

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 432/2003

Ghanashyam Das

Appellant (s)

VERSUS

State of Assam

Respondent(s)

(With office report)

Date: 27/07/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. VENKATARAMA REDDI

HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant(s)

Ms. Sunita Sharma, Adv.

For Respondent(s)

Mr. V.K. Sidharthan, Adv. For

M/s Corporate Law Group

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed order.

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(Meenu Sethi)

(Pushap Lata Bhard

Court Master

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

Ghanashyam Das ... Appel
lant

VERSUS

State of Assam ... Respo
ndent

O R D E R

The appellant stood trial before the Sessions Judge, Kamrup for the offence of killing one Gobinda Das with a 'Kukhri' (sharp cutting weapon) in the village

Baruapara on the night of 7.7.1990 at about 9 p.m. The appellant was convicted under Section 302 IPC and sentenced to life imprisonment. On appeal by the accused, the

High Court confirmed the conviction and sentence. Hence this further appeal to this

Court.

The informant - Rabin Das, who is examined as P.W.4 came out of the

house of one Bhabani Sarma with the deceased on the night of 7.7.90 at about 9 p.m.

and they were proceeding to their respective houses in two different directions, the

deceased by a bicycle and P.W.4 on foot. A short while thereafter, P.W.4 heard the

screams of the deceased. Then

P.W. 4 rushed back to the spot and found Gobinda Das lying in an injured condition.

By the time he was taken to the

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hospital, he was declared dead. P.W.4 got the F.I.R.(Exhibit 1) lodged in the Police

Station at Chaygaon on the same night. In the F.I.R. it was mentioned by P.W.4 that:

" when asked who has assaulted him, Gobinda Das said 'Ghanashyam' and became

unconscious and some time thereafter, the residents of the village came to the place of occurrence."

The post-mortem revealed several incised wounds, one on the left side of the

neck 8.5 cm X 5.5 cm bony deep resulting in incision of 4th cervical vertebra, an incised

wound 11 cm X 4.5 cm X 2.5 cm on the left side of the cheek, incised wound 14 cm x 2

cm x 3 cm muscle deep above the left ear in the parietal region and other incised

wounds over the vertex etc.. The cause of the death was found to be haemorrhage and

shock as a result of injuries caused by a sharp cutting weapon. The medical officer

opined that injuries could be caused by the kukhri.

The most incriminating evidence in this case is the dying declaration made

by the deceased to P.W.4. After uttering the words that Ghanshyam 'cut him' the victim

became unconscious. It may be recalled that P.W.4 was with the deceased till they

parted the company to go to their respective houses and within a few minutes

thereafter, the incident had happened. There is absolutely no reason why P.W. 4 would

come forward to give a false version to implicate the accused. The

oral dying declaration made to P.W.4 was believed by the trial Court as well by the

High Court. In the F.I.R. lodged without delay, the oral dying declaration was

specifically mentioned.

Another incriminating circumstance which corroborates the case of the

prosecution is that the appellant led the I.O.-P.W.12 to the Kharbhanga river side and

pointed out the place where he had thrown away the Kukhri. According to the evidence

of P.W.12-I.O. and P.W.6, the Kukhri was recovered from the river with the help of a

diver. Though both the Courts have eschewed this circumstance from consideration on

the ground that no information was recorded by P.W.12- the I.O.

so as to attract Section 27 of the Evidence Act, we are of the view that the evidence of

P.W.12 and P.W.6 to the effect that the accused led them to the spot and pointed out

the place where the Kukhri was thrown, which fact stands confirmed by its recovery,

can be looked into to throw light on the conduct of the accused under Section 8 of the

1 Evidence Act vide Himachal Pradesh Administration Vs. Om Prakash-(1972) SCC

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The contention of the learned counsel for the respondent that with the magnitude of injuries the victim suffered, he would not have been in a position to speak out, has been rejected by the High Court. The possibility of the deceased saying a few words before he became unconscious cannot be ruled out especially when there is no cross-examination of the medical officer on this aspect.

The findings recorded by both the Courts that the prosecution case has been established beyond reasonable doubt cannot be faulted. The appeal is dismissed.

.....J.

(P.VENKATARAM

A REDDI)

.....J.

(D.M.DHARMAD

HIKARI)

New Delhi,

July 27, 2005.