

Arjun Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-09-1998

Reported in : 1998CriLJ3956

Judge : Rajeev Gupta and ;R.P. Gupta, JJ.

Acts : Evidence Act - Sections 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 1237 of 1988

Appellant : Arjun Singh

Respondent : State of Madhya Pradesh

Advocate for Def. : R.A. Robertson, Adv.

Advocate for Pet/Ap. : Neena Khare, Adv.

Disposition : Appeal allowed

Judgement :

Rajeev Gupta, J.

1. Appellant Arjun Singh has preferred this appeal against his conviction under Section 302 of the Indian Penal Code (for short the IPC) and sentence of imprisonment for life, recorded by Illrd Additional Sessions Judge, Durg vide Judgment dated 8-9-88, passed in Sessions Trial No. 37/87.

2. The factual matrix of the case, in a narrow Compass, is that though Dhaniram (since deceased) and the four accused persons, including appellant Arjun Singh, were the members of one and the same gang of thieves, but there were some differences between them on account of the competitive feelings and distribution of the stolen property. At about 10.00 p.m. in the fateful night of 13-4-86, when Dhaniram was coming back to his house, the accused persons surrounded him near the 'Paan-Shop' of Mithu and belaboured him by means of 'ballam' and lathis. Dhaniram, with a view to save himself, tried to run away, but he was followed by the accused persons, who belaboured him again. Injured Dhaniram somehow reached his house and disclosed about the incident to his wife Vimla Bai. Dhaniram himself lodged the First Information Report at 3.30 a.m. on 13-4-86 (sic), at P.S. Chawni District Durg giving rise to the registration of a case at Crime No. 373/86. Injured Dhaniram was sent to District Hospital, Durg for his treatment; On 13-4-86 (sic) itself, his dying declaration was recorded by R.K. Sharma, Naib Tehsildar, Durg. Dhaniram succumbed to his injuries on 20-4-86. After observing the necessary formalities of preparing inquest memo etc., his body was sent for post-mortem examination. The Autopsy Surgeon found two stitched wounds and two incised wounds on his body, as detailed in postmortem report Ex. P/5 and in his opinion, the cause of his death were the injuries on his head region. During the course of investigation, all the four accused persons were arrested and in pursuance of the information given by them under Section 27 of the Evidence Act, one ballam from Arjun Singh and one lathi each, from the remaining three accused persons were seized. Though these articles were sent for chemical examination, but presence of blood on none of these articles was confirmed. After completing the investigation, Police Chawni charge-sheeted accused persons Arjun Singh, Mithu @ Mathew, Nandlal and Ashok Agrawal for the commission of the offence under Section 302 of the I.P.C.

3. All the accused persons abjured their guilt and pleaded false implication to the charges, framed by the trial Court, under Section 302 of the I.P.C.

4. In its endeavour to establish the charge of murder against the accused persons, the prosecution banked on the evidence of 14 witnesses, examined at the trial. The accused persons chose not to examine any witness in their defence. On the

ocular and medical evidence on record, the trial Court found it proved that deceased Dhaniram had sustained multiple external injuries, on 13-4-86 and had died a homicidal death on 20-4-86. Though there was no eye-witness account available in the case, for connecting the accused persons with the commission of murder of Dhaniram, but relying upon the three dying declarations of deceased Dhaniram, the trial Court found accused Arjun Singh guilty of commission of his murder and, therefore, convicted and sentenced him as mentioned above. The evidence led by the prosecution, against the three remaining accused persons, Mithu @ Mathew, Nandlal and Ashok Agrawal, was not found sufficient for establishing the charge of murder against them and, therefore, they were acquitted of the above charge.

5. Ku. Neena Khera, the learned counsel for the appellant, contended that the trial Court has erred in recording the appellant's conviction on the evidence of dying declarations alone, as the three dying declarations are not consistent and they do not pin down the identity of the assailant of deceased Dhaniram as that of appellant Arjun Singh. Shri R.A. Robertson, the learned Panel Lawyer, on the other hand, vehemently argued that the three dying declarations are consistent so far as appellant Arjun Singh is concerned and, therefore, the findings, recorded by the trial Court, holding him guilty do not suffer from any infirmity whatsoever.

6. Deceased Dhaniram sustained multiple external injuries in the night of 13-4-86 and had died a homicidal death resulting from those injuries on 20-4-86, remained unchallenged at the trial and so also before us in this appeal. That apart, the ocular and medical evidence on/record established the above facts beyond any shadow of doubt and, therefore, the finding, recorded by the trial Court, in that behalf is hereby affirmed.

7. Admittedly, there is no eye-witness account, available in the case, for connecting appellant Arjun Singh with the commission of murder of deceased-Dhaniram. A thorough analysis of the trial Court's Judgment reveals that the appellant's conviction is mainly founded on the three dying declarations of deceased-Dhaniram. Of these, the first is the oral one made by him to his wife Vimla Bai (PW/1). The remaining two are the recorded ones, one being in the form

of his First Information Report - Ex. P/21 and the other recorded by Shri R.K. Sharma, Naib Tehsildar, Durg-Ex. P/24. In the context of the submissions of the learned counsel for the appellant, now it is to be seen how far these three dying declarations establish the identity of appellant Arjun Singh Yadav, as the assailant of deceased-Dhaniram.

