



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Criminal Appeal No. 492/1989

Jeet Singh And Ors.

----Appellant

Versus

State

----Respondent

For Appellant(s) : Mr. Udit Mathur (Amicus Curiae)
For Respondent(s) : Mr. B.R. Bishnoi, PP

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Judgment

Reportable

Reserved on 11/07/2024

Pronounced on 25/07/2024

Per Dr. Pushpendra Singh Bhati, J:

1. This criminal appeal under Section 374 Cr.PC. has been preferred claiming the following relief:

"It is, therefore, humbly prayed that your Lordships may graciously be pleased to accept the present appeal and set aside the conviction and sentences passed by the impugned judgment of the learned Sessions Judge, Ganganagar dated 15-12-89 in Sessions Case No.2/86 (State Vs. Jit singh and others) and acquit the appellants."

2. The matter pertains to an incident occurred in the year 1985 and the present appeal is pending since the year 1989.

3. The accused-appellants laid a challenge to the judgment of conviction and order of sentence dated 15.12.1989 passed by the learned Session Judge, Sri Ganganagar, in Sessions Case No.02/1986 (State of Rajasthan Vs. Jeet Singh & Ors.), whereby



the accused-appellants have been convicted and sentenced as below:

Offence under Section	Sentence
302/34 IPC	Life Imprisonment (each of the accused-appellants)
447 IPC	One Month S.I. (each of the accused-appellants)

4. At the outset, it has been brought to notice of this Court that accused-appellant No.2-Karnail Singh and accused-appellant No.3-Dalip Singh since already expired, therefore, the instant appeal qua them already stood abated, as reflected in the orders dated 04.11.2022 and 21.02.2022, respectively. Thus, now the present appeal survived only against accused-appellant No.1- Jeet Singh, and the arguments were heard only to the extent of the said surviving accused-appellant, and the adjudication in the instant appeal is being made accordingly.

5. Brief facts of the case, as placed before this Court by learned counsel for accused-appellant, are that as per dying declaration of Kalwant Singh (deceased), on 12.09.1985 at around 7:15 a.m., he had gone to get vegetables from his farm. While, he was plucking rice pods for vegetables from his farm, at around 7:15 a.m., Dalip Singh s/o Gopal Singh, Karnail Singh s/o Jeet Singh, and Jeet Singh s/o Sadhu Singh entered the deceased's farm armed with lathis. Then Karnail Singh dragged the deceased to another field, while putting scarf around the deceased's neck, and started beating him with lathi; accused-Karnail Singh hit the deceased with lathi and his legs. The reason for such joint assault, was that the deceased misled the relatives of accused-Dalip Singh, which



resulted into a dispute between Dalip Singh and his relatives. Thereafter, Naseeb Kaur (PW.3) wife of deceased came there and started shouting, whereupon all the three accused ran away, and the deceased son- Gurjant Singh (PW.1) and his brother- Jogendra Singh (PW.2) also reached at the place of incident, and took the deceased to a hospital.

6. Thereafter, on 12.09.1985, the deceased gave a dying declaration (Ex.P/6) before Baldev Singh (PW.6)-Assistant Sub Inspector of Police Station, Chunawat wherein he stated the whole story at Government Hospital, Sri Ganganagar. On the basis of the aforementioned information, an FIR was registered for the offences under Sections 343, 365, 323 & 447 IPC and the investigation accordingly commenced.

7. Subsequently, on 16.09.1985 another dying declaration was recorded in the presence of Magistrate Shri Krishna Joshi (DW.1) which is the Ex.D/10 wherein deceased-Kalwant Singh stated that the entire incident had happened at the instance of Mohan Das, Narayan Das and Har Govind but they had not been prosecuted. Subsequently, the deceased-Kalwant Singh was transferred to Civil Hospital, Ludhiana, and during the investigation, on 22.09.1985 Kalwant Singh died under treatment; the death was opined to have been caused due to the injuries inflicted by the accused-appellants.

8. The learned Trial Court framed the charges against the accused-appellants and trial accordingly commenced wherein the accused were prosecuted under Sections 364, 302/34 and 447 IPC.



9. During the course of trial, the evidence of 12 prosecution witnesses were recorded and 43-A documents were exhibited on behalf of the prosecution and the evidence of 1 defence witness was recorded and 12 documents were exhibited on behalf of the accused; whereafter, the accused-appellants were examined, in which the accused-appellants pleaded innocence and their false implication in the criminal case in question.

10. Thereafter, upon hearing the contentions of both the parties as well as considering the material and evidence placed on record, the learned Trial Court, convicted and sentenced the accused-appellants under Section 302/34 and 447 IPC, while acquitting them under Section 364 IPC, as above, vide the impugned judgment of conviction and order of sentence dated 15.12.1989.

