

Dadu Vs. State of M.P.

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SooperKanoon Citation : sooperkanoon.com/512097

Court : Madhya Pradesh

Decided On : Apr-03-2002

Reported in : 2002(5)MPHT162; 2002(3)MPLJ495

Judge : Uma Nath Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304II and 323

Appeal No. : Criminal Appeal No. 616/96

Appellant : Dadu

Respondent : State of M.P.

Advocate for Def. : Sanjeev Shukla, Panel Lawyer

Advocate for Pet/Ap. : Imtiyaz Hussain, Adv.

Judgement :

Uma Nath Singh, J.

1. This appeal impugns the judgment dated 19-3-96 passed by the learned Additional Sessions Judge, Harda in S.T. No. 131/95, whereby the accused/appellant was convicted of offence under Section 304-II, IPC and sentenced to undergo R.I. for five years and to pay a fine of rupees two thousand, in default, to further undergo one month's simple imprisonment.

2. The prosecution case in brief is that on 4-11-94, the date of incident deceased Rajaram was given fists and legs blows on his chest and abdominal regions by his real brother accused Dadu. The report of the incident was lodged next day, i. e., on 5-11-94 by the deceased and he was sent for medical examination on the same day. As per the evidence of Dr. A.K. Chandravansi (P.W. 2) in para 9 of his cross-examination when the deceased Rajaram was brought to him for medical examination, he gave him necessary treatment and allowed him to go home thereafter. The deceased did not complain of any severe pain in his chest or abdominal region. The deceased died on 12-11-94, after seven days of the incident, in his house and marg intimation in that respect, namely Ex. P-12 was recorded by Dinesh Barhai (P.W. 9), Police Station Incharge. Chhotelal, a cousin of the deceased, who gave the marg showed ignorance about the cause of death.

3. Heard Shri Imtiyaz Hussain, Advocate for the appellant and Shri Sanjeev Shukla, Panel Lawyer for the State.

4. Mr. Hussain contended that the nature of offence is not such as to be covered under Section 304-II, IPC because the deceased died after seven days of the incident and his health condition was normal on that day. Shri Hussain further contended that at no point of time the deceased was hospitalized nor did the doctor (P.W. 2) say in his cross-examination that the health condition of the deceased showed any sign of deterioration or severe pain when he was brought for treatment and that is why, he was allowed to go home thereafter. Mr. Hussain placed reliance on the evidence of Sukhiabai (P.W. 4), wife of the deceased. In para 3 of her cross-examination she categorically stated that her husband Rajaram was an old patient of some abdominal disorder and he used to complain of Stomachache for which he had undergone treatments at several places. She also stated that the deceased was alcoholic. She further stated that she did not see the incident of quarrel and clarified that her husband did not die of assault but due to some ailment. This witness was not declared hostile. Mr. Hussain also contended that it is a case of misplaced conviction as in no circumstances, it would be covered under Section 304-II, IPC and that too, by placing reliance on the evidence of hostile witness Parasram (P.W. 5). Mr. Hussain further contended that Ex. P-6 (Notice for inquest), and Ex. P-7 (Inquest Panchnama) exhibit that the

dead body of the deceased was last seen lying inside his house. But these exhibits do not notice the cause of death. Out of nine witnesses of the prosecution, five were declared hostile. Even the material witnesses lack precision to support the conviction under Section 304-II, IPC. The hurt being simple in nature does not attract the ingredients of Section 304-II, IPC. Thus, if the accused is held guilty of his culpability, it would only be a case of simple assault under Section 323, IPC. The doctor did not notice any external or internal injury on the body of the deceased during initial medical examination. Further, the report lodged by the deceased, though being in the nature of a dying declaration is of no help to the prosecution as it inculcates the accused only for causing blows with fists and legs.

5. Shri Shukla, Panel Lawyer for the State on the other hand supported the impugned judgment and submitted that since the accused assaulted the deceased on abdominal region, a vital part of the body, his conviction under Section 304-II, IPC, i.e., culpable homicide not amounting to murder is fully justified.

6. On a reappraisal of the evidence on record and consideration of the rival contentions advanced by the Counsel for the parties, it appears that the Trial Court is not correct in convicting the accused by placing reliance on the evidence of hostile witness Parasram (P.W. 5). Secondly, Sukhiabai (P.W. 4) wife of the deceased is categorical in her evidence to say that her husband died of some old ailment of stomachache and not of any assault. Curiously enough, she has not been declared hostile. Thirdly, the medical evidence does not support the prosecution case inasmuch as Doctor A.K. Chandravansi (P.W. 2) in para 9 says that when the deceased was brought for treatment, he was not complaining of any severe pain. That is why, he was allowed to go home. The doctor further says that on post-mortem a small rupture of the small intestine was noticed which could be caused by assaults with legs and fists as also by an abdominal disease. Thus the prosecution is not able to establish the assaults as being the cause of death. Further neither the medical nor any other evidence including the Marg (Ex. P-12) and the Inquest Paachayatnama (Ex. P-7) substantiate the findings of the learned Trial Judge.

However, the first report (being in the nature of a dying declaration) recorded in Rojnamcha (Ex. P-10), the initial medical examination report (Ex. P-11) and the Marg (Ex. P-12) are descriptive about the incident of assaults alleged to have been caused with fists and legs by the accused. Hence, the accused is held guilty of causing assaults to the deceased, but since the medical opinion, as also the direct evidence of Sukhiabai (P.W. 4), and other corroborative materials do not prove the assaults being the cause of death and that a small rupture of the small intestine could be caused even by an abdominal disease, the accused/appellant is held guilty of causing simple hurt to the deceased. This conclusion is further fortified by the absence of any external injury on the body. The relevant portion of the post-mortem report reads:-

'No external injury detected over the body, except multiple burn scars, very small in size, present all over the abdomen. This act is done probably by himself for the removal of abdominal pain. No other external injury present over the body.'

7. In the premises discussed hereinabove, I find that the order of conviction and sentence of the accused/appellant under Section 304-II, IPC is not sustainable in law as well as on facts and at the most, it comes within the ambit of Section 323, IPC. Accordingly, his conviction and sentence under Section 304-II, IPC, are hereby set aside and instead, he is convicted under Section 323, IPC, and sentenced to six months rigorous imprisonment and a fine of rupees one thousand, in default, to further undergo one month's simple imprisonment. From the application for bail, it appears that during trial the appellant was in custody for four months, i.e., from 6-12-1994 to 6-4-95 and again after the impugned judgment, from 19-3-96 to 16-7-96 when he was granted bail by this Court. But by the same order dated 16-7-1996, his prayer for stay of depositing the fine amount was refused. Under the circumstances, his bail bonds shall stand discharged.

8. With this modification, the criminal appeal is allowed in part.