

Chotu and ors Vs. State

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Court : Rajasthan Jodhpur

Decided On : Mar-11-2014

Appellant : Chotu and ors

Respondent : State

Judgement :

-1- IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Chotu & ORS.versus State of Rajasthan D.B.Criminal Appeal No.950/2005 against the judgment dated 01.12.2005 passed by Additional Sessions Judge (Fast Track) No.1, Bhilwara, in Sessions Case No.29/2005.

Date of Judgment :: 11th March, 2014 P R E S E N T HON'BLE MR.JUSTICE GOVIND MATHUR HON'BLE MR.JUSTICE V.K.MATHUR Mr.R.K.Charan, for the appellants.

Mr.J.P.S.Choudhary, Public Prosecutor, for the State...BY THE COURT : (PER HON'BLE GOVIND MATHUR,J.) The appellants question correctness of the judgment dated 01.12.2005 rendered by Additional Sessions Judge (Fast Track) No.1, Bhilwara in Sessions Case No.29/2005 recording their conviction for the offences punishable under Sections 302/34 and 341 Indian Penal Code.

For the former offence each appellant has been sentenced to undergo imprisonment for life and to pay a fine of Rs.2000/- with default stipulation and 15 days simple imprisonment for latter offence.

-2- Factual matrix of the case as unfolded by the prosecution during the couRs.of trial is that an oral statement made by Shri Chhagana before the Assistant Sub Inspector Bhanwar Khan on 4.1.2005 at Community Health Centre, Mandalgarh was reduced in writing and as per that Chhagana was living with his sons viz.

Jamna and Gopal from last about 15 years in village Khachrol.

In day hours of 4.1.2005, he proceeded by bus for Adsipura to meet his elder son Nanda.

His travel was in bus upto Jityapur and then on foot.

While on way from Jityapur to Adsipura, at about 04:00 PM, accused Chhotu, Amba, Shankar and Hardev, armed with sticks came and attacked on him.

Few Gwalas witnessed the incident, but no one came for his rescue.

The accused after giving beating to Chhagana fled from the spot.

After some time Nanda, elder son of Chhagana came and took him to the hospital.

On basis of the statement made by Chhagana, a case was registered at Police Station Bigod and investigation commenced.

In early hours of 5.1.2005 Chhagana died, thus, the investigation was launched for the offence punishable under Section 302 Indian Penal Code.

During the couRs.of investigation the corpus of Chhagana was subjected to an autopsy and as per report (Ex.P/16) of that the corpus was having following injuries:- 1.Lacerated wound - 1/2.

x 1/4.

x bone deep, edges retracted swollen over right leg.

2.Lacerated wound - 1/2.

x 1/4.

x bone deep, edges retracted swollen over left leg.

-3- 3.Abrasion - 1.

x 1/2.

in size, dark brown in colour.

4.Deformity with swelling - 4.

x 2.

in size, reddish blue in colour over right forearm near wrist.

5.Deformity with swelling - 4.

x 2.

in size, reddish in colour over left forearm near wrist.

6.Lacerated wound - 1/2.

x 1/4.

x bone deep over left elbow, perfr.

surface, edges swollen retracted.

7.Abrasion - 1.

x 1/2.

in size, reddish in colour, over left arm.

The corpus was also found with fractures in the bones referred below:- 1.Right tibia, fibula 2.Left tibia, fibula 3.Right radius ulna 4.Left radius ulna 5.Left humerus

The accused persons were arrested and on basis of the information accorded by accused Chhotu a bamboo stick having blood stains was recovered.

On basis of the information given by accused Ambalal, Hardev and Shankarlal, wooden sticks were recovered.

All these sticks were sent for their serological examination to the Forensic Science Laboratory and those were found with blood stains of group 'B' matching with the blood group of deceased.

The investigating agency after completion of investigation filed a police report before the competent -4- court and after hearing the accused persons, charged them for the offences punishable under Sections 341, 302 and 302/34 Indian Penal Code.

On denial of the same, trial commenced as desired.

The prosecution produced 23 witnesses (PW-1 to PW-23) and several documents to substantiate the charges.

Opportunity was accorded to the accused to explain adverse and incriminating circumstances appearing against them in prosecution evidence and while availing that they pleaded their innocence and termed the entire evidence false.

In defence three documents were exhibited.

