

(1984) 08 RAJ CK 0015
In the Rajasthan High Court
Case No : Criminal Appeal No. 526 of 1982

Mathura Lal and Birdha

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 14-08-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 302, 325, 34

Citation : (1984) WLN 484

Hon'ble Judges : V.S. Dave, J; N.M. Kasliwal, J

Bench : Division Bench

Judgement

N.M. Kasliwal, J.—At the time of the hearing of the bail application, the learned Counsel for the accused submitted that argument in the main appeal may be heard as he does not dispute, the correctness of the incident as alleged by the prosecution witnesses but he only challenged the offence committed by the accused appellants. In view of these circumstances, arguments were heard in the main appeal. The prosecution story in brief is that on 5th December, 1981 the accused appellants were grazing their cattle. Some of the cattle trespassed into field of Latoor, (deceased) and when Latoor was taking those cattle to Kanji house the accused appellant attacked Latoor by lathies. Latoor lodged an FIR at Police Station Saroli, district Jhalawar (Raj.) on 6-12-1981 at 3 p.m. The police registered the case and sent Latoor for medical examination, Government Dispensary, Saroli Kalan, District, Jhalawar. Dr. Hari Mohan Guptu PW 4 clinically examined the injuries of Latoor on 6-12-1981 and found the following injuries:

1. Bruise & Slight abrasion profuse ecchymosis 4" x 3 1/2" Oval on Medical Side of Elbow joint of Right upper arm.
2. A lacerated wound 1" x 1/4" Longitudinal on Ant. surface of Lt. Leg (midway), Simple, Blunt.
3. A Bruise & Slight Abrasion 1 1/2" x 1" Oval on left side of right thigh about 4" above the right knee joint. Simple, Blunt.

4. Abrasion of wound 1 1/2" ? 1/4" long on Ant. side of chest at the side of joint of medical and of left clavicle & sternum. Simple, Blunt.

5. Extraction of First Incisor tooth of left lower jaw. Grievous, Blunt.

6. Swelling & Abrasion irregular 3" diameter left shoulder joint.

2. A dying declaration of Latoor was also recorded on 7-12-1981 vide Ex. P 17 in which he also narrated the same story. Latoor thereafter succumbed to the injury on 9-12-1981 and the autopsy of the dead body of Latoor was done by Dr. M.L. Singhvi PW 10. Dr. Singhvi, on Post Mortem examination found the following external and internal injuries on the body of deceased Latoor.

External injuries:

1. Lacerated wound mid Frontal region skull 2 1/2" x 1/2" Skin deep stitches applied.

2. Abrasion 1 1/2" x 1" x Superficial left fore-arm.

3. Lacerated wound 3 1/2" x 1/4" Muscle deep Ant. Chest wall near sternal and of left clavicle.

4 Lacerated wound irregular 2" diameter Ant. Chest wall 2" above left nipple.

5. Lacerated wound 1 1/2" x 1/2" x Muscle deep left leg 6-7" above Ankle joint left-side.

6. Swelling & Abrasion irregular 3" diameter left Shoulder joint.

Internal Injuries:

Fracture of 2nd and 3rd Left side rib Anteriorly Chest wall.

3. In the opinion of Dr. Singhvi the cause of death of Latoor was (1) respiratory failure due to injury of anterior chest wall, (2) Multiple injuries leading to shock.

4. In the statement of PW 10 recorded during the trial, he stated that in his opinion, the cause of death of Latoor was the injuries inflicted on the chest, obstruction in respiration, and due to haemorrhage and shock of all the injuries. He further, stated that the death may have been caused by these injuries and in case proper arrangements of chest surgery had been done then the death could have been avoided.

5. From the above statement of PW 10 Dr. M.L. Singhvi it is not clear whether any one of the injuries independently or cumulatively were sufficient in the ordinary course of nature to cause the death of Latoor.

6. Admittedly there was no motive or premeditation for doing the crime. According to the dying declaration of Latoor himself as well as other prosecution witnesses the incident took place at the spur of the moment. It has also come in the evidence of PW I Latoor s/o Narayan who is another witness in the name of

the deceased, that the father of accused Birdha and deceased Latoor were cousins. This clearly shows that the accused persons had no intention to kill the deceased. At the time of grazing their cattle they had ordinary lathies in their hands which were usually kept by the shepherds at the time of grazing their cattle. The incident started on account of the cattle being taken to Kanji house by the deceased and at the time the accused appellants inflicted the injuries as mentioned above. Dr. Singhvi failed to state that the injuries were sufficient in the ordinary course of nature to cause death independently or cumulatively. Admittedly it has not come in the evidence of any of the prosecution witnesses as to which of the accused persons was responsible for causing the fatal blow. It is also established on record that the deceased himself had gone to the Police Station and had lodged an FIR and was thereafter sent for clinical examination to the Government dispensary, and he succumbed to the injuries on 9-12-1981 i.e. 4 days after the incident. This also goes to show that the injuries inflicted on the deceased were not so grave and Latoor I was in a position to go to the Police Station and lodge FIR even after the incident. It has been held in *Mehroda and Ors. v. State of Rajasthan* 1983 (6) Cr. Cas 77 that where there was no intention to commit murder of the deceased and incident took place at the spur of the moment and it was not proved as to who inflicted the fatal injury, the accused persons cannot be convicted u/s 302 and can only be convicted u/s 325 read with Section 34, IPC.

7. In the facts and circumstances of the case before us we are also satisfied that the accused appellants cannot be convicted u/s 302 read with Section 34, IPC but they can only be convicted u/s 325 read with Section 34, IPC. The accused appellants at the time of arrest were of 19 and 20 years of age and they are rustic villagers, and as such, in our opinion, ends of justice would meet if they are sentenced to 4 years rigorous imprisonment.

8. In the result, we partly allow this appeal. Set aside the conviction and sentence of the accused appellants u/s 302/34, IPC and instead convict each of them u/s 325 read with Section 34, IPC and sentence each of them to 4 years rigorous imprisonment, fine of Rs. 50, and in default of payment of fine to further undergo rigorous imprisonment for one month to each of the accused, is maintained. It is made clear that the accused appellants shall be entitled to the benefit of Section 428 Cr.P.C. for the period of detention undergone by them during investigation, enquiry or trial of the case.