

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1084 of 2008

- Permanand, son of Dwarika Prasad Sahu, aged about 30 years, Occupation Labour, Resident of Village Gudheli, Police Station – Berla, Distt. Durg (CG)

---- Appellant

Versus

- State Of Chhattisgarh Through Station House Officer, P.S. Purani Bhilai, Distt.-Durg (CG)

---- Respondent

For Appellant	:	Shri NS Dhurandhar with Shri PK Dhurandhar, Advocates.
For Respondent/State	:	Smt. Madhunisha Singh, P.L.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board By Justice Pritinker Diwaker

15/09/2017

This appeal arises out of the judgment of conviction and order of sentence dated 19.11.2008 passed by the Additional Sessions Judge, Durg in ST No.16/2008 convicting the appellant under Section 302 of IPC and sentencing him to undergo imprisonment for life and to pay a total fine of Rs.4000/- with default stipulation.

02. In the present case, there are two deceased namely Surekha Sahu and Droupadi Sahu, close friend of Surekha Sahu. The appellant is a resident of Village – Gudheli whereas the deceased persons were residing at Village – Surdung about 22 km away from the village of the appellant. Further undisputed fact is that deceased Surekha was not

having good relations with the appellant and prior to about three years of the incident she was residing separately in a different village in the house of Droupadi. According to the prosecution case, on 22.6.2007 at about 10 pm the appellant along with 4-5 other persons entered the house of Droupadi where both Surekha and Droupadi were watching TV and set them afire. Immediately after being burnt, Surekha asked her minor son Yaman, aged 10 years (not examined) to inform PW-12 Gautam Singh Thakur about the incident. Yaman accordingly rushed to Gautam (PW-12) and narrated the entire incident to him who then along with PW-13 Bhikham Das reached the place of occurrence and saw both Surekha and Droupadi in burnt condition. As soon as they reached the place of occurrence, Surekha asked PW-12 to save her. On information of the incident being received by the police through telephone they immediately sent ambulance to take the victims to hospital. At 00.45 in the night Droupadi was hospitalized whereas Surekha was hospitalized at 00.50 in the night by PW-14 Dr. VR Meshram vide Ex.D/4 & D/2 respectively. In the said bedhead tickets (Ex.D/2 & D/4) it has been recorded by the doctor that he was informed by the patients that five persons who had covered their faces burnt them. In the night itself at 1.15, fitness certificate was issued by Dr. Meshram (PW-14) vide Ex.P/20 & P/21 that they are in a fit state of mind to make statement. At 2 in the night Dehati Nalishi was registered at the instance of Surekha vide Ex.P/28 wherein she has stated that on account of some family dispute the appellant along with 3-4 persons entered the house of Droupadi where she was watching TV with Droupadi and set them on fire by pouring kerosene on them. FIR (Ex.P/29) was registered under Section 307/34 of IPC against the

appellant and his 3-4 companions. PW-15 Shrikant Verma, Executive Magistrate, was summoned by PW-17 Vishram Singh Thakur, Investigating Officer, and at 3.00 am dying declaration of Surekha was recorded vide Ex.P/23 and that of Droupadi was recorded at 3.15 am vide Ex.P/24 wherein they have categorically stated as to the manner in which they were burnt by the appellant. Thereafter, on 23.6.2007 at 5 am Surekha expired whereas Droupadi expired at 7 am which was recorded in the merg intimations at 6.45 am and 8.30 am vide Ex.P/10 & P/8 respectively. Inquests over the dead bodies of Surekha and Droupadi were conducted vide Ex.P/2 and P/4 on 23.6.2007. Postmortem on the body of deceased Droupadi was conducted on 23.6.2007 vide Ex.P/5 by PW-4 Dr. SK Fating and postmortem on the body of deceased Surekha was conducted on 25.6.2007 vide Ex.P/7 by PW-6 Dr. PC Deshmukh. According to the autopsy surgeons, deceased Droupadi was 95% burnt whereas deceased Surekha was 100% burnt and their cause of death was shock and extreme deep burn. While framing charge, the trial Court framed charge under Section 302 of IPC against the appellant.

03. So as to hold the accused/appellant guilty, the prosecution examined 17 witnesses in all. Statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and false implication. In his defence, he examined two witnesses.

