

Dinesh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-22-2010

Judge : Govind Mathur and; C.M. Totla, JJ.

Appellant : Dinesh

Respondent : State of Rajasthan

Judgement :

Govind Mathur, J.

1. Learned Additional Sessions Judge (Fast Track) No. 1, Udaipur, by judgment and order dated 24.8.2004 convicted accused appellant for the offences punishable under Sections 302/34 Indian Penal Code and 4/25 Indian Arms Act and also sentenced as under:

Under Section 302 IPC : Life imprisonment with a fine of Rs. 2000/- and in default of payment of fine, further to undergo two months' simple imprisonment.

Under Section 4/25 Arms Act : Two years' rigorous imprisonment with a fine of Rs. 2000/- and in default of payment of fine, further to undergo two months' simple imprisonment.

2. Briefly stated, case of the prosecution is that on 7.3.2004 at about 09:00 AM, PW-1 Prakash orally reported at Police Station Jhadole that on the eve of Holi

festival, in the evening of 6.3.2004 a dance programme with drum beating was organised and in the programme aforesaid he, Shankarlal, Dinesh, Roopa etc. were beating the drums. At about 09:00 PM, when Shankar was beating the drum he had an incidental push with Dinesh that resulted into bleeding from nose of Dinesh. This made Dinesh and Roopa annoyed and they indulged in quarrel with Shankar. Shankar tried to run away from the spot but he was chased by Roopa and Dinesh and at a seasonal flow they caught hold of Shankar. After some heated discussions Roopa caught hold of Shankar and Dinesh gave a 'chhuri' (knife) blow on the chest of Shankar, consequently, he fell down and died at the spot. Dinesh and Roopa then immediately fled from the spot by carrying the weapon of offence with them.

3. On basis of information aforesaid, a case was registered, investigation was made, the accused persons were charge sheeted and the case was committed to the court of Sessions.

4. The trial court charged accused Roopa for commission of offences punishable under Sections 302 and 302/34 IPC and accused Dinesh for offences punishable under Sections 302, 302/34 IPC and 4/25 Indian Arms Act.

5. On denial of the charges framed, the accused persons were tried. The prosecution supported its case with the aid of 12 witnesses, out of whom PW-1 Prakash and PW-8 Raju were cited as eye witnesses.

6. PW-9 Kishan Singh was the Investigating Officer and as such he narrated the steps taken during the course of investigation.

7. During the course of investigation the investigating agency collected blood smeared soil and control soil from the spot of occurrence, a shirt and pant of deceased and also 'chhuri' said to be weapon of offence. The 'chhuri' aforesaid was recovered on basis of information given by accused. All the recovered articles aforesaid were sent for their serological examination to the Forensic Science Laboratory, Udaipur. The report of the aforesaid examination is available on record as Ex.P/24 and as per the report aforesaid the pant, shirt and 'chhuri' were found to be stained with 'A' group of blood.

8. PW-11 Dr. Anil Bansal conducted autopsy on the body of deceased Shankar, thus, he proved the postmortem report Ex.P/23. As per Ex.P/23 deceased Shankar was having a single antemortem injury i.e. stab wound 2 x 2 x 8 cms. on his chest. The cause of death given was shock due to wound over chest i.e. the antemortem stab wound.

9. The accused was put forth for examination as per provisions of Section 313 Cr.P.C. to explain the circumstances and evidence available against him and he denied the entire adverse evidence while pleading his innocence.

10. Learned trial court relying upon the eye witnesses and other corroborating evidence adduced by the prosecution including the statements of PW-2 Shankar, PW-7 Deeta, PW-9 Kishan Singh (Investigating Officer) and PW-11 Dr. Anil Bansal, held accused appellant Dinesh guilty for commission of an offence punishable under Section 302 IPC and also for an offence punishable under Section 4/25 Indian Arms Act. However, accused Roopa was acquitted from all the charges.

11. In appeal, the only argument advanced by counsel for the appellant is that even by accepting the entire prosecution case the accused appellant could have not been held guilty for an offence beyond the offence punishable under Section 304 part-I IPC. It is asserted that the act of the accused appellant lies within the purview of exception (4) of Section 300 IPC.

12. We have considered the argument advanced and also scrutinised the record available.

13. In view of the medical evidence available, there is no doubt about homicidal death of Shankar.

14. Precisely, the issue survives is regarding determination of offence committed by the accused appellant.

15. As per PW-1 Prakash, an eye witness of the incident, a dispute arose between accused Dinesh and deceased Shankar while beating drums on the eve of Holi. At first instance, a quarrel occurred between deceased and the accused, however,

the deceased choose to move from the spot. During heat of moment accused followed the deceased and after little heated arguments gave a 'chhuri' blow on the chest of deceased Shankar. A similar kind of statement is made by other eye witness PW-8 Raju.

16. On minute scrutiny of record, we failed to get any evidence available on record to establish that the accused was intending to cause death of Shankar. What reveals from the evidence available is that some dispute arose during the beating of drums and that resulted into scuffle between the accused and the deceased. During the course of scuffle accused caused a bodily injury which was found sufficient to cause death. Entire incident was an out come of sudden provocation and spontaneous heat. In such circumstances, the offence committed does not travel beyond an act punishable under Section 304 part-I IPC.

17. In view of the finding aforesaid, we are inclined to accept this appeal in part. Accordingly, the same is partly allowed. The conviction of accused appellant Dinesh under Section 302 IPC is modified to the conviction under Section 304 part-I IPC. The conviction under Section 4/25 Indian Arms Act is affirmed. The sentence of life imprisonment under Section 302 IPC with fine of Rs. 2000/- too is modified by rigorous imprisonment for a term of seven years with a fine of Rs. 100/- and in default of payment of fine, further to undergo two months' simple imprisonment.

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