

Suraj Mal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-02-1986

Reported in : 1986(1)WLN545

Judge : Dinkar Lal Mehta and; Farooq Hasan, JJ.

Appeal No. : D.B. Cr. Jail Appeal No. 178 of 1979 and D.B. Cr. Appeal No. 467 of 1978

Appellant : Suraj Mal

Respondent : State of Rajasthan

Judgement :

Dinkar Lal Mehta, J.

1. These appeals are directed against the judgment dated 31-8-1978 passed by the learned Sessions Judge, Tonk in Sessions Cases Nos. 19 and 26 of 1978 convicting the appellant Suraj Mal under Section 302, IPC and sentencing him to imprisonment; for life.

2. The prosecution story unfolded during the trial is that Sheodan arranged a community lunch and all the accused attended the lunch on 2-4-1978. After taking the lunch, all of them were returning and they sat near the Khalyan of the deceased Bhanwar Lal. Altercation took place and during the course of altercation

Suraj Mal inflicted one Tirpoy Lathi blow on the head of the deceased Bhanwar Lal. First Information Report of this incident was lodged by Gopi (PW 1) on the same day at 11.55 p.m. at Police Station, Toda Rai Singh. On behalf of the prosecution eight witnesses have been examined. PW 1 Gopi, PW2 Prem Lal & PW 3 Devi Lal are the eye witnesses of the occurrence. PW 8 Dr. Ramesh Chand Bakliwala has conducted the autopsy of the deceased and prepared the post-mortem report Ex. P 12. The doctor has opined that the cause of death was trauma leading to fracture of left temporal bone, contusion of left temporal lobe of brain with internal haemorrhage and shock leading to death.

3. Mr. Tibrewal appearing on behalf of the appellant has also submitted that along with Suraj Mal appellant two more persons Bhanwar Lal and Sri Lal were prosecuted. Bhanwar Lal has been convicted under Section 323. IPC and has been given the benefit of the Probation of Offenders Act. Sri Lal has been acquitted.

4. Learned Counsel for the appellant has submitted that even if the prosecution case is taken on its face value, no offence under section 302, IPC is made out. He has submitted that there was no previous enmity between the parties and the altercation took place all of a sudden. The complainant party wanted that they should not take rest near the Khalyan and should not smoke there. The accused party objected and thereafter the altercation took place. It has also come on record that PW 1 Gopi in his state-under Section 161, Cr. PC has stated that the deceased addressed accused Surajmal and his companions as Kanjars. This was the cause of a sudden provocation. Accused Suraj Mal lifted the Tripoy lathi which was lying nearby the place and inflicted one head injury.

5. On behalf of the State Mrs. Kamla Jain Public Prosecutor has submitted that the lathi blow/Tripoy blow was inflicted on the vital part of the body and as such the intention can be inferred.

6. We have considered the rival contentions of both the parties. It is an admitted position that there was no previous enmity between the parties. The accused party was returning after attending the community lunch at the residence of Sheodan. All the accused were unarmed and there was no previous animosity. The accused

party wanted to take rest in the way and they started smoking Biris. The complainant party which had a Khalyan nearby objected to it. This led to the altercation between both the parties and during the course of altercation deceased Bhanwarlal addressed the accused party at Kanjars. In Rajasthan in old days the Kanjars were taken as criminal tribes and addressing a Kanjar was considered to be synonymous of a thief. This is a case of sudden provocation. The provocation differs from case to case, community to community and the standard of living of the persons. One yard stick cannot be applied in all cases. The accused party belongs to a Gujar community. Generally they get sudden provocation and a great provocation in simple matters also specially when a person is addressed as a Kanjar and he considers that he is addressed as a thief, and it may amount in such circumstances to be a sudden provocation. Apart from that, there was no other intention what so ever to commit the murder. After the quarrel the accused party left the place. Only one lathi blow of tripoy was inflicted on the head which result in the death of the deceased subsequently. In such circumstances, we are not prepared to accept that the accused intended to cause death or intended to cause such bodily injury which was sufficient to cause the death. The intention which can be inferred in such circumstances is that the accused party intend to inflict a blow knowing it that it is likely to cause death. We have gone through the statements of the witnesses and we are of the view that the prosecution story as stated is correct and the accused has rightly been held as the author of the fatal injury. No appeal has been filed by Bhanwarlal, who has been convicted under Section 323 IPC. We are of the opinion that the knowledge can be attributed to the accused Surajmal causing such bodily injury which was likely to cause death. We are, therefore, of the view that the learned Sessions Judge had committed an error in convicting the accused-appellant under Section 302, IPC.

7. We therefore, set aside the conviction -and sentence awarded to the accused-appellant under Section 302, IPC. We hereby convict the accused appellant Surajmal under Section 304-II IPC. Taking into consideration that the matter relates to the year 1978 and that the accused Surajmal was 20 years old at the time of incident, we consider proper to take a lenient view in the matter of sentence. We direct that accused appellant Surajmal be convicted under Section 304-II. IPC and be sentenced to undergo rigorous imprisonment for a period of

three years. He shall also pay a fine of Rs. 500/-. In case of default of fine, he will have to undergo rigorous imprisonment for six months. The accused-appellant is on bail. As this Court has already suspended the sentence, non-bailable warrant be issued for the arrest of the accused immediately, so that he may undergo the remaining part of the sentence. The accused will get set off under Section 428, Cr.PC of the period during which he remained in jail during the enquiry and trial. The appeal is decided accordingly.

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