

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 867 OF 2008

DEVANAND

APPELLANT(S)

VERSUS

STATE OF M.P.

RESPONDENT(S)

O R D E R

The present Appeal is directed against the judgment of conviction and order of sentence passed by the High Court of Madhya Pradesh at Jabalpur, Bench at Gwalior in Criminal Appeal No. 180 of 1997 wherein the Division Bench, in exercise of the appellate jurisdiction, has partly set aside the judgment of acquittal recorded by the 4th Additional Sessions Judge, Gwalior in Sessions Case No. 228 of 1992 instituted under Section 302/34 of the Indian Penal Code (for short 'IPC') wherein the learned trial Judge had acquitted both the accused persons, namely, Devanand (appellant herein) and Ashok.

2. The facts which are essential to be stated are that on 22.06.1992 about 8.30 A.M. the deceased Chunnilal, father of Jagdish, while proceedings to

his work place, was assaulted by the accused persons at Gandewali Sadak near Jain Temple. The said assault was witnessed by a young girl who informed Laxmi Bai, wife of Jagdish. On being informed, Laxmi Bai rushed to the spot and, on a query being made by her, Chunnilal stated that he was assaulted by Devanand and Ashok. On the basis of the aforesaid statement made by Chunnilal, Laxmi Bai lodged an FIR on the basis of which criminal law was set in motion and eventually the accused persons were apprehended. The prosecution examined number of witnesses and laid the chargesheet before the competent court which, in turn, committed the matter to the court of session.

3. The accused persons pleaded false implication due to animosity.

4. In order to bring home the charge against the accused persons, the prosecution examined 11 witnesses, including the informant and the doctor who conducted the post mortem. Singular star witness was Laxmi Bai (PW-1). The learned trial Judge, analyzing the evidence in detail, did not think it appropriate to place reliance on the

testimony of the said witness as there were irreconcilable discrepancies in the FIR lodged by her and in her deposition in Court.

5. On an appeal being filed, the High Court though took note of the discrepancies, yet opined that the conviction could be based on the oral dying declaration of the deceased Chunnilal.

6. As a proposition of law, there can be no cavil over the issue that a conviction can be based on the oral dying declaration, if it is absolutely reliable.

7. On a scrutiny of the evidence on record, it is discernible that Laxmi Bai, who was examined as PW-1, had lodged the FIR stating that Devanand, as told by Chunnilal to her, had given blows with knife and Ashok had given blows with the hockey stick. She had also mentioned in the FIR that she had been informed by a young girl about the assault made on Chunnilal at Gandewali Sadak. In her examination-in-chief, she had deposed in unequivocal manner that she had seen the assault herself. It is her testimony that both Devanand and Ashok had inflicted blows with the knife. That

apart, in the FIR, it was mentioned that as Chunnilal was bleeding, he was taken to the hospital on a scooter. In the evidence in Court, she has deposed that Chunnilal died on the spot. Certain portions of discrepancies in her deposition and FIR could have been ignored, but we find that the High Court has based the conviction exclusively by placing reliance on the oral dying declaration. From the evidence adduced in the Court, we find that there is no statement by PW-1 with regard to the oral dying declaration. In fact, PW-1 has taken a summersault and tried to project herself as an eye witness. In such a situation, we are constrained to think that the High Court could not have thought of accepting the oral dying declaration when in actuality there was none. There was no justification to overturn the judgment of acquittal and record a conviction.

8. Consequently, the judgment rendered by the High Court overturning the judgment of acquittal of that of the trial court is set aside and the judgment of acquittal recorded by the learned trial Judge stands restored.

9. The appeal is, accordingly, allowed. As the appellant is on bail, he be discharged of his bail bonds.

.....J.
(DIPAK MISRA)

NEW DELHI;
OCTOBER 30, 2014

.....J.
(UDAY UMESH LALIT)

ITEM NO.113

COURT NO.5

SECTION IIA

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

Criminal Appeal No(s). 867/2008

DEVANAND

Appellant(s)

VERSUS

STATE OF M.P.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 30/10/2014 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)

Mr. Anil Shrivastav,Adv.

For Respondent(s)

Ms. Musharraf Chawdhry, Adv.
Ms. Ayesha Chawdhry, Adv. for
Mr. C. D. Singh,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Appeal is allowed in terms of the signed order.

As the appellant is on bail, he be
discharged of his bail bonds.

(RAJESH DHAM)
COURT MASTER

(RENUKA SADANA)
COURT MASTER

(signed order is placed on the file)