

Lachhmi Batri Vs. the State

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Court : Orissa

Decided On : Jun-25-1993

Reported in : 1994CriLJ1171

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 299, 302, 320 and 326

Appeal No. : Jail Criminal Appeal No. 261 of 1990

Appellant : Lachhmi Batri

Respondent : The State

Advocate for Def. : G.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : B.K. Mall, Adv.

Judgement :

A. Pasayat, J.

1. In this appeal from jail Lachhmi Batri (hereinafter referred to as the 'accused') calls in question legality of his conviction for an offence punishable under Section 302 of the Indian Penal Code, 1860 (in short, 'IPC') and sentence of imprisonment for life as awarded by the learned Sessions Judge, Koraput.

2. Prosecution case sans unnecessary details is as follows:

On 5-3-1989 in the afternoon a quarrel ensued between the accused and one Soma Batri (hereinafter referred to as the 'deceased') over taking of salap juice. While the deceased was returning to his house, the accused being armed with bow and arrows shot an arrow which hit the right thigh of the deceased, who immediately fell down at the entrance of his house. When the arrow was attempted to be pulled out, the wooden portion and some portion of the blade came out in broken condition and still the pointed portion of the iron remained inside. The incident was witnessed by Budei Toki, the wife of the deceased (P.W. 5), and Lachhmi Toki, the daughter of the deceased (P.W. 6). On hearing their cry for help Mangal Sisa (P.W. 4) immediately arrived and on hearing the background arranged a meeting in the village, but the accused did not turn up. The dead body was carried to Mudulipada Police Station. As the Officer-in-charge of the Police Station was absent, the dead body was carried to Khoirput where the Officer-in-charge was on duty. One Soma Badnaik (P.W. 2) lodged the first information report with the Officer-in-charge. Inquest was held, and the dead body was sent to Khoirput PHC for post-mortem. During post-mortem the Medical Officer brought out the remaining pointed portion of the arrow from the body of the deceased. During the spot visit of the Investigating Officer, the accused while under custody made a statement which led to recovery of bow and arrow, which were concealed inside a bush. After completion of investigation, charge sheet was submitted.

3. The accused pleaded not guilty.

4. Placing reliance on the evidence of P.Ws. 5 and 6, the learned Sessions Judge held the accused guilty and convicted and sentenced him as indicated above.

5. According to the learned Counsel for the accused, the prosecution case is not acceptable for making out a case under Section 302, IPC, but in the alternative at the most a case under Section 326, IPC is made out. According to the learned Counsel for doctor's evidence clearly shows that the injury was not on vital part and had the deceased been rendered adequate medical treatment he would have survived. The learned Counsel for State on the other hand supported the judgment of conviction and sentence.

6. Much stress has been laid by the learned Counsel for the appellant on the evidence of the doctor to show that the case at hand is not one covered under Section 302, IPC.

7. Admittedly there was one cut and piercing wound in the right inguinal region inside 1 1/2' x 1/2' x skin-deep. On dissection it was found that the muscles of that region below inguinal ligament were cut. The death was stated to be on account of haemorrhage and shock due to rupture of the right femoral artery which injury is sufficient in the ordinary course of nature. From the evidence of P.Ws. 5 and 6 it is clear that the arrow shot was made from a close distance during dusk time. There was only one arrow shot. Though it cannot be laid down as a rule of universal application that whenever injury is inflicted Section 302, IPC is ruled out, yet on consideration of the relevant background it is clear that the accused cannot be attributed the intention or knowledge to cause death or such bodily injury which he knew was likely to cause death. The fact that the arrow shot was made on the thigh and no attempt was made to make further assault at a vital part of the body clearly rule (sic) section of Section 302, IPC.

Where death has resulted from an attack, the degree of guilt of the offender depends on the intention or knowledge with which he committed the attack. The offences of which he may be convicted are murder, culpable homicide not amounting to murder, grievous hurt or hurt. The variations depend upon the weapon or the means used, the seat of assault, the surrounding circumstances like provocation and many other factors. Knowledge and intention are placed on different footing. The word 'knowledge' within the expression 'with the knowledge that he is likely by such act to cause death' occurring in Section 299 of the Code defining 'culpable homicide' is a very strong word and connotes a certainty and not merely a probability. When consequences result which are beyond the purpose of an act, it is necessary to determine how far the person can be held to have knowledge that he was likely by such act to cause the actual result. In the absence of intention or knowledge, the offence committed, will be either offence of grievous hurt or simple hurt, as the case may be. Where the injuries have resulted in death, a question normally arises as to what offence has been committed. The determinative factor in such a case is the degree of injuries the accused actually

intended, or knew to be probable consequence of such injuries. What is the likely consequence of an act is a matter of inference from the nature of the act committed by the offender, his conduct and the surrounding circumstances. In the case at hand the accused can be attributed the knowledge of likelihood of grievous hurt on the thigh where the arrow shot was made. But it would be unfair to stretch it so as to attribute knowledge to him that there shall be rupture of the femoral artery which would result in death. The rupture may have been a probability. But that is not sufficient to import knowledge about the likely consequence. The rupture of the artery can be held to be an unintended consequence. Merely because death has resulted, intention or knowledge cannot be inferred. It can reasonably be held that by shooting an arrow on the thigh, the accused has intended to cause grievous hurt, within the purview of Section 320 of the Code. But in view of the evidence of witnesses, it is clear that an offence under Section 326 is made out. The conviction of the accused under Section 302, IPC, and the sentence of imprisonment for life awarded by the learned trial Judge are set aside. In our considered opinion, it would be proper to convict the accused under Section 326, IPC and direct him to serve custodial sentence for five years. We direct accordingly.

8. The appeal is allowed to the extent indicated above.

D.M. Patnaik, J.

9. I agree.

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