

Rasheed Beg and Others

Vs

State of Madhya Pradesh

Criminal Appeal No. 118 of 1970

(S. N. Dwivedi, Y. V. Chandrachud JJ)

20.11.1973

JUDGMENT

DWIVEDI, J. -

1. The appellants along with six more were tried by the Additional Sessions Judge Shahjahanpur, for various offences including the offences under Section 302 read with Section 149 I.P.C. He convicted nine persons and acquitted one of them, Noorbeg. Majeedbeg was sentenced to death, and the rest of life imprisonment for the offence under Section 302 read with Section 149 I.P.C. they were also awarded different sentences for other offences.

2. All the nine persons appealed to the High Court from the judgment of the Sessions Judge. The High Court affirmed four of them and maintain the conviction of the remaining five. The sentences of death awarded to Majeedbeg, appellant, was however, converted into imprisonment for life. The sentences of the remaining four appellants, namely, Azizbeg, Waheedbeg, Majeedbeg and Rasheed Beg and were affirmed. They have now filed the appeal from the judgment of the High Court. They were jointly tried in two sessions trials numbers 104 and 105 of 1969 for the murder of two persons Chitubeg and Arifbeg. Briefly states. Prosecution case was this : Azizbeg, the appellant, used to tease Saheb Noor, a daughter of Chitubeg. So there was bad blood between Chitubeg and Noorbeg, father of Azizbeg. On July 16, 1969 Chitubeg had invited the wife of Noorbeg to his house for tea and there had given her a beating. A report was lodged of the incident in the police station. On the same day, at about 3 or 4 p.m., Chitubeg with his son Arifbeg was going towards his field. When they reached near Munirbeg's field, Majeedbeg, appellant, fired a gun shot. The shot hit Chitubeg. Azizbeg appellant, fired another gun shot. The shot hit Arifbeg on his left thigh. Both Chitubeg and Arifbeg fell down on the ground. Thereafter Azizbeg, Rasheedbeg and Majeedbeg inflicted lathi and farshi injuries on them. Chitubeg died on the spot. The shrieks of Arifbeg were heard by his uncle Sardarbeg, who was working in a nearby field. He rushed to the spot. Rasheedbeg, aimed his gun at him. Sardarbeg raised an alarm, and the accused fled away. It is said that the rest of the five accused were armed with guns, farshis and axes. Arifbeg succumbed to his injuries on August 24, 1969.

3. All the accused pleaded not guilty. They further, said that they have been falsely implicated due to enmity.

4. The only direct evidence is that of Sardarbeg, uncle of Arifbeg. As regards the Murder of Arifbeg there is an additional evidence. It consists of four dying declarations of Arifbeg. Two of them are oral, and the remaining two in writing. The oral dying declarations were made to Majeed Khan and Sardarbeg. The written dying declarations were made to L. N. Dubey, Investigating Officer, and Dr. S. P. Jain in the Sujalpur hospital. The dying declarations recorded by the Investigating Officer is

Ex.P. 10 and the one recorded by Dr. S. P. Jain is Ex.P-5. Ex.P-10 was recorded earlier in time than Ex.P-5.

5. The Sessions Judge does not appear to have relied on the oral dying declarations said to have made to Majeed Khan, the brother-in-law of the deceased Chitubeg. He has relied on the oral evidence of Sardarbeg, the oral dying declaration made to him and the two written dying declarations of Arifbeg. So he held all the accused except Noorbeg guilty of the murder of Chitubeg and Arifbeg.

6. The High Court has disbelieved Sardarbeg for various reasons. The High Court has said : "Therefore about the actual incident the statement of Sardarbeg should be omitted altogether". In the Result, there was no legal evidence of the guilt of the nine persons convicted by the Sessions Judge for the murder of Chitubeg. The High Court said : "The conclusion therefore is that so far as the murder of Chitubeg is concerned, after discarding of Sardarbeg's evidence there is evidence about the actual killing of Chitubeg". Accordingly, the High Court acquitted all the nine persons of the murder of chitubeg.

7. The High Court then proceeded to discuss the evidence in regard to the murder of Arifbeg. The oral evidence of Sardarbeg has already been discarded. So there remained only three dying declarations, one oral made to Sardarbeg, and two written made to the Investigations, Officer and Dr. S. P. Jain. The High Court says : "In this case there have been dying declarations and in fact the prosecution case depends only on dying declarations". As it has disbelieved the oral evidence of Sardarbeg, Naturally it has been discarded the dying declaration said to have been made to him by Arifbeg. The High Court said, "The dying declaration as stated by him should be discarded as we do not believe him".

8. After the two oral declarations have been discarded, there survived only the two written dying declarations. One made to the Investigating Officer and the other to Dr. S. P. Jain.

9. As regards the latter dying declaration, the High Court has remarked that it is not noted in the case diary of the Investigating Officer. It saw the light of the day some time after September 26, 1969. The High Court observed that Arifbeg's condition was not very good when the Investigating Officer recorded the Dying declaration. It appears that his condition was serious. So the Tahsildar-Magistrate was called to record his dying declaration. The Tahsildar, however, returned without recording it as according to him the condition of Arifbeg was very serious and he was losing consciously every moment. Dr. S. P. Jain, however, recorded his dying declaration a little after the Tahsildar has gone back. The High Court has also noted another disconcerting circumstances. Majeed Khan brother-in-law of Chitubeg was all along with Arifbeg. Majeed Khan himself bore enmity with the appellants. He had accompanied Arifbeg from the place of incident to the hospital. He was present when the dying declarations were recorded. Arifbeg was 12 years of age. It is true that Majeed Khan has denied that he had tutored Arifbeg to name the appellants. But his denial should not inspire confidence because Arifbeg, undoubtedly incriminated two more persons as assailants in the dying declaration made to Dr., S. P. Jain, while in the dying declaration made to the Investing Officer he has named five persons, Majeedbeg, Azizbeg, Rasheedbeg, Waheedbeg and Majeedbeg, in his dying declaration to Dr. S. P. Jain he has implicated Azizbeg, Waheedbeg, Basheerbeg, Majeedbeg, Noorbeg and Rasheedbeg. In the latter dying declarations he has thus implicated two more persons Basheerbeg and Noorbeg. Legally a dying declaration which should inspire confidence may be sufficient to hold guilty the persons accused therein. But in view of the circumstances already indicated, we think that it is a case where the two dying declarations should

not be believed without some corroborative evidence. The Sessions Judge could safely rely on them because he had already believed the oral evidence of Sardarbeg. The High Court has rightly discarded the oral evidence of Sardarbeg. In the result, there is no credible evidence to corroborate the dying declarations. It seems to us that the High Court also felt some difficulty in convicting the appellants for want of credible evidence to corroborate the dying declarations. The High Court said :

whatever the condition of Arifbeg may be - whether there was some improvement or not - the condition when the sub-Inspector took the declaration was not very good as also the condition when the doctor himself recorded the same. It may be that he gained consciousness. We feel that it will be safe to accept the names of the accused persons common in the dying declarations made to these two persons Sub-Inspector and Medical Officer to hold that they took part in the assault on Arifbeg.

The word "feel" has an air of uncertainty. We are reluctant to approve of this mechanical test of the greatest common measure in the two dying declarations to fasten guilt on the appellants for there are certain suspicious circumstances which should require dependable evidence in corroboration of the dying declarations. As there is no such corroborative evidence in support of two dying declarations, we think that it will not be safe to maintain the conviction of the appellants. Accordingly the appeal is allowed and the order of the High Court convicting the appellants is set aside. They shall be released forthwith if not required in any other case.

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