

Dhula Vs. State of Rajasthan

Dhula Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/760012

Court : Rajasthan

Decided On : Aug-09-1996

Reported in : 1997CriLJ609

Judge : B.R. Arora and; J.C. Verma, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 307 and 324; Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : Criminal (Jail) Appeal No. 493 of 1994

Appellant : Dhula

Respondent : State of Rajasthan

Advocate for Def. : Chandralekha, Public Prosecutor

Advocate for Pet/Ap. : J.R. Choudhary, Amicus Curiae

Disposition : Appeal allowed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 8-9-94 passed by the Additional District and Sessions Judge No. 1 , Udaipur, by which the learned Additional Sessions Judge acquitted the accused-appellant of the offence under

Section 307 IPC but convicted and sentenced him for the offences under Section 302 and 324 IPC.

2. The appellant was tried by the learned Additional Sessions Judge No. 1, Udaipur for the offence under Section 302 IPC for committing the murder of Smt. Roopli; under Section 307 IPC for an attempt to murder Smt. Raju and Rama and under Section 324 IPC for inflicting simple injuries to Ganesh by a shar-pedge weapon, i.e., the Kulhari.

3. The prosecution, in support of its case, examined twelve witnesses. The accused did not examine any witness in his defence. The learned Additional Sessions Judge, after trial, acquitted the appellant of the offence under Section 307 IPC for attempt to murder Smt. Raju (the mother of the accused) and Ram (the brother of the accused); but the learned Additional Sessions Judge, however, convicted the appellant for the offence under Section 302 IPC for committing the murder of Smt. Roopli and under Section 324 IPC for causing simple injury by a sharp-edged weapon (Kulhari) to Ganesh (the nephew of the accused) and sentenced him to under to imprisonment for life and a fine of Rs. 500/- and in default of payment of fine further to undergo two months' rigorous imprisonment for the offence under Section 302 IPC and three years rigorous imprisonment for the offence under Section 324 IPC. Both the sentences were ordered to run concurrently. It is against this judgment dated 8-9-94 passed by the learned Additional Sessions Judge No. 1, Udaipur that the appellant has preferred this appeal.

4. The prosecution to substantiate the charges for which the accused-appellant was tried, produced, fourteen witnesses. The nature of the evidence produced by the prosecution consists of the evidence of, the two eye witnesses, viz., PW-2 Ganesh and PW-4 Hakra Ram - the nephews of the accused and the sons of the deceased. Their evidence is sought to be corroborated by the evidence of PW-3 Thawra and PW-5 Thana relating to the extra-judicial confession and that of PW-1 Savji who lodged the FIR PW-6 Purkha, PW-7 Dola and PW-8 Mansa are the Motbir witnesses while PW-9 Dr. Anish Ahmed was the doctor who performed autopsy on the deadbody of Smt. Roopli and, also, medically examined the other

injured persons. PW-13 Kanhaiya Lal was the Head Constable, in whose custody the sealed articles remained and who handed-over the same to PW-10 Ram Narain for taking them for FSL Examination to the State Forensic Science Laboratory, Jaipur. PW-10 Ram Narain took the sealed articles for FSL Examination to the aforesaid Laboratory and deposited the same there. PW-11 Ratan Singh was the ASI Police posted at Police Station, Gordhan Yilas, Udaipur, who conducted the investigation and after completion of the same, placed the papers before Mool Chand, SHO who prepared the charge-sheet and submitted the challan.

5. The prosecution case rests upon three types of evidence, namely, (i) the evidence of the eye witnesses; (ii) the evidence relating to the extra-judicial confession; and (iii) the evidence relating to the recovery of the blood-stained Kulhari on the information and at the instance of the accused-appellant.

