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Chamra Lal Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-17-2013

Appellant : Chamra Lal

Respondent : The State of M.P.

Judgement :

[1]. Criminal Appeal No.1635/2002 HIGH COURT OF MADHYA PRADESH : JABALPUR DB : Hon'ble Shri Justice A.K. Shrivastava & Hon'ble Shri Justice G.S. Solanki Criminal Appeal No.1635/2002 Appellant: Chamra Lal S/o Sonu Lal Gond R/o Village Kohka, Police Station Bamhni District Mandla, M.P. Versus Respondent: State of Madhya Pradesh

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Shri Umesh Trivedi with Shri S. Trivedi, Advocates for the appellants. Shri Chandrakant Mishra, Public Prosecutor for the respondent/State.

JUDGMENT
[17.9.2013]. Per : A.K. Shrivastava, J.

1. The judgment passed in this appeal shall also govern the disposal of connected Criminal Appeal No.924/95 (Mangrulal and two others Vs. State of M.P.) since both the appeals have arisen from common judgment passed by the trial Court convicting the appellants under different offences.

2. Feeling aggrieved by the judgment of conviction and order of sentence dated 6.6.1995 passed by learned First Additional Sessions Judge, Mandla in S.T. No.85/94 convicting appellant of this appeal Chamralal under Section [2]. Criminal Appeal No.1635/2002 302, 201/34 of the IPC and thereby sentencing him to suffer Life Imprisonment and R.I. for 1 year with fine of ` 100/-; in default further R.I. for 2 months and further convicting the appellants of connected Criminal Appeal under Section 201/34 of the IPC and thereby sentencing them to R.I. for 1 year with fine of ` 100/- each; in default further R.I. for 2 months, this appeal and connected criminal appeal have been filed by the appellants.

3. In brief, the case of prosecution is that on 16.4.1994, one Bhikham Das @ Makhan lodged an FIR in the concerning Police Station that dead body of Sonu Gond has been cremated by his son Chamra Lal and other co-accused persons. There was some dispute of partition between Chamra Lal and his father Sonu Gond (deceased), as a result of which, appellant Chamra Lal dealt a kick on the private part of the deceased, as a result of which he had died. Without informing the Police Station and sending the deceased to the hospital for obtaining Post Mortem report, he was cremated by appellant Chamra Lal and also family members of the deceased. In order to disappear the evidence, blood stains were wiped-off by cow dung. However, on the report lodged by said Bhikham Das @ Makhan, the investigating agency arrived on the spot and seized the blood stained earth. [3]. Criminal Appeal No.1635/2002 4. A charge sheet was submitted in the committal Court, who committed the case to the Court of Session and from where it was sent for trial.

5. The learned trial Judge, on the basis of allegations made against the accused persons, framed the charges for the offence punishable under Section 302, 201/34 of the IPC against appellant Chamra Lal, while other co-accused persons of connected Criminal Appeal No.924/95 were charged for the offence punishable under Section 201/34 of the IPC.

6. Needless to say that all the accused persons abjured their guilt and requested for trial fresh.

7. In order to bring home the charges, the prosecution examined as many as 10 witnesses (PW-1 to PW-10) and also proved the documents (Ex.P1 to P14).

8. The defence of appellant and other co-accused persons is of false implication and the same defence they set forth in their statement recorded under Section 313 of the Criminal Procedure Code. In support of their defence, they examined two witnesses namely Bhair Singh (DW-1) and Mahrulal (DW-2).

9. The learned trial Judge, on the basis of evidence placed on record, found that the charges under Sections 302, 201/34 of the IPC have been found proved against [4]. Criminal Appeal No.1635/2002 appellant Chamra Lal. The learned trial Court further came to hold that the charge under Section 201/34 of the IPC is also proved against other co-accused persons, who are appellants of connected criminal appeal. In this manner, this appeal and connected criminal appeal have been filed by the appellants.

10. We have heard the learned counsel for the appellants and have gone through the record of connected Criminal Appeal. We find that both the appeals deserve to be allowed in part.