11. Learned counsel for the accused-appellants submitted that there are two dying declarations; one (Ex.P/6) was recorded before the police and the other (Ex.D/10) before the Magistrate. As per learned counsel, in both dying declarations different persons were named as accused, which shows that there was a clear contradiction between the contents of both the dying declarations. It was further submitted that the dying declarations were not trustworthy because of their high degree of contradictions, and further on count of the deceased being not in a fit state of mind, at the relevant time.

11.1. It was also submitted that at the time of recording of the dying declaration by the police, no certificate was taken from the doctor, but as regards the later dying declaration recorded before the Magistrate, the certificate of the doctor was obtained. It was



further submitted that the persons named as accused in the dying declaration recorded before the Magistrate, were not made accused, and no investigation was conducted against them, and therefore, the impugned judgment is not justified in law.

11.2. It was also submitted that all the three witnesses to the incident, namely, PW.1, PW.2 & PW.3 were the interested witnesses, and therefore, their testimonies could not have been relied upon so as to pass the impugned judgment. It was further submitted that the independent persons, namely, Ajmer Singh, Maniram, and Bagga who were the persons to inform the PW.1, at the first instance, about the incident in question, were not produced and examined as prosecution witness.

11.3. It was also submitted that apart from the above, a clear contradiction was there in the deposition made by PW.3 to the effect that on one side, she stated to have seen the accused persons beating the deceased with lathi, while on the other hand, as per her deposition, when she reached the place of incident, the mouth of the deceased was filled with sand and the same was taken out by her son and son-in-law, whereafter she asked the deceased as to who had beaten him up, and therefore, the deposition given by PW-3 was not a reliable piece of evidence so as to justify the conviction in question. It was further submitted that the prosecution failed to prove the malice and motive on part of the accused for committing the crime in question.

11.4. It was also submitted that the total custody of the surviving accused-appellant is 5 months and 12 days and presently he is on bail as the sentence awarded to him was suspended by this



Hon'ble Court on 09.02.1990; the surviving accused-appellant is about 71 years old, at present.

11.5. In support of such submissions, learned counsel relied upon the following judgments:-

(a) *Makhan Singh Vs State of Haryana* 2022 SCC OnLine SC 1019;

(b) *Abhishek Sharma Vs. State (Govt. Of NCT of Delhi)* 2023 SCC OnLine 1358;

(c) *Kamla Vs. State of Punjab* (1993) 1 SCC 1;

(d) *Ratan & Ors. Vs State of Rajasthan* (D.B. Criminal Appeal No. 1190 of 2005, decided on 09.01.2015 by a Coordinate Bench of this Hon'ble Court).

12. On the other hand, the learned Public Prosecutor, opposed the aforesaid submissions made on behalf of the appellant, while submitting that the accused-appellant caused the death of the deceased, and the same had been clearly supported by the statements rendered by the eye witnesses in the present case.

12.1. It was further submitted that the accused-appellant caused a total of 9 injuries on vital parts of the deceased's body, and his death was caused due to such injuries, and therefore it is clear that the accused-appellant was having a clear intention to cause murder of the deceased.

12.2. It was also submitted that the dying declaration (Ex.P/6) recorded before the police was completely reliable as the same had been corroborated by the depositions of eye witnesses, medical evidence, recovery of weapon etc., and they all had supported the prosecution story by the learned Trial Court. It was further submitted that the accused have come with common



intention because they were carrying the *lathi* with a clear mind to commit murder of the deceased.

13. Heard learned counsel for the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

14. This Court observes that the deceased's dying declaration (Ex.P/6) was recorded before the police basing on which the FIR was registered and the subsequent dying declaration (Ex.D/10) was recorded before the Magistrate. The deceased died while under treatment and the trial was conducted for the offences under Sections 364, 302/34 and 447 IPC, culminating into passing of the impugned judgment.

15. This Court further observes that in the present case, there were two dying declarations; First dying declaration (Ex.P/6) was recorded by Baldev Singh (PW.6)-Assistant Sub Inspector of Police Station, Chunawat on 12.09.1985, wherein the deceased stated that he was getting the grains of rice for vegetable from his farm, at that time, the accused came with lathi and dragged him to another field and started beating him with lathi, whereafter, accused-Karnail Singh put a scarf around the deceased's neck and dragged him to another field, where he was subjected to beatings.

