

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.278 OF 2006

MADAN LATKAN PATIL

...APPELLANT(S)

Versus

STATE OF MAHARASHTRA

...RESPONDENT

(S)

J U D G M E N T

B.P.SINGH, J.

In this appeal special leave was granted limited to the question of the offence said to have been committed by the appellant.

We have heard counsel for the parties.

The appellant as well as the deceased were autorickshaw drivers operating from the bus stand at Dhule. It appears that there was some dispute between the autorickshaw drivers about the lifting of passengers alighting from particular buses. An occurrence took

place in the night intervening 14th and 15th October, 1992 at the

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State Transport Stand. In view of their disputes, it is alleged that the appellant assaulted Jagdish with a knife as a result of which there was profuse bleeding and ultimately Jagdish succumbed to his injuries but not before disclosing that he has been assaulted by the appellant.

The medical evidence on record shows that the following injuries were found when the deceased was initially brought to the hospital :-

1. Incised wound on middle side of right thigh 2 x 2 cm.
2. Incised wounds on left thigh from middle aspect to lateral aspect of size 1 x 1/2 x 1/2 cm., 2 x 1 x 1/2 cm. and 1 x 1/2 x 1 cm.

After his death postmortem was conducted and the following injuries were found :-

1. Sutured wound on the left thigh middle 1/3rd antero medially 1.5 cms.
2. Sutured wound on left thigh medially 2 cm above injury No.1, 1/5 cms.
3. Sutured wound on left thigh posteriorly at junction upper of two third and lower one third, 3 cms. long.

4. Sutured wound on left thigh 5 cms. above injury No.3 posterior medially 1.5 cms.

5. Sutured wound on right thigh, medially middle 2/3rd 2 cms.

The medical evidence also discloses that injury No. 1 and 3 were incised stab wounds. The femoral artery, vein

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and nerve were cut. In the opinion of the doctor, the cause of death was haemorrhage and shock following stab wounds on left thigh, involving major blood vessels, associated with multiple incised wounds. The doctor was categoric in stating that the cutting of the femoral artery vein was fatal and sufficient to cause death of the patient.

Learned counsel appearing on behalf of the appellant submitted that apart from three skin deep injuries which were minor in nature and which were insignificant, the fatal injury was the one inflicted on the left thigh of the deceased. Having regard to the nature of dispute that existed between the parties, the appellant would not have intended to cause the death of the deceased. That is why he did not inflict any injury on any vital part of the body. The serious

injuries found are those caused to the right and left thighs. However, since the femoral artery was cut death resulted, In his submission the appellant may have intended to cause some injury to his thighs but certainly did not intend to cut the femoral artery resulting in his death. He has relied upon a decision of this Court in Laxman Kalu Nikalje Versus The State of Maharashtra reported

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in 1968 (3) SCR 685. This Court held that Section 300 requires that the bodily injury must be intended and the bodily injury intended to be caused must be sufficient in the ordinary course of nature to cause death. The clause is in two parts; the first part is a subjective one which indicates that the injury must be an intentional one and not an accidental one; the second part is objective in that looking at the injury intended to be caused, the Court must be satisfied that it was sufficient in the ordinary course of nature to cause death. In that case it was held that the second part was not fulfilled because death resulted as a result of the injury causing the severing of artery. I f

artery was not cut, death might have not ensued. This Court

therefore, concluded that the injury which the appellant intended to

cause did not include specifically the cutting of the artery but to wound

the deceased in the neighbourhood of the clavical. Therefore, thirdly

of Section 300 did not cover the case and the offence made out was one

punishable under Section 304 Part II of the Indian Penal Code (IPC)

The act was done with the knowledge that the appellant was likely by

such act to cause the death of the deceased. This

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Court, after considering the facts of the case concluded :-

