

Dip Singh Vs. Emperor

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Court : Allahabad

Decided On : Sep-19-1925

Reported in : AIR1926All246

Appellant : Dip Singh

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an appeal from a conviction under Section 328 and Section 458-75 of the Indian Penal Code. The prosecution case is that on the 6th January last the accused sold some flour to the complainant Bhaggi, a money-lender, which had been poisoned with dhatura; that his children partook of the loaves of bread made of it and were taken ill; and that the accused with three others entered the complainant's house during the night and caused injuries to him.

2. The learned Sessions Judge is unable to believe the oral evidence for the prosecution. According to him 'the case against Dip Singh must depend on whether the Court believes his confession.'

3. The facts that Bhaggi's relations, who partook of the bread, were poisoned and that Bhaggi himself was assaulted during the night, admit of no doubt. The only question is whether the complicity of Dip Singh has been established by the

evidence.

4. Bhaggi had known Dip Singh from before, yet, admittedly, he did not recognize him as one of the assailants, Bhaggi did not go to the thana on the morning of the 7th January, but a report was made by the village chaukidar the next day, although the thana was not very distant. Till then Bhaggi had not made any charge against Dip Singh. Neither the village Mukhya nor any other villager gave any early information to the police. The learned Judge has rightly commented on this curious feature of the case.

5. When the Sub-Inspector went to the village on the 8th January, Bhaggi Singh did not name Dip Singh at all, but said that; 'a man of 45 years of age with black and white moustaches had brought the flour to him.' As pointed out by the Judge, Dip Singh does not at all answer to this description. He is about 23 or 24 years of age and has not white hairs. The explanation of this discrepancy, as given by Bhaggi, was that he was not in his proper senses. The Judge has declined to believe this. He thinks that the motive for a wrong statement was fear. It is highly improbable that some fear existed even after the police had arrived.

6. In face of all these difficulties the learned Judge has discarded the oral evidence. The notice found posted outside Bhaggi's house, which never came to the knowledge of Bhaggi, was inadmissible in evidence against the accused. In fact having regard to the incorrect facts it contained, it was probably a fabrication by some mischievous person.

7. There remains the confession of the accused. The fact that the accused adhered to it in the Magistrate's Court is certainly a matter of importance, and has influenced the Judge considerably. But the following facts have to be considered in connexion with it.

8. Dip Singh was a previous convict, and as such a person on whom the suspicion of the police was likely to fall from the very start. The learned Judge has erred in law in referring to 'the confession to the police.' The confession before the Magistrate was not made till the 19th January, i.e. some 9 days after. The confession, as it reads, throws the major part of the blame on Bhola, and makes

the accused take a minor, almost a passive part. Bhola is said to have 'mixed something of green colour' before telling the accused what it was. At that time he had no idea of any intended raid during the coming night. He was called out after nightfall by Bhola who asked him to accompany him.' Then at the last moment when Bhola wanted to use the knife on Bhaggi's neck, the confession says that Dip Singh, accused, 'stopped him and caught hold of his hand. '

9. The learned Judge has himself pointed out that although the confession speaks of a knife (chaqu, being used), the medical evidence shows that 'the injuries were probably caused by a blunt weapon.' The learned Judge thinks that the injuries were caused by a blunt implement of some sort, whether of wood or metal. He has tried to explain away the discrepancy in the confession by a reference to Dip Singh's confession to the police where he is stated not to have clearly mentioned a knife. The so-called confession to the police was totally inadmissible in evidence, and the learned Judge has erred in referring to it in order to explain away a discrepancy which favoured the accused.

10. As to the question whether the confession before the Magistrate had been voluntarily made the learned Judge has observed: 'It may be that some pressure was brought to bear upon him to make him confess.' But he goes on to remark that this fact, if true, might only weaken the value of the confession. This is not always so. If the pressure exercised by a police officer is sufficient to give the accused grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature, the confession would not only be weak in value, but wholly irrelevant under Section 2,4 of the Indian Evidence Act.

11. The learned Judge has relied on two circumstances as constituting material corroboration of the confession. The first is that an eight anna stamp was, on search, found in the house of Ganesh. But this was an undoubted fact, and it was fully known to Bhaggi that Ganesh had bought such a stamp which had not been used. Without mentioning this incident Ganesh could not have been dragged in. The second is that the accused mentioned the mixing of something green long before the report of the Chemical Examiner was received. But the fact that

Bhaggi's children had been poisoned was a well-known fact in the village, and therefore, the subsequent chemical examination was hardly any material corroboration of the statement.

12. The motive for the raid was obviously not robbery, but revenge. Ganesh is said to have been displeased with Bhaggi because although he had previously promised to lend Rs. 125, he advanced no more than Rs. 25. But no direct connexion between Ganesh and the accused is established.

13. The learned Judge has not considered Dip Singh's confession as sufficient evidence against his co-accused. All the assessors disbelieved the confession entirely.

14. I find it difficult to uphold the conviction. Accordingly, I allow the appeal, and setting aside the conviction and the sentence, acquit the accused and order that he be released forthwith so far as this case is concerned.

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