04. The trial Court after hearing counsel for the respective parties and considering the material available on record, by the impugned

judgment convicted and sentenced the appellant as mentioned above.

05. Counsel for the appellant submits as under:

(i) that the appellant was residing in a different village i.e. Gudheli whereas both the deceased were residing in Village – Surdung which is 22 km away from the appellant's village and therefore, commission of the offence by the appellant after covering this much distance that too in the night, makes the prosecution case doubtful.

(ii) that if somebody would suffer 95% to 100% burn injuries, he/she would normally raise much hue and cry whereas in the present case no such evidence is there.

(iii) that most important witness of the prosecution could have been one Yaman who was residing with the deceased persons at the relevant time but he has not been examined by the prosecution for the reasons best known to it. It is Yaman who passed on the information to PW-12 Goutam and therefore, non-examination of Yaman is fatal to the prosecution case.

(iv) While recording the history of the patients/deceased before PW-14 Dr. VR Meshram, who is a government doctor, vide Ex.D/2 & D/4, it was disclosed by both the deceased persons that they were burnt by 4-5 persons who had covered their faces and it being the first statement of the deceased appears to be authentic. According to this statement, the accused had covered their faces and therefore, the question of their identification does not arise.

(v) that the dying declarations recorded by the Executive Magistrate PW-15 Shrikant Verma, vide Ex.P/23 & P/24, are almost identical and creates doubt as to whether any such declaration was made by the

deceased persons or it has been recorded by the police. Further, fitness of mind of the deceased persons was recorded in Ex.P/20 & P/21 at 1 am and 1.15 am whereas their dying declarations were recorded at 3 am and 3.15 am and there is no mention in the dying declarations that at that point of time the declarants were in a fit state of mind.

(vi) that even no question was put to the Executive Magistrate as to whether the deceased were in a position to understand the questions which were put to them by the Executive Magistrate.

(vii) that as soon as Surekha and Droupadi were hospitalized they were given injection Fortwin and Compose as is evident from Ex.D/2 & D/4 and thus after administration of such medicines, it is literally impossible for anyone to make any statement as in the normal course, the patient falls into sleep.

(viii) that for the first time Surekha and Droupadi disclosed the name of the appellant in the dying declarations recorded by the Executive Magistrate and it creates doubt on the prosecution case.

(ix) that in the oral dying declaration made by deceased Surekha before PW-12 Goutam name of the appellant was not disclosed.

(x) that as per case of the prosecution itself, there were about 5-6 persons involved in commission of the offence but it is only the appellant who has been arrested and tried merely on the basis of suspicion as there was matrimonial dispute between appellant and Surekha.

(xi) that both the deceased sustained 95% and 100% burn injuries and therefore, the question of obtaining their thumb impression on the dying declarations and Dehati Nalishi does not arise.

06. On the other hand, State counsel supporting the impugned judgment submits as under:

(i) that non-examination of Yaman is not fatal to the prosecution for the reasons that he was a child witness and it is not the case of the prosecution that Yaman was sleeping with the deceased persons.

(ii) that PW-12 Goutam has categorically stated that it is Yaman who informed him about the entire incident and once the factum of incident was brought into the knowledge of PW-12, he immediately rushed to the place of occurrence and in these circumstances, non-examination of Yaman makes not difference.

(iii) that PW-12 Goutam saw both Surekha and Droupadi in burnt condition and upon being asked by Surekha to save her, ambulance was called and both the injured were taken to hospital.

(iv) that normally the patient of burning being admitted in the hospital does not give the history of the incident and it is the attendants of the patient who inform the police about the incident. Even if some particulars of the incident were disclosed by the injured persons in the hospital and they could not clarify the same, it will not make the whole prosecution case doubtful considering the fact that the injured persons were under severe pain and trauma at the relevant time.

(v) that after getting fitness certificates (Ex.P/20 & P/21) at 1 am and 1.15 am, the Executive Magistrate was summoned, who reached the hospital at 2.45 am vide Ex.P/22, and immediately thereafter recorded dying declarations of Surekha and Droupadi at 3 am and 3.15 am vide Ex.P/23 & P/24. Once the fitness certificates were already on record, the Executive Magistrate after being satisfied about the fitness of the declarants, recorded their dying declarations and therefore, non-

obtaining of fitness certificate again by the Executive Magistrate does not make the dying declarations doubtful.

