
(1988) 04 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Appeal No"s. 6 and 76 of 1986

Latoor and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 19-04-1988

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 300, 302, 304

Citation : (1988) 1 RLW 579 : (1988) 1 WLN 697

Hon'ble Judges : J.S. Verma, J;G.K. Sharma, J

Bench : Division Bench

Judgement

G.K. Sharma, J.—This judgment shall also dispose of D.B. Criminal (Jail) Appeal No. 76/86 [Latoor v. The State].

2. Nine appellants namely, Latoor, Nazir. Mangilal, Sharif, Latif, Farookh Khan, Chittar, Hemraj and Jagdish are all convicted for the murder of Surajmal u/s 302 read with Section 149, IPC and sentenced to Life Imprisonment and a fine of Rs. 100/- each, and in default of payment of fine to undergo two months simple imprisonment, and also u/s 148 IPC to two years rigorous imprisonment and a fine of Rs. 100/- each, and in default of payment of fine to further undergo two months simple imprisonment. In addition, appellant [1] Latoor has also preferred a separate appeal from Jail (No. 76/86), which, earlier stated, shall also be disposed of by this judgment.

3. The incident occurred on 25-11-1983 between 5.30 and 6.00 pm. near a way side restaurant of Lalchand Sarpanch of Village Mai Bembori, P.S. Mangrole, District, Kota, in which Surajmal sustained some head injuries, for the treatment of which he was taken first to the hospital at Mangrole and then to Kota hospital. Surajmal succumbed to the head injuries in the hospital at Kota on 27-11-1983. The FIR was lodged promptly by Surajmal's brother PW 1 Bhimraj at 7 p.m. at P.S. Mangrole, at a distance of 9 kms. from village Mal Bembori where the incident occurred. Surjmal was examined at Mangrole hospital by Dr. S.A. Rehman PW 8, and his injury report is Ex. P 11. According to this medical report,

there were two incised wounds on the head of Surajmal, which were on the same side, in addition to a bruise with local swelling also on the head and a superficial abrasion on the right ankle joint. The post mortem report on the dead body of Surajmal, when he died on 27-11-1983, was prepared by Dr. Y.K. Sharma PW 15. The post mortem report is Ex. P. 18. According to the doctor, the cause of death were the head injuries inflicted to Surajmal.

4. The prosecution case rests on the testimony of the eye-witness Bhimraj PW 1, Rambilas PW 2, Ramnarain PW 3, Bachraj PW 4, Chhaganlal PW 5, Dhannalal PW 6 and Laxminarain PW 7. For corroboration of the direct evidence is the medical evidence and some other circumstances appearing from the evidence. The prosecution case is that deceased Surajmal was standing outside the restaurant of Lalchand along with Rambilas PW 2, while the other eye-witnesses were sitting inside that restaurant at the time of the occurrence when appellant Latoor alone happened to pass that way carrying a lathi with him Latoor inflicted a lathi blow on the head of Surajmal after which Rambilas PW 2 snatched the lathi from Latoor's hand and was himself injured in the process. Latoor then ran to the nearby Mohalla and returned immediately along with the other appellants carrying a Dhariya himself, while the other appellants were also armed with Dhariya lathis. It is further alleged that thereafter Latoor inflicted a Dhariya blow on the head of Surajmal as a result of which Surajmal fell on the ground and then the appellants Nazir and Chhitar each inflicted a Dhariya blow on the head of Surajmal, while appellant Jagdish inflicted a lathi blow on the right elbow of Rambilas PW 2. The appellants are alleged to have then escaped from the scene. Surajmal's brother Bhimraj PW 1 and the other eye-witnesses then carried Surajmal to the Police Station and the hospital at Mangrole for initial treatment and then to Kota for further treatment where he died on 27-11-1983.

5. The defence is substantially of denial and appellant Latoor states that he himself was assaulted by the deceased and the other eye-witnesses.

6. The trial court has convicted and sentenced all the appellants as earlier stated.

7. In our opinion, the appellants can be safely classified into three categories according to the prosecution case itself for the purpose of disposal of this appeal. The case against appellant Latoor is by itself in a separate category because there is overwhelming evidence which cannot be doubted for the injuries inflicted to Surajmal, as a result of Which he died without recovering consciousness, which were caused by Latoor. In the second category are the appellants, Nazir (2), Chitar (7) and Jagdish (9), who are alleged to have inflicted some injury to Surajmal and Rambilas PW 2. In the third category are the appellants Mangilal (3), Sharif (4), Latif (5), Farookh Khan (6) and Hemraj (8) against whom there is no suggestion of any overt act by the prosecution. We shall deal with their cases in the same manner.

8. The case against 5 appellants Mangilal (3), Sharif (4) Latif(5), Farookh Khan (6) and Hemraj (8), who belong to the last "category, can be disposed of straight

away, since we do not find any reasonable basis to sustain their conviction. The prosecution case itself is that they came later on the scene when Latoor returned. No overt act is attributed to any of these five appellants. The prosecution case at the most against them is of mere presence having come to the scene along with Latoor when he is alleged to have returned to the scene. Mere presence at that time and place by itself without any suggestion of any overt act by any of them is insufficient to hold that they were members of any unlawful assembly, which is the foundation of their conviction u/s 148 and 302/149, IPC. They are, therefore, to be acquitted. According, we set aside the convictions and sentences of these five appellants, namely, Mangilal (3), Sharif (4), Latif (5), Farookh Khan (6) and Hemraj (8).

