

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 2256 of 2000**

1. Daduram Son of Shri Ramsevak, Aged 45 years, Occupation Agriculture.
2. Ram Bilas Son of Shri Daduram, aged 24 years, Occupation Agriculture.

Both resident of village Navapara-kala, Police Station Prem Nagar, District Surguja, M.P. (Now Chhattisgarh)

---- Appellants**Versus**

State of Madhya Pradesh (Now Chhattisgarh)

---- Respondent

For Appellants	:	Smt. Smriti Shrivastava, Advocate.
For Respondent/State	:	Shri Ravindra Agrawal, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****26/08/2015**

1. The appeal being called out for hearing, no one appeared on behalf of Appellants. The order sheet reflects that none had appeared on behalf of the Appellants on 14.10.2014. Ms. Meena Shastri, Advocate appeared on 20.11.2014 and informed that she shall be assisting us. On 21.8.2015, Shri Ashok Dixit, Advocate appeared for the Appellants. We therefore had the name of Shri Dixit displayed on the Court Display System today both pre-lunch and post-lunch, yet no one appeared.

2. This is an appeal of the year 2000. The Appellants have been convicted under Section 302 IPC to life imprisonment with fine of Rs. 1000/-, in the event of failure to pay which, they were required to undergo further five months each

rigorous imprisonment as ordered on 13.7.2000 by the Additional Sessions Judge, Surajpur in Sessions Trial No. 38 of 1998. The Appellants were granted bail on 25.10.2004 and 12.1.2005 respectively.

3. Smt. Smriti Shrivastava, who we were informed is a Panel Lawyer in the High Court Legal Services Committee happened to be present in the Court room and was requested by us to render assistance in the matter. Both Smt. Shrivastava and Learned State Counsel have taken us through the materials and evidence on record because of which we have been able to take up the appeal for consideration on merits. We appreciate the assistance rendered by them.

4. In (2014) 14 SCC 222 (Surya Baksha Singh v. State of Uttar Pradesh), it was noticed that appeals are filed, bail is granted and then the Appellants become untraceable or unresponsive. While it is the bounden duty of the Court to ensure that innocent person is not punished, but it was equally the duty of the Court not to become a mute spectator to the spectacle of the convict circumventing his conviction. We therefore proceeded to take up this appeal for consideration on merits on the basis of same.

5. FIR (Exhibit P-1) was lodged on 19.8.1997 at 5:00 am by PW-1, Smt. Jamundri Bai, wife of the deceased Jagdish that the latter had been assaulted on 18.8.1997 at about 7:00 pm naming the Appellants as the assailants. The injured was taken to the hospital where he died on 19.8.1997 during treatment. Merg intimation was given by the hospital staff the same day. The postmortem of the deceased was conducted by Dr. Ashok Kumar Bansal (PW-10) who found the following eight injuries on the person of the deceased:

"1. There is a lacerated wound on vertex of skull 6 cm, 6 cm and 2 cm respectively and upto bone depth. On dissection whole cranial cavity is filled with coagulated blood.

2. There is a lacerated wound 2 cm in length on right elbow. On dissection muscle are torn and wound depth is

upto elbow joint. The coagulated blood present upto arm.

3. A lacerated wound 6 cm in length on right wrist joint with right radius bone is fractured.

4. A lacerated wound 2 cm in length upto bone depth on right little finger.

5. An abrasion 8 cm in length on right arm.

6. A lacerated wound on right middle 1/3rd ankle muscle are torn. Coagulated blood are present in the wound

7. A lacerated wound present on right ankle 6 cm in length. Right ankle joint are total torn. Both tibia and fibula bones of right ankle fractured.

8. There is a lacerated wound on left hand, both little and ring finger cutted. The wound length is 11 cm."

6. Learned Counsel assisting us on behalf of the Appellants submitted that there is no eyewitness to the assault. The place of assault is also not certain whether it was in the fields or in the jungle. The witnesses are primarily related to the deceased and therefore interested in view of the land dispute that existed between the parties. It will therefore not be safe to rely on their evidence alone. The deceased was seriously injured and not in a position to speak and therefore the question of his disclosing the name of the Appellants to any of the prosecution witnesses or in his police statement simply does not arise. No blood has been found in the FSL report on the axe allegedly recovered on the confession of Appellant No. 1 and neither has it been found on his vest seized by the police. The Appellants, under Section 313 CrPC had taken a defence of false implication because of the land dispute. Two defence witnesses had also been examined in support of the plea of alibi that Appellant No. 2 was at the village of his in-laws on the date of occurrence which has not been properly appreciated and considered by the Trial Judge.