The relevant portion of Ex.P/6 is reproduced as hereunder:-

". . . . आज सुबह करीब 7 बजे मैं अपने खेत से सब्जी लाने गया था मैं अपने खेत से सब्जी के लिए चावलों की फलीयां तोड़ रहा था वहां पर करीब 7 1/4 बजे सुबह दलीपसिंह पुत्र गोपालसिंह जाति करीगर सिख करनेलसिंह पुत्र जीतसिंह जट सिख जीतसिंह पुत्र साधूसिंह सकनाये डूंगर सिंह पुरा आये । जिनके पास लाठीयां थी आते ही दलीप सिंह ने कहा कि तूने हमारे रिश्तेदारों को बहका कर झगड़ा क्यों करवाया था । मैंने कहा कि हमने कुछ नहीं सिखलाया था । तब करनेलसिंह ने गला से मेरे कमीज पकड़ लिया और दलीपसिंह ने सजा हाथ पकड़ कर मरोड़ दिया । जीतसिंह ने लाठी मेरे मगरों



में मारी और मुझे जबरदस्ती अपने खेत की तरफ खेंचा मैं गिर पड़ा तो करनेल सिंह ने मेरा साफा मेरे गला में डाल लिया और घसीटा जीतसिंह दलीपसिंह ने लाठीयां हाथों पैरों मगरों पर मारी। मुझे घसीट मर अपने खेत में ले गये वहां दलीप सिंह के खेत में भी मुझे लातों लाठीयों से खूब मारपीट किया । उन तीनों ने मुझे मारपीट किया । ”

16. This Court also observes that on 16.09.1985, another dying declaration (Ex.D/10) was recorded by the Magistrate Shri Krishna Joshi (DW.1), wherein the deceased stated an entire different incident by stating that he was beaten by Mohan Das, Narayan Das, Har Govind and sons of Bali Singh; the deceased also stated the reason for the same was a land dispute.

Relevant portion of the Ex.D/10 is reproduced hereunder:-

"मेरे मत्थे पर लठ की मारी मेरी पीठ व छाती पर भी लठ की मारी । मोहनदास मारता रहा । और कहा झगड़ा करूंगा मेरे उससे जमीन का झगड़ा है तीन बीघे का जो 22 एम एल में ही है । अब भी वो मुझे मारने को तैयार । मैंने उसे नहीं मारा । उसके साथ हरगोविन्द था । हरगोविन्द के हाथ में भी लठ था और जो साथ थे उन्हें मैं जानता हूं । जो मेरे पिंड (गांव) के ही थे । एक नारायण दास था उनके पास भी लठ था वो कहता था रजिस्ट्री करवा दो मेरी जमीन की नहीं तो मैं तुम्हें मारूंगा । बाकी तीन छोकरे से थे वे बलीसिंह के लड़के थे जो मेरे पिंड का ही है । बलीसिंह के मेरा कोई झगड़ा नहीं । यह मारपीट सुबह उन्होंने 5-6 बजे के करीब करी सबसे आगे मारने वालों में नारायण दास था ।"

17. This Court further observes that a perusal of aforequoted dying declarations of the deceased not only shows a clear contradiction, as the deceased named different persons to be the accused of the crime in question, who had caused injuries to him. Those are the completely different stories with different accused's name as stated by the deceased in the said two dying declarations. This Court also observes that learned Trial Court



relied upon the first dying declaration (Ex.P/6) and impugned conviction judgment was passed and completely discarding the dying declaration recorded by the Magistrate. When the two dying declarations come into the picture, then the prosecution case is itself on doubt.

18. This Court has seen the precedent laws wherein multiple dying declaration were recorded. This Court, in this regard, places reliance upon the judgment rendered by the Hon'ble Apex Court in the case of **Anmol Singh Vs State of M.P (2008) 5 SCC 468**, relevant portion whereof is reproduced as hereunder:-

"13. ... it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration [but] the statement should be consistent throughout. ... However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not [and] while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

18.1. This Court further places reliance upon the judgment rendered by the Hon'ble Apex Court in the case of **Lakhan Singh Vs State of M.P. (2010) 8 SCC 514**, relevant portion whereof is reproduced as hereunder:-

*"21. In such an eventuality no corroboration is required. **In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no***



circumstance giving rise to any suspicion about its truthfulness. *In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."*

18.2. This Court also relies upon the judgment rendered by the Hon'ble Apex Court in the case of **Jagbir Singh Vs State (NCT of Delhi), (2019) 8 SCC 779**, relevant portion of which is reproduced as hereunder:-

"OUR CONCLUSION ON MULTIPLE DYING DECLARATION

31. *We would think that on a conspectus of the law as laid down by this court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a summersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered."*

18.3. In the case of **Abhishek Sharma Vs State (Govt. of NCT of Delhi) (Criminal Appeal No. 1473 of 2011, decided on 18.10.2023)**, it has been held as under:



"9. Having considered various pronouncements of this court, the following principles emerge, for a Court to consider when dealing with a case involving multiple dying declarations:

9.1 The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be in a fit state of mind;

9.2 All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;

9.3 When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration of the contents of dying declarations.

9.4 The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances.

9.5 Each declaration must be scrutinized on its own merits. The court has to examine upon which of the statements reliance can be placed in order for the case to proceed further.