6. PW-2 Ganesh and PW-4 Hakra are the two eye witnesses of the occurrence. Ganesh was aged about 10 years and Hakra was 14 years at the relevant time. They are the nephews of the accused and the sons of the deceased. PW-2 Ganesh has stated that his mother Smt. Roopli was killed by his uncle Dhula by the Kulhari. The accused, also, inflicted injuries by Kulhari to his father Ramji. Dhula, also, inflicted injuries to him on his temporal region. Hakra is his elder brother who was, also, present there. His aunt (Taai) Smt. Raju was, also, there, to whom, also, the accused inflicted injuries by the Kulhari. He has, also, stated that he was in the sleep when the injuries were inflicted to him. In the cross-examination he has specifically admitted that when the injuries were inflicted by the accused to his mother, father and the grand-mother, he was sleeping and no injury was inflicted to any of the persons in his presence. He has, also, stated that Hakra was not present at the time of the incident. In the cross-examination conducted by the Additional Public Prosecutor, he has stated that in his presence no injury was inflicted by the accused to his mother.

A critical examination of the evidence of this witness, therefore, clearly shows that he is not an eye witness to the occurrence and he has not seen the accused-appellant inflicting any injury to any of the persons. So far his own injuries are

concerned, they were inflicted to him while he was in the sleep.

7. PW-4 Hakra is the other eye witness to the occurrence. He was aged about 14 years. He has stated that about two years before, his mother died, who was killed by his uncle Dhula, who cut his mother by inflicting injuries with the Kulhari. He was sleeping in his house and was called by his Taai and the injuries were inflicted by the accused to the victims before he reached the place of the incident. The injury to Ganesh was, also, inflicted before he reached there and he did not see the accused inflicting injuries to any of the persons. The accused inflicted injuries to his Taai on her temporal region by the Kulhari and thereafter the accused ran away. His mother was lying dead on the ground and was having injuries on her frontal region, head and the leg. When he reached there, accused Dhula was having the Kulhari in his hand. His father was, also, having injuries on his frontal region, shoulder and leg. In the cross-examination he has admitted that he was the last man to reach Dhula's house and when he reached there, the incident was over and no injury was inflicted by the accused to any person in his presence. He has further stated that Dhula wanted to inflict injury to him, also, but he concealed himself in the maize crop and came out of the crop when all the thing was over and the accused had run away. In the last two lines of his statement, in the cross-examination, he has admitted that this is the fact that the accused did not inflict any injury to any person in his presence by the Kulhari.

The statement of this witness, also, clearly shows that this witness has not seen the Occurrence. He, therefore, also, cannot be said to be an eye witness of the occurrence.

8. A critical examination of the evidence of these two alleged eye witnesses makes its clear that both these witnesses are not the eye witnesses of the occurrence and they have not seen the accused inflicting any injury to any person by the Kulhari and they came at the place of the occurrence after the incident was over. So far the injury inflicted to PW-2 Ganesh is concerned, that was, also, caused when he was in the sleep and he has not seen the accused inflicting him the injuries. They are, therefore, not the eye witnesses of the occurrence. The evidence of the alleged eye witnesses regarding their seeing the incident, therefore, does not

inspire confidence.

9. The next evidence relied-upon by the prosecution and believed by the learned trial Court is the evidence of extra-judicial confession. PW-3 Thawra and PW-5 Thana are the two witnesses produced by the prosecution to prove the extra-judicial confession allegedly made by the accused-appellant. PW-3 Thawra has stated that he knows accused Dhula as well as deceased Smt. Roopli. Dhula used to say that he inflicted injuries to Roopli by Kulhari. Dhula, also, told him that he inflicted injuries to his own mother Smt. Raju, Smt. Roopli and her son Ganesh by Kulhari, but he did not tell him why he inflicted the injuries to them. As soon as he told him this fact, he produced Dhula at the Police Station. The evidence of this witness does not find corroboration from the facts of the case. Neither this fact of extra-judicial confession finds place in the FIR though he was with PW-1 Savji at the Police Station when the report was lodged by Savji, nor it finds place in his statement recorded under Section 161 Cr.P.C. For the first time he has' stated so in the trial Court. Moreover, he has stated that he produced the accused at the Police Station, whereas the accused, as per the statement of :PW-11 Ratan Singh, was arrested on 8-9-93 vide Ex. P-12, at 5.45 p.m. in the jungle. His statement, also-, appears to be casual in nature. It was not expected of the accused to make the statement confessing his guilt without being asked by anybody and)that too to a person who is not a man of status and who could not help the accused in any way to save him from the involvement.