7. Learned Counsel for the State submitted that even if there is no eyewitness to the occurrence, the names of the Appellants as the assailants were revealed both to related and independent witnesses by the deceased, after he had managed to drag himself from the place of occurrence. PW-2,

Dr. Amrit Lal Soni, who had examined the deceased when he was brought to the hospital in an injured condition had deposed that he was conscious otherwise in his report (Exhibit P-4) he would have mentioned that the injured was unconscious. The injured had gone to the police station alongwith his wife. The narration of the occurrence given by him was recorded by the police and read over. PW-1, Smt. Jamundri Bai, wife of the deceased has adequately explained that the injured was incapacitated to sign because of injury in both his hands leading to her signing the FIR. She had proved the motive as land dispute. PW-4 was an independent witness residing near the house of the deceased as also the Appellants who were residents of the same village. Blood has been found in the FSL report on the sample of earth seized from the place of occurrence and also on the Lathi recovered on the confession of Appellant No. 2 and his vest for which he has offered no explanation. The police statement of the deceased was recorded while he was conscious and before he passed away where he again named the Appellants as the assailants. The conviction, therefore calls for no interference as the police statement of the deceased is akin to a dying declaration.

8. We have considered the submissions on basis of assistance rendered to us both by Smt. Shrivastava and Learned State Counsel.

9. PW-1, Smt. Jamundri Bai, wife of the deceased stated that it was the festival of Rakhi on the day of occurrence. She heard commotion and on coming out saw her husband coming dragging himself who informed her of the assault by the Appellants with Farsa and Lathi, and that the assault had taken place in the jungle. She then put her husband on a cot and alongwith Udai Prasad (PW-4) and Smt. Rukhmani (PW-3) went to the police station for lodging the FIR (Exhibit P-1). Because her husband was injured on both hands, incapable of signing, she signed the same after the contents as narrated and recorded were read over to them. In cross-examination, she

reiterated her police statement that her husband had named the Appellants as also the land dispute. She denied that the deceased was unconscious at that time and unable to speak. PW-3, Smt. Rukhmani, sister of the deceased also named by PW-1 as having accompanied her likewise deposed of the deceased who was injured having disclosed of assault by Farsa and Lathi by the Appellants. Significantly, the witness also deposed that on the day of assault, she had seen the Appellants working in the fields sowing crops. PW-4, Udai Prasad was an independent witness residing approximately 300 meters from the house of the deceased who also was named by PW-1 and PW-3 as having rushed when the deceased came dragging himself from the jungle. This witness similarly deposed that the deceased in consciousness had named the Appellants as the assailants. He also proved seizure of the blood stained earth (Exhibit P-6) from the place of occurrence. He also explained that the jungle and the fields were adjacent to each other separated hardly by 100 steps and that the Appellants were also neighbours with whom he had no enmity. He had seen them in the village during the day time on the day of occurrence.

10. PW-2, Dr. Amrit Lal Soni proved the injuries caused to the deceased when he was taken to the hospital including the fact that the injured was in full consciousness competent to make statements. The police statement of the deceased was also recorded on 19.8.1997 before he died wherein he again named the Appellants. PW-9, Padumsai Mahilane, Sub Inspector of Police proved having recorded the statement of the deceased in an injured condition. In cross-examination, he specifically denied that the deceased was unconscious and not in a position to make any statement. Significantly, this suggestion was also given to PW-2, Dr. Amrit Lal Soni who also had specifically denied that the injured was unconscious at the time and unable to give any statement.

11. PW-7, Mudrika Singh Chouhan, proved the inquest report (Exhibit P12). PW-9, Padumsai Mahilane, Sub Inspector, proved recording confession of the Appellants 10 days later on 29.8.1997 by Exhibit P-19 and Exhibit P-21 leading to recovery of Farsa and vest of Appellant No. 1 and Lathi and vest of Appellant No. 2. The fact that no blood may have been found in the FSL report on the Farsa recovered from Appellant No. 1 or on his vest is considered insignificant in view of the fact that it was recovered on a confession made 10 days later giving ample time for erasing the blood stains or washing the clothes. Blood has been found in the FSL report on the Lathi and vest of Appellant No. 2 for which he had offered no explanation.

12. The father-in-law of Appellant No. 2 appearing as defence witness No. 1 and a co-villager of father-in-law have tried to put up a plea of alibi as DW-1 and DW-2 with regard to Appellant No. 2 unsuccessfully in view of the clear evidence of PW-3 that the Appellants were present in the village sowing crops on the day of occurrence and also of PW-4, Udai Prasad who had seen the Appellants in the village. The Trial Court has rightly concluded that the village of the father-in-law was barely 20 KMs away which is hardly any distance. Alibi, being a weak defence, we find no reason to interfere with the conclusion of the Trial Judge that it did not stand proved.

