

State of U.P.

Vs

Shishupal Singh

Criminal Appeal No. 712 of 1980

(S. R. Pandian, M. Fathima Beevi JJ)

22.01.1992

JUDGMENT

1. The State of U. P. feeling aggrieved by the judgment of the High Court of Allahabad rendered in Criminal Appeal No. 1244 of 1975 allowing the appeal by setting aside the judgment of the trial Court convicting the respondent-accused under S. 302. I.P.C. and sentencing him to imprisonment for life.
2. Before the trial Court, this respondent and four others (since acquitted) took their trial on the allegation that on 6th March, 1973 at about 12 noon within the premises of BN Hostel, Agra College, all of them formed themselves into an unlawful assembly each armed with a deadly weapon and that the respondent herein caused the death of the deceased by name Bhagwan Das Sharma by shooting him with a country-made pistol.
3. It is a very unfortunate and pathetic incident in which the life of a student had been done away with by another group of students on an unpleasant incident of eve-teasing of a girl student of the college. It is still more painful that none of the students has come forward to speak about the truth of the incident before the Court despite the fact that four witnesses have been examined who were all college students. It is also very unhappy to note that even Ms. Asha Yadav, the girl student of the college who was the target of eve-teasing also has not supported the prosecution version. The only piece of evidence on the basis of which the prosecution had attempted to establish its case is the alleged dying declaration given by the deceased before PW 3, a Judicial Magistrate in the presence of the Medical Officer. The trial Court convicted the respondent only on the basis of the dying declaration but the High Court for the reasons assigned in its judgment was not inclined to place reliance on the dying declaration and consequently acquitted the respondent disbelieving the dying declaration on entertaining a suspicion with regard to the identity of the respondent as the assailant.
4. We bestowed our anxious consideration and pondered over this matter after hearing the elaborate arguments advanced by both the learned Counsel with reference to the documents relied upon by the prosecution.
5. Needless to say that the law is well settled by the judicial pronouncements of this Court as well as by various High Courts that a conviction can be safely placed on a dying declaration provided the said dying declaration is free from vice of infirmities and if that dying declaration commands acceptance at the hands of the Court. Therefore, let us now examine the dying declaration Ex. P. ka 3 and see whether this dying declaration can be acted upon without any demur. PW 3, the Judicial Magistrate has testified that he went to the hospital on being summoned and recorded the dying declaration in the presence of the Medical Officer.

6. Now let us examine the various attending circumstances that prevailed upon before and at the time of recording the dying declaration. PW 2 who is the brother of the deceased after hearing this incident came to the hospital and met the injured in the emergency ward. According to him, he got the information from the injured person that the injured was shot at by the respondent. According to PW 3 he thereafter went to the police station and laid the information that he got from his injured brother. Ex. Ka 5 is shown to have been recorded by 1.25 p.m. But admittedly the dying declaration was recorded from the deceased long after 1.25 p.m. i.e. after the registration of the case. In other words even before the dying declaration was recorded, the deceased was contacted by his brother PW 2 with whom he had a discussion about this case.

7. The evidence clearly spells out that the deceased before giving his declaration was practically in the midst of his friends and admirers right from the time of the incident till all of them were asked to clear the emergency ward evidently for the purpose of recording the dying declaration. This also indicates that before recording the dying declaration the deceased had been discussing about this incident not only with his brother (PW 2) but also with his friends and admirers.

8. We have carefully gone through the first information report Ex. Ka 4 as well as the evidence of PW 2 very carefully. From the manner in which PW 2 has given his evidence it appears that PW 2 was having uppermost in his mind the name of the respondent as having taken the major part in the earlier incident of chasing the deceased to the office and thereafter at the hostel - evidently for the reasons that the name of this respondent was mentioned by the peon and the carpenter (both not examined) who are said to have informed the earlier and latter part of the incident respectively to PW 2. It is not known whether the peon or the carpenter was an eye-witness to any part of the occurrence, had the carpenter been an eye-witness to the occurrence in the hostel incident, he would be the most important and independent witness in this case. But the prosecution for the reasons best known to itself, has not chosen to examine the carpenter in this case before the Court.

9. Coming to the vital document namely the dying declaration it does not contain the signature of the deponent namely the deceased. The prosecution has not come forward with any explanation that the deceased was not in a position to put his signature. Added to that neither the time of recording of the statement nor the date is mentioned in the dying declaration.

10. In our opinion the dying declaration is impregnated with a number of suspicious circumstances which create a doubt in the mind of the Court about the genuineness of this document.

11. For all the reasons stated above, we hold that this dying declaration can hardly be sufficient as an unimpeachable document for safely basing the conviction of the respondent.

12. In the result, we see no infirmity or perversity in the judgment impugned before us and consequently we affirm the judgment of the High Court and dismiss the appeal as devoid of any merit. Appeal dismissed.

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