Investigating Officer

B. Defence Witnesses, if any:

Rank	Name	Nature of evidence
DW1	Not Applicable	Not Applicable

C. Court Witnesses, if any:

Rank	Name	Nature of evidence
CW1	Not Applicable	Not Applicable

LIST OF PROSECUTION/ DEFENCE / COURT EXHIBITS**A. Prosecution:**

Sr. No.	Exhibit Number	Description
1	Exhibit P- 12/PW1	FIR/Complaint
2	Exhibit P- 20/PW3	Spot panchanama
3.	Exhibit P- 25/PW4	Seizure Panchanama
4.	Exhibit P- 28/PW5	Muddemal receipt
5.	Exhibit P- 27/PW5	Notice given to the informant

B. Defence:

Sr. No.	Exhibit Number	Description
1	Not Applicable	Not Applicable

C. Court Exhibits:

Sr. No.	Exhibit Number	Description
1.	Exhibit C-11	Evidence of PW1
2.	Exhibit C-13	Evidence of PW2
3.	Exhibit C-19	Evidence of PW3
4.	Exhibit C-24	Evidence of PW4
5.	Exhibit C-26	Evidence of PW5
6.	Exhibit C-29	Statement of Accused recorded under section 313 of the Code of Criminal Procedure

D. Material Objects:

Sr. No.	Exhibit Number	Description
1	Article A	Pendrive

JUDGMENT

(Delivered on 26.06.2024)

The accused is facing trial for the offenses punishable under section 429 of the Indian Penal Code, 1860, and section 11(1) (a)&(l) of the Prevention of Cruelty to Animals Act, 1960.

2. The admitted facts in the said case are that the accused and the informant stay in the same society where the alleged incident has taken place. The fact that the accused kicked the said dog and then the dog went out of the gate is also undisputed. Further, the fact about the pendrive (Article A) given by the informant to the IO is also admitted. In addition to that the identity of the accused remained undisputed during the entire trial.

3. Statement of the case of the Prosecution:

On 23.04.2020 at about 06.30 PM the informant was informed by one of his neighbors that while he was returning from the medical to his home, he saw that in the premises the accused had kicked one dog which left from the gate and was lying outside the compound. After getting the said information on the call, the informant personally went there and checked the dog. He found that the said dog was dead. He then went to the secretary and asked for the CCTV footage of the camera installed on the gate of the said building. He along with his neighbor watched the CCTV footage and saw that the accused kicked the dog. Hence they went to Kashmiri Police Station and lodged the present FIR.

4. Accordingly crime was registered in Kashimira police station CR No.334/2020 for offences punishable under section 429 of the Indian Penal Code,1860, and section 11(1)(a)&(l) of the Prevention of Cruelty to Animals Act, 1960. The investigation officer Shri. Gambhirrao conducted spot panchanama and recorded statements of the witnesses. He conducted a seizure panchanama of the pen drive in which he got the CCTV footage of the said incident from the informant. After completing the investigation, he filed the final report.

5. The charge was framed vide Exh.7 under section 429 of the Indian Penal Code,1860, and section 11(1)(a)&(l) of the Prevention of Cruelty to Animals Act, 1960 by my learned predecessor. The accused pleaded not guilty vide Exh. 8 and claimed to be tried. The statement of the accused under section 313 of the Criminal Procedure code is recorded vide Exh. 29. When the statement of the accused under section 313 of the Criminal Procedure Code was recorded on Exh. 29, he took a defense of total denial and submitted that he did not want to examine any defense witness nor he wanted to examine himself on oath.

6. To prove the case the prosecution has examined 5 witnesses, details of which are mentioned in the **Part C** of the annexure and their evidence is recorded and mentioned as Court Exhibits

7. Heard learned A.P.P Smt. Kiran Vekhande for the Prosecution and Shri Pandey for the accused. The learned A.P.P argued that the informant had given evidence corroborating with the FIR. The Spot panchanama and seizure panchanama are proved by

the Panch witness. An eyewitness has also deposed on similar lines as that of the informant and strengthened the prosecution case. In addition to that, the CCTV footage produced by the IO laid a strong foundation to bring home the guilt of the accused. The prosecution thus prayed for conviction as the evidence recorded is strong and reliable.

8. Against these contentions the Ld. Advocate Shri. Pandey for the accused argued that there is a contradiction in the FIR and the evidence of the informant. There is also a contradiction about the deceased dog being male or female. In addition to that, the time mentioned in the CCTV footage is 12.00 and the time in the FIR is 6.00 PM. He also argued on the veracity of the panch witness. He tried to establish the defense that the accused had kicked the said dog for his protection. He also pointed out that the color of the dog in the photograph attached to the final report is different from the color of the dog seen in the CCTV footage. The prosecution has failed to prove its case beyond reasonable doubt and bring home the guilt of the accused. On these grounds learned advocate for the accused has prayed for acquittal.