9.6 When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.

9.7 In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring by relatives, etc.

18.4. This Court also observes that in the present case, the deceased had given two dying declarations, one (Ex.P/6) before the police and another (Ex.P/10) before the Magistrate, and the contents of both the dying declarations are having material contradictions as noted hereinabove. But the learned Trial Court relied on the dying declaration (Ex.P/6) recorded before the police, while passing the impugned judgment, which in the given circumstances was not justified in law; more particularly, since the





aforequoted precedent law makes it amply clear that if any inconsistencies/contradictions are found in the dying declaration, then the dying declaration recorded before the Magistrate is to be relied upon, which was not done in the present case.

19. This Court in the present adjudication has also seen the other evidence, apart from the dying declarations. PW.3- Naseeb Kaur, wife of deceased, is the sole eye witness in the present case, and on a perusal of her statement, it is found that she had stated that she saw the accused-appellant beating the deceased, and in that regard also, some contradictions are found. In the given circumstances, the impugned judgment on the basis of her statement also, coupled with the clear contradictions as noted above, is not sustainable in the eye of law.

20. This Court further observes that the police authority recovered the lathi (weapon) used for causing death of the deceased on the basis of disclosure information given by the accused-appellant in the presence of two witnesses (Motbir) i.e. Gurdev Singh and Prakash; but the none of the witnesses (Motbir) was present before the learned Trial Court for examination, and no reason was assigned for the same. Therefore, the same among other things, is fatal to the prosecution case.

21. This Court also observes that when multiple dying declarations were recorded, and inconsistencies/contradictions were found therein, then *the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion.*



This Court further observes that after inconsistencies/contradictions were recorded in a case then the other corroborative evidence are required. In the present case, there is no strong corroborative evidence, to support the claim of the prosecution that the dying declaration recorded by the police is reliable, and not the one as recorded by the Magistrate.

22. This Court also observes that when the judgment of conviction is challenged before the Appellate Court, a proper appreciation of the evidence recorded by the learned Trial Court has to be made. The power of the Appellate Court is provided under Section 386 of Cr.PC, which reads as under:-

"(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—"

23. Now, as regards, the scope of interference in the judgment of conviction passed by the learned Trial Court, it is considered appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Apex Court in case of ***Kamlesh Prabhudas Tanna v. State of Gujarat, (2013) 15 SCC 263***, as hereunder:-

".....

10. In Rama v. State of Rajasthan [(2002) 4 SCC 571: 2002 SCC (Cri) 829], the Court has stated about the duty of the appellate court in the following terms: (SCC p. 572, para 4



"4. ... It is well settled that in a criminal appeal, a duty is enjoined upon the appellate court to reappraise the evidence itself and it cannot proceed to dispose of the appeal upon appraisal of evidence by the trial court alone especially when the appeal has been already admitted and placed for final hearing. Upholding such a procedure would amount to negation of valuable right of appeal of an accused, which cannot be permitted under law."

.....

12. Recently, a three-Judge Bench in **Majjal v. State of Haryana [(2013) 6 SCC 798]** has ruled thus: (SCC p. 800, para 7)

"7. It was necessary for the High Court to consider whether the trial court's assessment of the evidence and its opinion that the appellant must be convicted deserve to be confirmed. This exercise is necessary because the personal liberty of an accused is curtailed because of the conviction. The High Court must state its reasons why it is accepting the evidence on record. The High Court's concurrence with the trial court's view would be acceptable only if it is supported by reasons. In such appeals it is a court of first appeal. Reasons cannot be cryptic. By this, we do not mean that the High Court is expected to write an unduly long treatise. The judgment may be short but must reflect proper application of mind to vital evidence and important submissions which go to the root of the matter."

24. This Court further observes that there are reliable and cogent evidence on record that the accused-appellant's conviction deserves to be reversed, from conviction to acquittal, as provided under Section 386(b)(i) of Cr.P.C pertaining to "reverse the finding and sentence and acquit".

25. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, as well as in view of the aforementioned precedent laws, the present appeal is **allowed**. Accordingly, while quashing and setting aside the impugned





judgment of conviction and order of sentence dated 15.12.1989 passed by the learned Session Judge, Sri Ganganagar, in Sessions Case No.02/1986 (State of Rajasthan Vs. Jeet Singh & Ors.), the appellant is acquitted of the offence under Sections 302/34 and 447 IPC. The sentence awarded to the accused-appellant already stood suspended, as noted hereinabove. His bail bonds stand discharged. All pending applications stand disposed of. Record of the learned Trial Court be sent back forthwith.

26. This Court is thankful to Mr. Udit Mathur, who has rendered his assistance as Amicus Curiae, on behalf of the accused-appellant, in the present adjudication.

(MUNNURI LAXMAN),J

(DR.PUSHPENDRA SINGH BHATI),J

SKant/-