(vi) that immediately after obtaining fitness certificates, Dehati Nalishi (Ex.P/28) was recorded at the instance of Surekha at 2 am wherein she has categorically stated as to the manner in which she and Droupadi was burnt by the appellant. Even thumb impression of Surekha was obtained in the said Dehati Nalishi and it can also be treated as her dying declaration.

(vii) that there is no reason for this Court to disbelieve the dying declarations recorded by the Executive Magistrate and it is the settled position of law that such dying declaration has to be given preference over other dying declarations.

(viii) that there is no evidence on record that the Executive Magistrate was having any ill-will with the appellant or he was influenced by anyone. The Executive Magistrate being an independent witness recorded the correct facts disclosed to him by the declarants.

(ix) that the victims were hospitalized at 00.45 hours in the mid night, soon thereafter the treatment started and in the meanwhile, the police also came into action, called the Executive Magistrate through telephone who reached hospital at 2.45 am and then recorded dying declarations. As such, there was no occasion for the prosecution to pre-plan anything or to create any false story. It appears to be very natural conduct of the authorities where almost within less than 3 hours the dying declarations of the deceased were recorded and therefore, the same cannot be doubted.

(x) that there is no thumb rule that if a person has suffered 95% or 100% burn, he or she cannot put his or her thumb impression. Even

otherwise in the dying declarations itself it has been mentioned that on account of there being burn injury on right hand of the deceased persons, their thumb impressions were obtained.

(xi) that the police made all efforts to get the other accused persons but when nobody would be arrested, the challan was filed against the appellant and in the facts and circumstances of the case and the nature of evidence available on record, the fact that other accused persons could not be arrested by the police is no ground to acquit the appellant of the charges.

(xii) that even if the distance between the two villages is 22 km, it cannot be said that the appellant cannot cover that much distance and therefore, this argument of the appellant also holds no water.

07. Heard counsel for the respective parties and perused the material on record.

08. PW-1 Itwari, PW-3 Chandrabhan are witnesses to inquest whereas PW-4 Atul Vishwakarma conducted the inquest on the dead bodies. PW-4 Dr. SK Fatingh conducted postmortem on the body of deceased Droupadi vide Ex.P/5 and noticed 95% burn which was antimortem deep burn. In his opinion the cause of death was shock and extreme deep burn. PW-5 Devendra Kumar Sahu, Patwari, prepared the spot map Ex.P/6. PW-6 Dr. PC Deshmukh conducted postmortem on the body of deceased Surekha and noticed 100% deep burn and opined the cause of death to be shock and extreme deep burn. PW-7 Nanku Singh recorded merg intimation Ex.P/8 in respect of Droupadi. PW-9 Churaman Lal Warde recorded merg intimation in respect of deceased Surekha vide Ex.P/10. PW-10 Kuntibai, mother of

the deceased Surekha, has not stated anything specific against the appellant. PW-11 JP Kathote, ASI, assisted in the investigation. PW-12 Goutam Singh Thakur, is the person to whom the information was given by son of deceased Surekha namely Yaman and he reached the place of occurrence immediately thereafter. While supporting the prosecution case he has stated that when he reached the place of occurrence he found both Surekha and Droupadi standing outside their house in burnt condition who requested him to save them and then he made a telephonic call to the police who sent ambulance and then the injured persons were taken to hospital. Further, he has stated that from the spot jerrycane of kerosene oil was seized which contained about one liter of kerosene. From the spot, burnt pieces of sari, broken bangles, matchbox and some documents etc. were also seized vide Ex.P/17 & P/18. PW-13 Bhikham Das, Village Kotwar, had gone to the place of occurrence along with PW-12 and he is a witness to spot maps Ex.P/6 and P/19.

09. PW-14 Dr. VR Meshram who first attended both Surekha and Droupadi in the hospital has stated that he issued fitness certificates vide Ex.P/20 & P/21 regarding fitness of their mental condition. He admits that while admitting the patients he recorded that the patients had informed that they were burnt by five persons who had covered their faces. He has categorically stated that after issuing fitness certificates at 1.15 am he had not examined the patients again and therefore, he cannot say whether they were in a fit state of mind to make any such statement or not.