9. After hearing rival contentions of both sides, the points for determination along with my findings thereon are as follows:

Sr.No.	Points for Determination	Findings
1.	Whether the prosecution proves that the accused committed mischief by killing, poisoning, maiming, or rendering useless any animal of the value of fifty rupees or upwards and thereby committed an	Yes.

	offense punishable under section 429 of IPC?	
2.	Whether the prosecution proves that the accused beat, kicked, over-rode, over-drove, over-loaded, tortured or otherwise treated any animal to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animal to be so treated and mutilated any animal or killed any animal (including stray dogs) by using the method of strychnine injections in the heart or any other unnecessarily cruel manner and thereby committed an offense punishable under section 11(1)(c)(l) of the Prevention of Cruelty to Animals Act, 1960?	Yes
3.	What Order and judgment?	Accused is convicted.

REASONS

10. Reasons as to points no.1 to 2:

To prove the offence below section 429 of the Indian Penal Code, 1860 and section 11(1)(c)(l) of the Prevention of Cruelty to Animals Act, 1960 the following ingredients must be proved:

- *The accused committed mischief.*
- *The accused committed mischief by killing, poisoning, maiming, or rendering useless the said dog.*
- *The accused killed the dog due to his kick which was unnecessarily cruel.*

11. As both points are related to the same incident, I am discussing them together. To prove its case, the prosecution has examined 5 witnesses. Informant Peter (PW1) has deposed on the lines of the complaint. He narrated the entire incident that took place on that day. It has come in his evidence, that on 23.04.2020 at about 06.30 PM he was informed by one of his neighbors Francis (PW2) that while he was returning from the medical to his home, he saw that in the premises the accused had kicked one dog which left from the gate and was lying outside the compound.

12. After getting the said information on the call, he went there and checked the dog. He found that the said dog was dead. He then went to the secretary and asked for the CCTV footage of the camera installed on the gate of the said building. He along with his neighbor watched the CCTV footage and saw that the accused kicked the dog. He further deposed that due to the lockdown in the pandemic, he reached the police station by 11 PM and lodged the present complaint(Exh- 12) against the accused.

13. In the cross-examination, he admitted that he had not seen the entire incident directly. He further admitted that he was informed about the entire incident by his neighbor Francis (PW2). He denied all the suggestions given by the learned advocate for the accused about making a false complaint against the accused and giving false evidence.

14. The prosecution further examined Francis (PW2). He deposed that the incident took place in the common passage of their society when he went to get medicines from the medical near their building. While he was returning from the medical he took 2 to 3

rounds in the society premises. At that time, he saw that a person from the D wing of the society was speaking on a phone call loudly and had kicked the dog which was passing from the passage of the building. Due to such a kick, the Dog went outside the gate. After completing his rounds, he went out of the gate and saw that the said dog was lying outside the gate and was breathing slowly.

15. As the informant was having his dog, he thought that it would be better to inform the informant about the said incident. Hence, he called the informant to inform him about the entire incident and went home. After about half an hour, when he went down, the informant told him that the said dog died and that he had informed the municipal corporation. He further deposed that he along with the informant went to the committee members in the evening and requested them to show CCTV footage. When they saw the said footage, they saw that the accused was kicking the dog. After that, they went to the police station and complained about the entire incident.

16. In the cross-examination, he admitted that he knows the accused as both of them are staying in the same society. He was unable to depose about the dispute between the accused and the society members. He denied the suggestions given by the learned advocate for the accused about making a false complaint and giving false evidence due to their love for animals.

17. During the cross-examination, the advocate for the accused tried to put the defense that the accused had made a false complaint about the society registration. Due to this, all the members of the society lodged this false complaint. And as the dog tried to bite

the accused he kicked the said dog. However, the witness denied the said defense. He admitted that while giving the complaint he had deposed that the deceased dog was a male, and while giving the supplementary statement, he had deposed that it was a female dog.

18. Further the prosecution examined Panch witness Gavai (PW3). He deposed that he was called by police inspector Deshmukh at about 10:50 AM at Nityananda Nagar, Mira Road. He was accompanied by another panch Kishan Chauhan. He further deposed that the informant was present at the spot and informed them about the incident. At the spot of the incident, one white-colored dog was lying dead. The police prepared Panchanama (Exh-20) on the spot and took his signature on the same.

19. During the cross-examination, he deposed that he is unaware of exactly who gave the complaint in the present case. During the cross-examination when the witness was asked to put his signature on a blank paper, which is in the record (Exh-21), and was asked about the difference between the present signature and the signature on the panchanama he deposed that there is no such difference, and both the signatures are done by him.

20. The learned advocate for the accused tried to bring the fact before this court that the present witness has acted as a panch witness in many other cases in this court as he stays near the Kashimira police station.