13. The deceased was injured on 18.8.1997 around 7:00 pm. He died during course of treatment on 19.8.1997 about 9:05 pm. FIR was lodged by the deceased who was injured and fully conscious but signed by his wife because of injuries on his hands. The police statement of the injured was also recorded on 19.8.1997 soon before he died. We find no reason not to accept contention of Learned State Counsel that the FIR and the police statement of the deceased were virtually dying declarations. It has been established by the prosecution that the deceased was conscious and competent to make statements as explained by his wife PW-1 and also deposed by PW-2,

Dr. Amrit Lal Soni. Significantly, the FIR and the police statement were corroborating each other.

14. Section 32 (1) of the Evidence Act, 1872 makes a dying declaration admissible in evidence. It is based on the premise that a sanctity attaches to a statement by a person in serious apprehension of death with no chance of survival. It is expected that at such time he would invariably speak the truth and the Court attaches an intrinsic value to it for that reason. Once the Court considers it truthful, voluntary and reliable it can form the basis of conviction also. Caution is however required to consider the capability of the person to make the statement, ruling out false implication and if it is supported by corroborative evidence it can safely be relied upon to found conviction.

15. In (2000) SCC (Cri) 1501 (Laljit Singh v. State of U.P) with regard to the admissibility of a dying declaration based on the police statement it was observed as follows:

"5. In order to appreciate the correctness of the contentions raised, we have been taken through the statement of Jaswant Singh which has been treated to be a dying declaration under Section 32(1) of the Evidence Act as well as the evidence of PW1 Smt. Krishna, who has given a vivid account as to how the occurrence took place. In the dying declaration Jaswant Singh has given a brief sketch as to how the accused persons arrived at the scene of occurrence and started assaulting the prosecution party. It is not expected at that stage to give a detailed account particularly when the person concerned himself was severely injured and, in fact, died on the next day in the hospital on account of such injuries on his person."

16. The acceptability of a police statement as a dying declaration was also considered in (2007) 14 SCC 550 (State of Rajasthan v. Wakteng) as follows:

"12. In *Paras Yadav v. State of Bihar* it was held that the statement of a deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can be taken as a dying declaration after the death of the injured if he was found to be in a fit state of health to make a statement. If the dying declaration is recorded by an investigating officer the same can be relied upon if the evidence of the

prosecution witness is clearly established beyond reasonable doubt that the deceased was conscious and he was removed to the hospital and he was in a fit state of health to make the statement."

17. Similarly, in (2013) 12 SCC 137 (Sri Bhagwan v. State of U.P) it was held:

"24. As far as the implication of Section 162(2) CrPC is concerned, as a proposition of law, unlike the excepted circumstances under which Section 161 CrPC statement could be relied upon, as rightly contended by the learned Senior Counsel for the respondent, once the said statement though recorded under Section 161 CrPC assumes the character of dying declaration falling within the four corners of Section 32(1) of the Evidence Act, then whatever credence that would apply to a declaration governed by Section 32(1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 CrPC. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32(1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such."

18. Enmity existed between the parties and therefore, the Appellants had the motive to assault because of the land dispute. There is no denial by the Appellants in that regard even during cross-examination.

19. Even if the seizure witnesses have not been examined, we do not consider it as detrimental to the case of the prosecution for two reasons, (a) the Appellants have been named as assailants by the deceased to PW-1, PW-3 and PW-4 as also in his police statement soon before his death, and (b) no question had been put to PW-9, Sub Inspector who recorded confession and made recovery or that he had forced the seizure witnesses to sign by coercion or otherwise.

20. PW-9, Padumsai Mahilane had specifically denied having obtained signatures of the seizure witnesses by coercion or otherwise. There will be a

presumption under Section 114(e) of the Evidence Act that the police has performed its duties in normal course unless it is rebutted by cogent evidence. It is important to notice that the seizure has been signed by the Appellants also respectively quite apart from the independent witnesses for which the Appellants have offered no explanation themselves.

21. In (2002) 5 SCC 234 (Devender Pal Singh v. State (NCT of Delhi) it was observed as follows:

"37...A mere statement that requisite procedures and safeguards were not observed or that statement was recorded under duress or coercion, is really of no consequence. Such a stand can be taken in every case by the accused after having given the confessional statement. It could not be shown as to why the officials would falsely implicate the accused. There is a statutory presumption under Section 114 of the Evidence Act that judicial and official acts have been regularly performed. The accepted meaning of Section 114(e) is that when an official act is proved to have been done, it will be presumed to have been regularly done. The presumption that a person acts honestly applies as much in favour of a police officer as of other person, and it is not a judicial approach to distrust and suspect him without good grounds therefor. Such an attitude can do neither credit to the magistracy nor good to the public. It can only run down the prestige of police administration."

22. In conclusion, we find no reason to interfere with the order of conviction in appeal. The bail bonds of the Appellants are cancelled. They are directed to surrender and/or be taken into custody forthwith for serving out the remaining period of sentence.

23. The appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE