

Dhulgo Vs. State of Chhattisgarh

Dhulgo Vs. State of Chhattisgarh

SooperKanoon Citation : sooperkanoon.com/496596

Court : Chhattisgarh

Decided On : Sep-11-2008

Reported in : 2008(5)MPHT10(CG)

Judge : Rajeev Gupta, C.J. and; Sunil Kumar Sinha, J.

Appellant : Dhulgo

Respondent : State of Chhattisgarh

Disposition : Appeal dismissed

Judgement :

Sunil Kumar Sinha, J.

1. This appeal is directed against the judgment of conviction and order of sentence dated 12-7-2002 passed by the Additional Sessions Judge and Special Judge under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Jagdalpur in Sessions Trial No. 473/2001, whereby, the appellant has been convicted under Section 302, IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,500/-, in default of payment of fine to further undergo R.I. for 1 year.

2. Deceased-Kamlu was the real brother of complainant Foska (P.W. 4). They were residing separately. On 29-8-2001, Foska was informed by his mother,

Mangli, that the appellant has committed murder of Kamlu in his house at about 8.30 p.m. Foska went to the house of appellant and saw that the dead body of his brother was lying in the court-yard of the house of the appellant. When he asked to the appellant as to why he committed murder of deceased, the appellant replied that since the deceased was trying to molest his wife, therefore, he had assaulted him with Danda. According to the prosecution, the assault was witnessed by 2 eye-witnesses namely, Smt. Sarai (P.W. 2) and Mangli (P.W. 3). Foska lodged the First Information Report (Exh. P-4) in the concerned police station on 30-8-2001. The merger intimation (Exh. P-6) was also lodge on the same day. On 30-8- 2001, during the course of investigation, the inquest (Exh. P-7) on the body of the deceased was prepared and the dead body was sent for post-mortem to Maharani Hospital, Jagdalpur, where the post-mortem examination was conducted by Dr. V.K. Dhruw (P.W. 7), who prepared his report (Exh. P-18). The Autopsy Surgeon noticed the following injuries on the body of the deceased:

- (i) Lacerated wound, 2 x 1/2 inch above right eye;
- (ii) Lacerated wound 2 x 1 inch on right temporal region;
- (iii) Lacerated wound 1 x 1/2 inch over occipital region having a depressed fracture;
- (iv) Ecchymosis 2 x 1 inch on the left cleical region; and
- (v) There were fractures of right IV, V, VI ribs.

He opined that the death was due to traumatic shock. In further investigation, a memorandum (Exh. P-11) of the appellant was recorded under Section 27 of the Evidence Act and a bamboo stick was seized under Exh. P-12 in pursuance of discovery made through it. The seized articles were sent for their chemical examination to Forensic Science Laboratory, Raipur under Exh. P-16 but no report could be obtained.

3. After completion of usual investigation, the charge- sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed the matter, whereafter the trial was conducted by the Special Court, Jagdalpur and the

appellant was convicted and sentenced as aforementioned.

4. The conviction of the appellant is based upon the testimonies of 2 eye-witnesses namely Smt. Sarai (P.W. 2) and Mangli (P.W. 3) coupled with extra-judicial confession made by the appellant before Foska (P.W. 4).

5. Learned Counsel for the appellant has not disputed the homicidal death of the deceased. He argued that the eye-witnesses are not reliable and the extra-judicial confession also does not appear to be genuine. Alternatively, he argued that as it comes in the extra-judicial confession, the appellant has assaulted the deceased with lathi because deceased was trying to molest the wife of the appellant, therefore, the offence would not travel beyond Section 304 Part I, IPC.

6. On the other hand, learned Counsel for the State opposed these arguments and supported the judgment passed by the Sessions Court.

7. We have heard the learned Counsel for the parties at length and have also perused the records of the Sessions Court.

So far as eye-witness account is concerned, Mangli (P.W. 3), is the mother of the deceased. In her examination-in-chief, she deposed that she had seen the appellant assaulting the deceased by danda but in cross-examination, she admitted that it was a dark night and it is correct to say that she was inside her house at the time of incident and it is further correct to say that she was unable to look in the night time. This witness is aged about 70 years. On the fact of her admission, it appears that due to her old age, she was unable to see in the night time, therefore, she may not have seen the occurrence and in such state of affairs, we are unable to place our reliance on her testimony.

8. So far as other witness, Smt. Sarai (P.W. 2), is concerned, she deposed that when she heard hue and cry, she went towards it and saw that deceased-Kamlu was standing in front of house of the appellant. Appellant was having a danda in his hands and he assaulted the deceased with danda. The deceased received injuries on his back and head. He succumbed to the injuries sustained by him. Though the defence has tried to destroy her testimony in the cross-examination

but nothing could be brought on record on which her testimony may be doubted. It was argued that in the night, she was unable to see but the witness has denied it and has said that she had seen the occurrence as she had gone to the place of occurrence. The Map (Exh. P-9) shows that the place of occurrence, i.e., house of the appellant was not very far from the house of this witness and it is simply at a distance of 13 steps. She had said that when she heard hue and cry, she came out from the house and she had witnessed the instance. The Trial Court has relied on the testimony of this witness and after close scrutiny of her evidence, we do not find any such reason on which her testimony may be discarded. Therefore, it is established that on the fateful night, the deceased was assaulted by the appellant in his court-yard, who sustained many injuries and succumbed to those injuries.

9. In addition to it, there is an extra-judicial confession of the appellant before Foska (P.W. 4). Foska deposed that when her mother informed him that the appellant has killed his brother (deceased), he went to the house of appellant and saw that the dead body of the deceased was lying in front of the house of appellant. The deceased has sustained injuries on his head and back. When he asked to the appellant as to why he murdered the deceased, the appellant told him that the deceased was trying to molest his wife, therefore, he had assaulted him by danda. These facts are also there in the merg intimation and the FIR lodged by this witness and nothing could be brought on record by the defence to show that either such statement was not made by the appellant to this witness or this witness is telling a lie about statement made before him.

10. It was argued before us that since the deceased was trying to molest the wife of the appellant, therefore, he made the assaults, but, this fact has not been established on record by any evidence except that it comes in extra-judicial confession of the appellant that he has assaulted the deceased for the said reason. Even the wife of the appellant namely Sukhdei has not been examined in this case. If we take the contents of the statement (extra-judicial confession) as a whole including the explanatory part of it about the reason to commit the offence, it would appear that the reason, told by the appellant has not been substantiated in any form. There is possibility that after commission of the offence of murder, the appellant may have chosen the defence and have tried to make a defence. The

appellant has not given any explanation in his Section 313, Cr.PC statement saying all this, therefore, for want of any positive evidence regarding proof of the fact stated by appellant that he had a reason to assault the deceased, the arguments advanced by the learned Counsel for the appellant that the appellant assaulted the deceased in grave and sudden provocation cannot be accepted.

11. For the foregoing discussions, we do not find any illegality or infirmity in the judgment and order passed by the Sessions Court.

12. The appeal has no merit. It is liable to be dismissed and is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com