21. The prosecution, then examined Sudhir(PW4). He deposed that he was called to Kashimira police station on 26 June 2022 by the police. The informant was also present and gave a pen drive to the police. The police played the video by connecting the pen

drive to a laptop. In the CCTV footage video, it was seen that one person was speaking on the phone in the premises of the society. When a dog was going by from the side premises, the said person kicked the dog. He also identified the person in the footage as the accused present in the court. He further deposed that after securing the said CCTV footage and that pen drive the police prepared the panchanama (Exh. 25) and took his signature on the same.

22. During the cross-examination, he denied that he went to the police station due to the request of the informant. He denied the suggestions about giving a false deposition regarding the said CCTV footage and pen drive due to his acquaintance with the informant.

23. The prosecution then examined the investigating officer, Vijay (PW5). He deposed that he had received the FIR, spot Panchanama, notice given to the accused when the investigation was handed over to him. He had also given a notice(Exh-PW27) to the informant to continue the investigation. He further deposed that she had seized the pen drive Having CCTV footage from the informant and made a receipt(Exh-28) of the said article. He further deposed that the informant had submitted photographs about the incident to him, which he had attached in the final report. While concluding the investigation, he found out that the accused had kicked the white-colored dog in the stomach due to which she died.

24. During the cross-examination, he submitted that he had not investigated such cases previously. He admitted that he had investigated the matter concerning the supplementary statement recorded by him. He was unable to state whether the medical examination of the deceased dog was done at the time of the

incident or not. He also deposed about the contents of the CCTV footage and denied that he had done a false investigation. He denied the suggestion, given by a learned advocate for the accused about the non-happening of the alleged incident due to lock down.

25. In the re-examination, the witness was shown the pen drive (Article A) which was submitted along with the final report. He identified the pen drive and the video of CCTV footage was played during the evidence in front of the accused and his learned advocate. From the said CCTV footage, a screenshot was taken at 0.14 seconds which is attached to the Record.

26. During the cross-examination, he admitted that the said pen drive was presented by the informant at the police station. He admitted that in the footage, one person is seen while speaking on the phone, and a dog coming into the said premises all of a sudden. He further denied that to defend himself a person kicks a dog in such a manner. He admitted that after the incident, the dog went away from the said premises. He admitted that the certificate about the CCTV footage is produced on record and is given by the informant.

27. When he was asked about verifying the technical knowledge of the person giving the certificates, he answered that any person knowing mobile can give such such certificate. He denied that the video in the CCTV footage is stamped. He also denied that there were no signatures of witnesses on the spot Panchanama. He also denied the fact that the said dog could have died due to corona. He further denied all the suggestions given by the learned advocate for the accused about giving false deposition and incomplete investigation.

28. At this stage, it is very important to analyze the entire evidence in the light of the alleged sections. To attract section 429 of IPC, the act of the accused must fall under the scope of the definition of mischief as per section 425 of the Indian penal code. To constitute the offense of mischief, wrongful loss or damage caused to the public or any person with intention or knowledge that such loss or damage would change the property or the situation that will destroy or diminish, its value or utility or affect must be injuriously must take place.

29. It is a settled law that the intention or knowledge to cause, wrongful loss or damage to the public or any person is gist of the offense of mischief. In addition to that, when such intention or knowledge is coupled with killing or maiming the animals of the value of ₹50, the offense under section 429 is attracted.

30. All the witnesses have deposed that after suffering from the kick by the accused, the alleged dog went away from him. This means that the dog was not killed, then and there. However, it has come in the evidence of Peter (PW1) and Francis (PW2) that they found the dog lying outside the gate. When Francis (PW2) had initially checked the dog, the dog was breathing slowly, and when Peter (PW1) reached the spot, he found that the dog had died.

31. Direct evidence about the accused kicking the dog is on record and the circumstantial evidence shows that after suffering from the said kick, the dog had died outside the gate of the building. The CCTV footage also corroborates the fact that the accused had kicked the dog.

32. Section 11(1)(a) makes the act of kicking any animal an offense. Thus, the act of the accused fits within the purview of section 11 (1)(a). In addition to that, while making suggestions, there is no denial on the part of the accused about kicking the seed dog. The accused tried to take a defense that the said dog approached him suddenly due to which he took the dog to defend himself. Further section 11(1)(l) makes killing any animal in unnecessarily cruel manner an offence.

33. The offense of mischief demands, intention or knowledge out of which the fact of knowing that kicking such a dog would cause it such an injury is a fact of common knowledge for any ordinary prudent man. The defense taken by the accused was that the informant had lodged a false complaint due to some previous enmity in society. However, by establishing a prima facie case, the prosecution had shifted the burden on the accused to revert the same.

