

Dinu Vs. State of Maharashtra

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Court : Mumbai

Decided On : Jun-19-2014

Judge : M.L. Tahaliyani

Appeal No. : Criminal Appeal No. 246 of 1998

Appellant : Dinu

Respondent : State of Maharashtra

Judgement :

Oral Judgment:

1. Heard learned counsel Mr. Kalar for the appellant and learned Additional Public Prosecutor Mr. Thakre for the respondent State.

2. The appellant was accused No.4 in Special Criminal Case No.16/1994, heard by the Special Judge under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. In all there were six accused. They were tried for the offences punishable under Sections 147, 148, 326 read with Section 149 of Indian Penal Code and Section 3(1)(x) of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989. At the end of trial, only accused Nos.1, 2 and 4 (appellant) were convicted for the offence punishable under Section 325 read with Section 34 of Indian Penal Code and are sentenced to suffer R.I. for two months and fine of Rs.100/- each.

3. The incident had occurred in the agricultural field at village Jamuniya. The appellant and others had assaulted the complainant (PW-1) by means of axe and sticks. The complainant had sustained various injuries including fracture of proximal phalynx of 3rd and 4th finger. Offence was registered on the report lodged by PW-1.

4. During the course of investigation, statements of witnesses were recorded and PW-1 was sent for medical examination. During the course of radiology investigation, it was found that PW-1 had sustained fracture of proximal phalynx of 3rd and 4th finger. After completion of investigation, charge sheet was submitted in the Court of Special Judge.

5. As already stated, the appellant and two other accused have been convicted for the offence punishable under Section 325 read with Section 34 of I.P.C. The learned counsel for the appellant has submitted that PW-1 has not stated as to on which part of his body, the blow was inflicted by the appellant. It is submitted that the evidence of PW-1 and PW-2 is vague and does not explain the role allegedly played by the appellant.

6. I have gone through the evidence of PW-1 and PW-2. The whole case is based on evidence of PW-2, PW-7 and PW-8. In my opinion, there are no major discrepancies in the evidence of PW-1 and PW-2. Though PW-2 is the wife of PW-1, she cannot be said to be interested witness, as she was the natural witness to be present on the scene of offence. The evidence of PW-7 and PW-8 Medical Officers clearly indicate that the description of injuries mentioned by these witnesses is consistent with the evidence given by PW-1 and PW-2. The learned counsel has submitted that PW-1 most probably had sustained fracture due to fall on hard surface in the agricultural field. However, in view of direct, cogent and unimpeachable evidence of PW-2, this part of argument is not acceptable. If the evidence of eye witness is reliable, the court cannot draw any other inference without there being any material on record.

7. In the present case, in my opinion, the evidence of PW-1 with regard to the alleged assault has been corroborated by the evidence of PW-2. The appellant had used stick at the time of incident. Though it is not certain as to which of the

accused had caused fracture, it is certain that PW-1 had sustained fracture due to assault on the part of the appellant and the other accused. All of them had come together and therefore, it can safely be said that the assault on PW-1 was in furtherance of common intention of all the accused including the appellant.

8. Fracture or dislocation of bone is described as grievous hurt in Section 320 of I.P.C. Since the medical evidence is consistent with the oral evidence, I do not find any fault in the judgment and order passed by the learned trial Judge.

9. The appellant had remained in custody for 8 days during the course of investigation. The appellant is not hardened criminal. The incident had occurred due to some other dispute between the PW-1 and 2 on the one hand and the appellant on the other hand. In my opinion, the imprisonment already undergone by the appellant was sufficient sentence in the present case. Even the Special Judge could have explored the possibility of releasing the appellant under the Probation of Offenders Act. Hence, I pass the following order.

10. The appeal is partly allowed. The conviction of the appellant for the offence punishable under Section 325 of I.P.C. is maintained. However, the sentence is modified as under;

i]. The appellant shall undergo imprisonment for the period already undergone by him and shall pay fine of Rs.100/-, in default simple imprisonment for seven days.

ii] The bail bond of the appellant shall be cancelled. Appeal stands disposed of accordingly.

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