9. We now take up the case of appellants Nazir (2), Chitar (7) and Jagdish (9). The case against Jagdish is that he came to the scene when Latoor returned to it armed with a Dhariya and at that time appellant Jagdish inflicted a blow on the right elbow of Rambilas with hard and blunt object. The injury report of Rambilas Ex. P.12 does not show any injury on any part of the body of Rambilas except an injury on the head. The prosecution evidence to this extent cannot, therefore, be accepted and instead of providing corroboration to this part of the prosecution case against Jagdish it actually demolishes the case to that extent against this appellant. Without this further material against appellant Jagdish, his case falls under the same category as that of the five appellants against whom no overt act has been proved on account of which they have been acquitted. The appellant Jagdish (9) is also therefore entitled to be acquitted. We are also of the opinion that it would be unsafe to sustain the conviction of appellants Nazir (2) and Chitar (7) who are alleged to have inflicted one Dhariya blow each on the head of Surajmal after he had fallen on the ground. This part of the prosecution case is discredited by the medical evidence. The doctor S.A. Rehman PW 8 has deposed that both the incised wounds on the head of Surajmal could result from one blow of a sharp edged weapon. More over the location of the injury is such that it was more likely to have been caused when Surajmal was standing, rather than when he had fallen on the ground. The additional head injuries attributed to appellants Nazir (2) and Chitar (7) are absent and this also renders the case against them doubtful. We accordingly give the benefit of doubt to appellants Nazir (2) Chitar (7) and Jagdish (9), and acquit all the three of them of the offence levelled against them and set aside their convictions and sentences.

10. Now remains for consideration the case against appellant Latoor (1) alone. There can be no doubt that the injuries inflicted to Surajmal, three of which were on the head and which proved fatal, were caused by appellant Latoor (1). Surajmal became unconscious on the spot and did not gain consciousness till he died in the hospital two days later. The nature of injuries read along with the opinion of the doctors clearly shows that these injuries were atleast cumulatively sufficient in the ordinary course of nature to cause death. It is also evident from the nature of weapon used for inflicting the injuries. Latoor will, therefore, be liable for conviction u/s 302, IPC unless for the exceptions in Section 300, IPC is

attracted. Learned Counsel for the appellants contended that these injuries were inflicted by Latoor in exercise of his right of self defence he was cornered by deceased Surajmal and his friends who have been examined as eye-witnesses. The question is, whether there is any reasonable foundation for this contention.

11. The evidence shows that there was bad blood between Surajmal & the eye witnesses who belonged to his faction on the side and appellant Latoor (1) and his friends belonging to the other faction. It is apparently in this back-ground that the case against Latoor (1) had to be assessed. Even according to the prosecution case at the commencement of the occurrence Latoor (1) was alone, though armed with a lathi, who happened to pass by that way, while Surajmal and Rambilas (PW 2) were standing on the road outside the restaurant, and the other eye witnesses were inside it. There is no suggestion in the prosecution evidence to indicate how the incident commenced. It is unlikely that being alone and faced with so many persons belonging to the other factions. Latoor began the quarrel by assaulting Surajmal, as suggested by the prosecution. The mere presence of Surajmal in the company of so many persons of the other faction at that time and place when Latoor was alone could provide the foundation for reasonable apprehension in the mind of Latoor. However, that apprehension could not last long as is clear from undisputed fact. It is Latoor (1) who was apparently in control of the situation thereafter in as much as he inflicted head injuries to Surajmal while he himself sustained some superficial abrasions etc...which must have been sustained by him in the ensuing facts when he was assaulting Surajmal in the presence of many of his friends. Appellant Latoor (1), therefore, clearly far exceeded the right of self defence which may have accrued to him at the beginning of the occurrence, and, therefore, he is to be convicted u/s 304, IPC even if the defence is accepted. It is also the alternative submission of the learned Counsel for the appellants in case we do not accept his primary contention that Latoor is also entitled to be acquitted.

12. As a result of the above discussion, we set aside the conviction and sentence of appellant Latoor (1) u/s 302/149, IPC and instead convict him u/s 304, IPC. We have also learned counsel for the appellant on the question of sentence after indicating to him our decision of convicting Latoor u/s 304, IPC. In our opinion, a sentence of 10 years R.I. is appropriate for the present offence for which we convict Latoor (1) and we direct accordingly.

13. Consequently, the appeal of Latoor appellant is partly accepted. His conviction u/s 302 read with Section 149, IPC is altered to Section 304, IPC and he is sentenced to rigorous imprisonment for ten years and a fine of Rs. 100/-, in default whereof to further undergo two months simple imprisonment.

14. The appeal of all other appellants is accepted and their conviction and sentences are set aside. Appellants Nazir and Chitar are in jail. They shall be set at liberty forthwith, if not required in any other case. The other appellants are on bail. Their bail bonds are discharged. They need not surrender to their bail bonds.