34. However, other than putting a defense of previous enmity and false implication, the accused had not adduced any evidence on record to support his defense. In addition to that, the fact of the dog being deceased remains unchallenged in the entire trial. At this stage, the fact that the accused had kicked the dog to defend himself is coming from special knowledge of the accused due to which the burden of proving the same lied upon the accused as per section 106 of the Indian Evidence Act, 1872, which they failed to rebut.

35. Thus the prosecution proved that the eye witness Francis (PW2) has seen the accused kicking the dog after which he had seen

the said the dog going outside the gate and was lying and breathing slowly. When the informant checked the dog, he found out that the dog was dead. The prosecution had corroborated these facts by CCTV footage produced by the investigating officer.

36. The fact that the accused had kicked the dog is not denied by the defence. Thus the prosecution had proved that the accused had kicked the dog with a knowledge that it may amount to his death. Thus, the prosecution had laid a strong foundation for bringing home the guilt of the accused. Hence, the prosecution has proved the alleged offences beyond any reasonable doubt. In view of this discussion, I record my findings as to point number 1 and 2 in the affirmative.

37. Reasons as to Point no. 3

According to the above discussion, the alleged offences under section 429 of I.P.C and 11(1)(c)(l) of the Prevention of Cruelty to Animals Act, 1960 are proved by the prosecution beyond any reasonable doubt. The defence has failed to create any such doubt in my mind. The other hand, the prosecution with help of direct and circumstantial evidence has proved the guilt of the accused. The defence has failed to revert the burden and to shake the prosecution case. Other than mere denials, there is no strong defence, which will give rise to another view above the prosecution story, hence, in my opinion, it is a clear case for Conviction.

38. Due to lack of proper defence there are no other views established by the accused to apply the theory in Criminal Jurisprudence. Hence the one view established by the prosecution by examining 5 witness and bringing reliable evidence on record

brought home the guilt of the accused. Thus I am satisfied that this is a clear case for convicting the accused.

39. Considering the age of the accused, nature of offence, its gravity I am of the opinion that it is not a fit case to give benefit of Probation of Offenders Act to the accused. Hence I stop to hear the accused on the point of sentencing.

40. Heard prosecution and defence on the point of sentence. Ld APP submitted that in order to send a proper message in the society and to curb such cruel practices against the animals and to stop the accused from repeating such similar offences it is necessary to impose stringent punishment on the accused. Hence, she prayed for imposing maximum punishment on the accused.

41. Ld. Advocate for the accused submitted that considering the age of the accused and his medical condition leniency be shown on the accused. He further submitted that the accused is a senior citizen. Lastly he submitted that the accused is not habitual and leniency be shown on humanitarian grounds. Hence, he prayed for imposing fine rather than imposing punishment of imprisonment on the accused.

42. Considering the above submissions and perusing the punishments laid down in IPC for Section 429 it seems that the section is punishable with 5 years imprisonment or fine. Also the punishment for first time offender under section 11(1)(a)&(l) of the Prevention of Cruelty to Animals Act, 1960 is punishable with fine which may extend to 50/- Rs. At this stage it is important to note the conduct of the accused observed during entire trial. The accused as

per the submission of his advocate is prima facie seen to be suffering from medical issues.

43. Indian Criminal Jurisprudence gives more reliance on reformatory theory. Keeping the accused behind bars for more days might have the risk of introducing him with the hardened criminals. This can cause negative impact on the accused. It is a settled position of law that the sentence imposed on the accused shall not be too harsh, excessive or should not be meager at the same time. Hence, in my opinion, punishing the accused by imposing heavy fine will suffice the purpose. The muddemal i.e. pendrive (Article -A) needs to be preserved until appeal period is over. After the above discussion about convicting the accused and hearing both sides on point of sentence, I passed the following order;

-: **ORDER** :-

1. Accused **Kailash Ilakar Singh** is convicted as per Section 248(2) of the Code of Criminal Procedure, 1973 for the offence punishable under section 429 of the I.P.C, 1860 and is sentenced to pay the fine of Rs.30,000/- (Rupees Thirty thousand only) and in default to suffer simple imprisonment for one month.

2. Accused **Kailash Ilakar Singh** is convicted as per Section 248(2) of the Code of Criminal Procedure, 1973 for the offence punishable under section 11(1)(a)&(l) of the Prevention of Cruelty to Animals Act, 1960 and is sentenced to pay the fine of Rs.50/- (Rupees Fifty only) and in default to suffer simple imprisonment for 10 days.

3. The Accused is directed to surrender the Bail bond.
4. Accused is directed to comply provisions of 437-A of Cr.P.C. and file fresh surety which will be effective till appeal period or till period of 6 months.
5. The muddemal pendrive be returned to the owner (informant) after appeal period is over.
6. Copy of the judgment be given to accused immediately free of cost.

Date :- 26.06.2024

(Smt. Ruchi. Bhagat)

Place :- Thane

8th Jt. CJJD & JMFC, Thane.