10. Similar is the statement of PW-5 Thana. He has stated that about 2fa years before, accused Dhula came to his house in the night and informed him that he has killed Ramji's wife Smt. Roopli by the Kulhari. He, also, informed him that he has inflicted injuries to Ramji, Ganesh and Smt. Raju by the Kulhari and he may go to the house and enquire about it.

The evidence of this witness relating to the extra-judicial confession allegedly made by the accused Before him, also, does not inspire confidence. The accused had no occasion to have approached this witness who is neither a man of status nor otherwise was an influential person who could have helped the accused in the matter. This witness was, also, not related to the accused nor had he any close

relations with the accused. As he was neither related to the accused nor was he in a position to help the accused in any way, therefore, there was no question of making any extra-judicial confession by the accused before this witness.

11. The evidence of extra-judicial confession can be acted-upon and can form the basis of conviction provided it appears to be perfectly voluntary, true and trustworthy and comes from the mouth of a witness who appears to be an unbiased, not inimical to the accused or having no motive to implicate the accused. From the above discussion it is clear that the prosecution has failed to establish this circumstance against the appellant and the learned trial Court was not justified in believing the evidence of extra-judicial confession against the appellant.

12. The third set of evidence relied-upon by the prosecution and believed by the learned trial Court is the evidence of recovery of the blood-stained Kulhari on the information and at the instance of the accused-appellant. PW-11 Ratan Singh is the person before whom the information Ex. P-23 was given by the accused-appellant and the Kulhari was recovered vide Ex.P-7 from an iron-drum lying in the house of the accused-appellant. The house was not in the exclusive possession of the accused-appellant. The recovery of the Kulhari was made in the presence of PW-3 Thawra and PW-5 Thana. The Kulhari was seized and sealed and was sent for FSL Examination by PW-13 Kanhaiya Lal through PW-10 Ram Narain. The learned trial Court relied-upon the FSL report for treating the Kulhari as bloodstained Kulhari but neither the FSL report was exhibited nor was it produced in the evidence. It was not even put to the accused-appellant in his statement recorded under Section 313 Cr.P.C. Without putting the FSL report to the accused in his statement under Section 313 Cr.P.C., the same could not have been read against the accused because it is the requirement of law that anything adverse to the accused, if relied-upon, then the accused should be given an opportunity to explain that adverse circumstance. As this adverse circumstance was not put to the accused in his statement recorded under Section 313 Cr.P.C., it should not have been read against him. The learned trial Court, therefore, committed an error in considering the FSL report against the accused without being put to him in his statement under Section 313 Cr.P.C. This circumstance, also, therefore, cannot be

read against the accused-appellant.

13. We have disbelieved the evidence of the eye witnesses, the evidence relating to the extra-judicial confession and the evidence relating to the recovery of the blood-stained Kulhari. There is no other evidence connecting the accused-appellant with the crime. The learned Additional Sessions Judge was, therefore, not right in convicting and sentencing the accused-appellant for the offences under Sections 302 and 324, IPC. The prosecution has failed to prove the case against the accused-appellant beyond reasonable manner of doubt. The judgment passed by the learned Additional Sessions Judge No. 1, Udaipur, convicting and sentencing the accused-appellant for the offences under Sections 302 and 324 IPC therefore, deserves to be quashed and set-aside and the accused-appellant deserves to be acquitted of all the charges levelled against him.

14. In the result, the appeal filed by accused-appellant Dhula is allowed. The judgment dated 8-9-94 passed by the learned Additional Sessions Judge No. 1, Udaipur, convicting and sentencing the accused-appellant for the offences under Sections 302 and 324 IPC is quashed and set aside and the accused-appellant is acquitted of all the charges levelled against him. He is in jail. He shall be released forthwith if he is not required in any other case.