"Therefore, we are of the opinion that the thirdly of Section 300 does not cover the case. Inasmuch as death has been caused, the matter must still come within at least culpable homicide not amounting to murder. There again, Section 299 is in three parts. The first part takes in the doing of an act with the intention of causing death. As we have shown above, Laxman did not intend causing death and the first part of Section 299 does not apply. The second part deals with the intention of causing such bodily injury as is likely to cause death. Here again, the intention must be to cause the precise injury likely to cause death and that also, as we have shown above, was not the intention of Laxman. The matter therefore comes within the third part. The act which was done was done with the knowledge that Laxman was likely by such act to cause the death of Ramrao. The case falls within the third part of Section 299 and will be punishable under the second part of Section 304 of the Indian Penal Code as culpable

homicide not amounting to murder. We accordingly alter the conviction of Laxman from Section 302 to Section 304 of the Indian Penal Code and in lieu of the sentence of imprisonment for life imposed on him, we impose a sentence of rigorous imprisonment for 7 years. With this modification, the appeal shall stand dismissed."

This decision, no doubt, support the case of the appellant inasmuch as it cannot be said in the instant case that the injury which the appellant intended to cause included specifically the cutting of the femoral artery, and did not only intend to wound the deceased in the thigh region.

Learned counsel appearing on behalf of the State submits that in the case of Virsa Singh versus The State of

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Punjab reported in 1958 SCR 1495 this Court held that to bring a case within Section 300 thirdly, the prosecution must establish objectively that a bodily injury is present. The nature of the injury must be proved. Thirdly it must be proved that there was intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended. Lastly, it must be proved that the injury of the type just

described made up of the three elements set out above was sufficient to

cause death in the ordinary course of nature. This part of the inquiry

is purely objective and inferential and has nothing to do with the

intention of the offender. It may be useful to quote the words of

Justice Vivian Bose who observed :-

"Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout) the offence is murder under Section 300, thirdly. It does not matter that there was no intention to cause death. It does not matter that there was no intention even to cause an injury of a kind that is sufficient to cause death in the ordinary course of nature (not that there is any real distinction between the two). It does not even matter that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the

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ordinary course of nature to cause death. No one has a licence to run around inflicting injuries that are sufficient to cause death in the ordinary course of nature and claim that they are not guilty of murder. If they inflict injuries of that kind, they must face the consequences; and they can only escape if it can be shown, or reasonably deduced that the injury was accidental or otherwise unintentional."

It is no doubt, true that this judgment does hold that once the

injury caused is found to be intended, the next part of the enquiry is

purely objective and inferential and has nothing to do with the intention of the offender. If the injury is found to be sufficient in the ordinary course of nature to cause death, thirdly of Section 300 is attracted. However, we find that in Virsa Singh's case, the Court had recorded a finding that the injury inflicted was the injury intended. On the other hand, in Laxman's case, this Court considered a case where the facts were somewhat similar to the facts of the instant case, and held that the cutting of the artery was not intended by the accused. Having regard to the similarity of facts, we prefer to follow the reasoning in Laxman's case. Relying on Laxman's case, counsel has argued that the appellant did not intend to cause any injury to the femoral artery but he intended to cause injury to the thighs of the deceased. Accepting the

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submission we set aside the conviction of the appellant under Section 302 IPC and find him guilty of the offence punishable under Section 304 Part II IPC and sentence him to undergo rigorous imprisonment

for five years. We maintain the sentence of fine.

The appeal is accordingly partly allowed.

.....J.

(B.P.SINGH)

.....J.

(LOKESHWAR SINGH PANTA)

New Delhi,

November 15, 2006

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ITEM NO.102

COURT NO.6

SECTION IIA

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 278 OF 2006

MADAN LATKAN PATIL

Appellant (s)

VERSUS

STATE OF MAHARASHTRA

Respondent(s)

(With appln(s) for stay and office report)

Date: 15/11/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P. SINGH

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. A.V.Savant, Sr.Adv.

Mr. M.Y.Deshmukh, Adv.

Mr. Rameshwar Prasad Goyal,Adv.

For Respondent(s)

Ms. Aparajita Singh, Adv.

Mr. S.S.Shinde, Adv.

Mr. Aniruddha P. Mayee,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is partly allowed in terms of the signed judgment.

(Sukhbir Paul Kaur)

(Vijay Dhawan)

Court Master

Court Master

(Signed Judgment is placed on the file)