

Dhondu Vs. the King

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Court : Privy Council

Decided On : Nov-10-1949

Reported in : AIR1950PC30

Judge : Lord Simonds, Sir John Beaumont & Sir Lionel Leach

Appeal No. : Privy Council Appeal No. 31 of 1949 (From Nagpur)

Appellant : Dhondu

Respondent : The King

Advocate for Pet/Ap. : Ralph Millner for Dingle Foot, for Appellant; J.M. Pringle and J.M.B. Jayakar, for the King. Solicitors for Appellant, T.L. Wilson and Co.; Solicitors for the King, Solicitor, High Commissioner for India.

Judgement :

SIR JOHN BEAUMONT:

This is an appeal from the judgment and sentence of the High Court of Judicature at Nagpur dated 4th November 1947, whereby the High Court allowed an appeal against the acquittal of the appellant by the Court of the Additional Sessions Judge at Buldana on 11th June 1947, on a charge of murder. The High Court convicted the appellant of murder and sentenced him to transportation for life. At the conclusion of the argument their Lordships announced that they would humbly advise His Majesty that the appeal be dismissed and they now give their reasons.

2. Special leave to appeal to His Majesty in Council was granted because it was suggested that the High Court had failed to give proper weight to the views expressed by the Board in the case of *Sheo Swarup v. Emperor*, 61 IA 398 : (AIR (21) 1934 PC 227 : 36 Cr. LJ 786). In that case the Board rejected the view which had prevailed in some High Courts in British India that in appeals against acquittal the powers of a High Court were less extensive than in appeals against conviction. Having rejected that argument, Lord Russell of Killowen in delivering the judgment of the Board pointed out that a High Court should always give weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of witnesses (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who has had the advantage of seeing the witnesses. It was contended in this case that there was no sufficient justification for the rejection by the High Court of the view which the trial Judge and all his assessors had formed of the oral evidence.

3. Mr. Millner for the accused has referred the Board to the relevant evidence. There were eight eye witnesses whose evidence the trial Judge and assessors were not prepared to accept. The High Court took the view that there was no reason for disbelieving their evidence. There was certainly a suspicious uniformity in matters of detail, in the evidence of these witnesses, which suggests some measure of tutoring, and as the victim was the son of the Police Patel it is not difficult to divine the source of inspiration. But be this as it may, there is much evidence on the record to show that it was the appellant who struck the fatal blow. The Judges of the High Court were entitled to act upon this evidence, and it is impossible to say that in doing so they exceeded their powers, or that there has been any miscarriage of justice which would justify intervention by His Majesty in Council. That being the position, the Board, in accordance with its normal practice in criminal appeals, must reject the appeal.

Appeal dismissed.