Learned trial court after examining the evidence available on record and considering the rival submissions held the accused guilty and after recording conviction sentenced them accordingly.

In appeal, the only argument advanced by counsel for the appellants is that even by accepting the prosecution case as it is, the offence committed by the accused persons does not travel beyond an offence punishable under Section 304 part-II Indian Penal Code.

Contrary to it, as per learned Public Prosecutor, the accused persons gave severe beating to deceased Chhagana and that itself is sufficient to establish their

intention to kill him, thus, the conviction recorded is correct and that does not require any interference in appellate jurisdiction.

-5- We pondered the evidence and also considered the argument advanced.

As per the medical evidence adduced by Dr.

Dinesh Gautam (PW-7).deceased Chhagana was admitted at Community Health Centre, Mandalgarh on 4.1.2005.

He was having injuries on his both legs and hands.

While undergoing treatment, the Assistant Sub Inspector Bhanwar Khan came to the hospital and asked him about the incident taken place.

Whatever stated by injured Chhagana was reduced in writing as per document Ex.P/7.

After reducing the statement of Chhagana in writing, signatures of this witness were also taken by the Assistant Sub Inspector.

As per Dr.

Dinesh Gautam (PW-7).Chhagana was competent to give the statement as he was detailing the entire incident with ease.

The autopsy on the corpus of Chhagana was conducted by a medical board consisting of three doctors viz.

Dr.

V.D.Sharma (PW-16).Dr.

Sunil Upmanyu (PW-17) and Dr.

M.R.Gagrani (PW-18).As per these witnesses the deceased was having seven antemortem injuries and those all were either on his legs or on hands.

He was having fractures in his both hands and left leg.

PW-18 Dr.

M.R.Gagrani stated that from Community Health Centre, Mandalgarh patient viz.

Chhagana was referred for treatment to Mahatma Gandhi Hospital, Bhilwara.

He was admitted in the hospital at 11:00 PM.

While undergoing treatment Chhagana was fully conscious and he was in position to detail the entire incident.

His pulse -6- rate was 110 per minute.

Necessary treatment was given to him, but he died in early morning of 5.1.2005.

As per the medical evidence the cause of death of Chhagana was multiple fractures, thus, there is no doubt about his homicidal death.

The involvement of accused persons in the crime in question has not been contested in appeal as i.e.well established in view of a definite and reliable declaration made by the deceased as per Ex.P/7 and that being further corroborated by recovery of lathis having blood stains matching with the blood group of deceased.

The prime question that requires consideration is that whether the offence committed by the accused appellants is a murder as defined under Section 300 Indian Penal Code or that come within the exceptions to that.

As per the document Ex.P/7, the statement made by the deceased while undergoing treatment, the accused persons restricted him on way and gave beating with lathis.

At that time certain Gwalas were present there but nobody came for rescue.

The assailants after beating fled from the spot.

Shri Nanda, son of deceased subsequent thereto came at the spot and carried Chhagana to the Community Health Centre, Mandalgarh.

The facts stated in document Ex.P/7 clearly indicates that the accused after beating Chhagana left the spot at their own.

They did not fled from the spot due to intervention of any other person.

The beating given -7- by accused persons to deceased Chhagana was also on his arms and legs.

The accused persons, if had any intention to kill Chhagana, they would have given blow on vital parts of Chhagana, but no such injury was caused.

The injuries given were on the arms and legs.

The accused also left the spot of occurrence at their own.

These facts clearly indicates that the intention of the accused was only to give severe beating to Chhagana.

However, being armed with lathis, they must be having knowledge that the assaults made by them may cause bodily injuries sufficient to cause death, as such, the offence committed by them is not a murder but an offence punishable under Section 304 part-II Indian Penal Code.

Accordingly, this appeal is allowed in part.

The conviction of the accused persons recorded by the trial court for the offence punishable under Section 302/34 Indian Penal Code is substituted by commission of an offence punishable under Section 304 part-II read with Section 34 Indian Penal Code.

The sentence of life term imprisonment with stipulation of default is substituted by rigorous imprisonment for a period of ten years with a fine of Rs.2000/- and further to undergo one month's simple imprisonment in the event of default in payment of fine.

The conviction for the offence punishable under Section 341 Indian Penal code is affirmed.

(V.K.MATHUR),J.

(GOVIND MATHUR),J.

Mathuria KK/ps.

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