8. In his First Information Report - Ex. P/21, deceased-Dhaniram had described his assailant as 'Arjun Naam Ka Bihari Ladka'. Though in all four accused persons were sent up for trial, but in this First Information Report - Ex. P/21, the entire, incident of assault on him was described by deceased-Dhaniram, as the solo performance of one and only one assailant.

9. In his dying declaration - Ex. P/24, deceased-Dhaniram disclosed about the presence of 4-5 persons at the 'Paan-Shop' of Mithu, but the active participation in the assault on him was confined to two persons, namely; 'Arjun' and 'Mithu'. He further made it clear that the relations of Arjun and Mithu with him were neither inimical nor friendly.

10. In his oral dying declaration to his wife Vimla Bai, as deposed by her in para 1 of her deposition in the Court, deceased-Dhaniram disclosed about participation of 8-9 accused persons in the assault on him, out of which 2 persons were specifically named by him, as 'Arjun Yadav' and 'AshokMarvadi'. Both these accused persons were alleged to have assaulted him by means of 'ballam'.

11. Thus, in his three dying declarations deceased-Dhaniram has described the name/names and number of his assailant/assailants differently. In his First Information Report, he come out with the name of one 'Arjun Naam Ka Bihari Ladka' as his sole assailant, whereas in his dying declaration - Ex. P/24, recorded by Naib Tehsildar, his version was that he was assaulted by 4-5 persons, including 'Arjun' and 'Mithu', who were neither inimical nor friendly with him. Yet another version of the incident is to be found in his oral dying declaration, made to his wife Vimla Bai PW/1, wherein participation of as many as 8-9 persons, in the assault on him, was alleged by deceased-Dhaniram and two of them were specifically named as 'Arjun Yadav' and 'Ashok Marvadi'. The trial Court, disbelieving the recorded dying declaration - Ex. P/24 so far as it related to co-accused Mithu @ Mathew,

recorded his acquittal. Similarly, the oral dying declaration by the deceased to Vimla Bai PW/1, so far as it related to co-accused Ashok too was disbelieved and this accused Ashok was also acquitted.

12. True, first name of the appellant i.e.. 'Arjun' is common in the oral dying declaration of the deceased, in his First Information Report - Ex. P/21 and his recorded dying declaration. - Ex. P/24, but the further description, qualifying the name 'Arjun' is different in the First Information Report - Ex. P/21 and his oral dying declaration to his wife Vimla Bai PW/1. In his First Information Report, his assailant has been further described by the deceased as 'Bihari Ladka', whereas in his oral dying declaration to his wife Vimla Bai, his assailant was further qualified as 'Yadav'. The appellant before us is 'Arjun Singh Yadav'. There is no material to even suggest that the appellant either hails from Bihar, or is known as 'Bihari Ladka' in the locality. Though his full description is to be found in the oral dying declaration of deceased-Dhaniram, as deposed by his wife Vimla Bai, but in his First Information Report - Ex. P/21 and the recorded dying declaration-Ex. P/24, this further qualification of his assailant as 'Yadav' is missing. This omission of further description as 'Yadav' of his assailant Arjun, assumes importance in view of the fact that there were other persons with the name 'Arjun' in the locality. One such person was examined by the prosecution as Arjun Nair PW/2, as a panch witness to the inquest memo Ex. P/I. From his cross-examination, we gather that he was well known to deceased-Dhaniram and used to visit him frequently.

13. As the 'ballam' (spear), said to have seized in pursuance of the information given by appellant Arjun Singh under Section 27 of the Evidence Act, on Chemical Examination, vide Chemical Examiner's Report dated 14-8-1986. was not found stained with blood, the entire prosecution case against the appellant rests on the evidence of the three dying declarations of deceased-Dhaniram. There is no other corroborative evidence against the appellant. The abovementioned discrepancies in the three dying declarations, in the description of the assailant of the deceased, create sufficient amount of doubt, about the identity of the assailant of deceased Dhaniram. We find it quite unsafe to hold on the evidence of the three dying declarations alone, with certainty that it was the appellant and appellant Arjun Singh Yadav alone, who had caused injuries on deceased-Dhaniram, leading to

his death. True, the three dying declarations, taken together, do raise strong 'suspicion' against the appellant, but even then his conviction on the capital charge of 'murder' cannot safely be upheld, as 'suspicion', howsoever strong, cannot take place of 'proof. Appellant Arjun Singh Yadav, at any rate, is entitled to benefit of doubt.

14. For the foregoing reasons, the appeal, filed by appellant Arjun Singh, deserves to be allowed and is hereby allowed. His conviction under Section 302 of the Indian Penal Code and sentence of imprisonment for life are hereby set aside. His is acquitted of the charge under Section 302 of the Indian Penal Code.

15. Appellant Arjun Singh, who is in custody, be set at liberty forthwith, if not wanted in connection with any other case.

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