

Fulloo Vs. The State of M.P.

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Court : Madhya Pradesh

Decided On : Jun-22-2015

Judge : Subhash Kakade

Appeal No. : Criminal Appeal No. 47 of 2006

Appellant : Fulloo

Respondent : The State of M.P.

Judgement :

1. This criminal appeal under Section 374(2) of Cr.P.C.has been filed by the appellant against the Judgment dated 29.11.05 passed in Sessions Trial No.127/05 by learned Sessions Judge, Chhatarpur whereby the appellant has been convicted under Section 25(1-Kha)(k) of the Arms Act and sentenced to R.I. for one year and fine of Rs.1,000 with default stipulation.

2. The case of the prosecution is that on 13.01.05 at about 22.15 hours complainant Bodhan lodged a report alleging that he was resident of Kitpura village and was doing agriculture work. At about 19.00 hours when he was sitting nearby the house of one Dhanprasad with others, appellant came there and asked the complainant to accompany him on the point of 12 bore gun, on refusal by the complainant, appellant threatened to fire and ultimately fired on him resulting in injury on the elbow of complainant. The matter was reported to the police and Crime No. 9/05 for offence punishable under Sections 307 IPC and Sections 25/27

of the Arms Act was registered. After due investigation challan has been filed.

3. In order to bring home the charges against appellant the prosecution examined nine witnesses and placed FIR on record and exhibited the documents vide Ex.P/1 to P/17. The defence did not examine any witness.

4. The learned Sessions Judge, Chhatarpur found the appellant guilty for the offence punishable under the aforesaid Section of the Arms Act and convicted and sentenced him as above, hence this appeal.

5. Learned counsel for appellant submits that the judgment and findings of learned Court below are perverse and contrary both on facts and law and are liable to be set aside. Learned Court below failed to appreciate the material available on record and passed the judgment and findings on conjunctures and surmises. There are lots of contradictions and omissions in the testimonies of prosecution witnesses. Most of the witnesses such as Lalli (PW.4), Ladku (PW.5) have been declared hostile. Even complainant Bodhan has not supported the version of prosecution. Finally, it is prayed that appeal be allowed and the substantive jail sentence should be confined to the period already undergone by the appellant.

6. Per contra, learned PL appearing for respondent/State submits that after due appreciation of prosecution evidence, the learned Court below has found the offence proved against the appellant which requires no interference.

7. Having heard learned counsel for the parties, gone through the impugned judgment passed by learned Court below and statements of prosecution witnesses, I am of the view that no error has been committed by learned Sessions Judge, Chhatarpur in recording the guilty of the appellant as mentioned hereinafter and in convicting him for offence punishable under the aforesaid section of the Arms Act.

8. Now the question arises that as to how a balance should be struck and maintained in regard to the sentence.

9. More than ten years have been elapsed from the date of incident . It is pertinent to mention here that out of the awarded jail sentence, appellant Fulloo has already

suffered the jail sentence with effect from 31.03.05 to 29.11.05 (244 days) during trial, and thereafter in execution of non-bailable warrant issued by this Court appellant is in jail since 21.05.15 till date.

10. Considering the above facts and circumstances of the case, I am of the considered view that in the instant case, more important sentence should be that the appellant should be sentenced to the period already undergone by them as against the aforesaid awarded sentence.

11. In the result upholding the judgment of conviction recorded by learned Sessions Judge, Chhatarpur, I reduce the sentence awarded to the appellant to the sentence already undergone by him. The appeal, to that extent, is allowed and the impugned judgment is modified. In this case, the appellant is in jail, he be released forthwith, if not required in any other case.

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