11. In order to hold the appellant Chamra Lal guilty of offence under Section 302 of the IPC, the prosecution has examined star witness Mulayam (PW-7). Other relevant witnesses are Phool Singh (PW-5), Sukhchain (PW-6) and Gangaram (PW-4). The appellant has also made oral confession to these witnesses.

12. On a bare perusal of testimony of Mulayam (PW-7), we find that in order to call the deceased to his house where his presence was required, this witness had gone to the house of the deceased, where he saw that appellant Chamra Lal had caused one kick blow on the private part of deceased, as a result of which, he fell down and blood was started oozing from his private part, which stained the earth. When it was asked by this witness to the appellant [5]. Criminal Appeal No.1635/2002 that why he kicked to the deceased, he told that on account of dispute of partition, he became annoyed and dealt a kick on the private part of the deceased. Nothing has been carved out in the cross-examination although this witness was cross-examined at length that the evidence of this witness is not

reliable, therefore, we do not find any doubt to hold that from the evidence, factum of giving a kick by the appellant on the private part of deceased has been proved and this fact is also proved that blood started oozing from the private part of the deceased, which stained the floor of the house of the appellant. True in the present case, there is no Post Mortem report, but it is proved from the evidence of this witness that no report was lodged and deceased was not sent to the hospital and straightway he was cremated.

13. On scanning the testimonies of three witnesses namely Phool Singh (PW-5), Sukhchain (PW-6) and Gangaram (PW-4), we find that the appellant gave extra-judicial confession admitting his guilt to these witnesses saying that because the partition was not effected, therefore, he had dealt kick blow upon the private part of the deceased. According to us, the extra-judicial confession is a weak type of evidence and solely on its basis, there cannot be any conviction but it can be used as corroborative [6]. Criminal Appeal No.1635/2002 piece of evidence. Since there is clear, cogent and trustworthy evidence of Mulayam (PW-7) and, therefore, the evidences of these three witnesses namely Phool Singh (PW-5), Sukhchain (PW-6) and Gangaram (PW-4) are corroboration to the testimony of Mulayam (PW-7).

14. According to us, the act of appellant would come within 4th clause of Section 300 because, it was in the knowledge of appellant that if a kick blow is given on the private part, a person may die and, therefore, we hereby hold that the appellant Chamra Lal has committed the offence punishable under Section 304-II of the IPC. He is sentenced to R.I. for 8 years, which he has already suffered.

15. Coming to conviction part under Section 201/34 of the IPC, we have gone through the reasons assigned by the trial Court. The trial Court found that in order to disappear the evidence, the place, where the blood stains of the deceased were lying, was wiped-off by cow dung by the appellant Bhute Bai, present appellant Chamra Lal and other co-appellant Mangru Lal being son of Bhute Bai. They cremated the deceased without informing the Police and hence, the present appellant and appellants of connected criminal appeal have committed offence under Section 201/34 of the IPC. On verifying the record, we find that the appellants of connected criminal appeal have also suffered [7]. Criminal Appeal

No.1635/2002 jail sentence of near about 3 months. According to us, looking to the facts and circumstances of the case, this would be appropriate punishment for them. The same sentence is also awarded to the appellant of this appeal. Hence they are released for the period they have already undergone.

16. For the reasons stated above, this appeal and connected appeal are allowed in part. Conviction of appellant Chamra Lal under Section 302 of the IPC is altered to Section 304-II of the IPC. He is sentenced to suffer R.I. for 8 years, which he has already undergone. Conviction of appellant Chamra Lal and appellants of connected criminal appeal under Section 201/34 of the IPC is hereby affirmed. They have already served out the sentence under Section 201/34 of the IPC, which we have imposed. Appellant Chamra Lal, if he is in jail, he be released immediately, if not required in any other case. Appellants of connected criminal appeals are on bail, their bail bonds stand discharged. Let copy of this judgment be kept in the record of connected criminal appeal. (A.K.Shrivastava) (G.S. Solanki) Judge Judge PB

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