10. PW-15 Shrikant Verma, Additional Tehsildar, recorded two dying declarations (Ex.P/23 & P/24). He has stated that at 2.45 am he reached district hospital after receiving information on telephone from the police and thereafter recorded the aforesaid dying declarations. He has further stated that as there was already endorsement by PW-14 regarding mental fitness of the patients to make statement, he did not deem it necessary to obtain fresh certificate. He has further clarified that as there was injury on the right hand of Surekha and Droupadi he obtained their thumb impression on the dying declarations. In the lengthy cross-examination this witness remained firm and nothing could be elicited from him by the defence to its advantage. PW-16 PC Tiwari assisted in the investigation. PW-17 Vishram Singh Thakur, Investigating Officer, has duly supported the prosecution case. He has categorically stated that on 23.6.2007 at about 2 am he recorded Dehati Nalishi at the instance of Surekha. However, he admits that there was some delay in recording Dehati Nalishi as the fitness certificate was given by the doctor at 1.15 am.

11. DW-1 Dharmendra Kumar Sahu and DW-2 Ashish Kumar have been examined to prove the plea of alibi of the appellant.

12. Admittedly, relations between the appellant and deceased Surekha were strained as there was some matrimonial dispute between them and she was residing separately from the appellant with deceased Droupadi in her house in a different village. According to the prosecution case, on 22.6.2007 at about 10 pm when Surekha and Droupadi were watching TV in the house of Droupadi, the appellant along with 4-5 persons entered her house and set them afire and

immediately thereafter Surekha sent her son Yaman to call PW-12 Goutam for help who on being informed by Yaman reached the spot, made a telephonic call to the police, the police sent ambulance and the victims were hospitalized. Though said Yaman has not been examined by the prosecution, however, it cannot be said to be fatal to the prosecution because it is for the prosecution to prove its case beyond all reasonable doubt and if it thinks that the same can be proved by particular nature of evidence, oral or documentary or circumstantial, non-examination or non-adducing of other witness(es) or evidence cannot *ipso facto* lead to adverse inference against the prosecution. The case of the prosecution is based mainly on the evidence of dying declarations of the deceased. Therefore, we are to see whether the dying declarations in this case are worth reliance, pass the test of credibility and can be made the basis for conviction of the appellant.

13. In the matter of ***Lakhan Vs. State of MP, (2010) 8 SCC 514***, the Supreme Court after discussing number of judgments on the point of dying declarations summarized the law in this regard as under:

“20. In view of the above, the law on the issue of dying declaration can be summarized to the effect that in case, the Court comes to the conclusion that the dying declaration is true and reliable, has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration and it has not been made under any tutoring/duress/prompting; it can be the sole basis for recording conviction. 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 scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.”

14. In ***Shudhakar Vs. State of MP, (2012) 7 SCC 569***, the Supreme Court held as under:

18. In the case of Laxman (supra), the Court while dealing with the argument that the dying declaration must be recorded by a Magistrate and the certificate of fitness was an essential feature, made the following observations. The court answered both these questions as follows:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical

opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

15. In the matter of ***Ramakant Mishra Vs. State of UP, (2015) 8 SCC 299***, the Supreme Court observed as under:

“9 Definition of this legal concept found in Black's Law Dictionary (5th Edition) justifies reproduction:

“*Dying Declarations* - Statements made by a person who is lying at the point of death, and is conscious of his approaching death, in reference to the manner in which he received the injuries of which he is dying, or other immediate cause of his death, and in reference to the person who inflicted such injuries or the connection with such injuries of a person who is charged or suspected of having committed them; which statements are admissible

in evidence in a trial for homicide (and occasionally, at least in some jurisdictions, in other cases) where the killing of the declarant is the crime charged to the defendant. Shepard v. U.S., Kan., 290 U.S. 96, 54 S.Ct. 22, 78 L.Ed. 196.”

Generally, the admissibility of such declarations is limited to use in prosecutions for homicide; but is admissible on behalf of accused as well as for prosecution. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death was imminent, concerning the cause or circumstances of what he believed to be his impending death is not excluded by the hearsay rule. Fed.Evid.R. 804(b)(2). Statement under the Belief of imminent Death”

10. When a person makes a statement while being aware of the prospect that his death is imminent and proximate, such a statement assumes a probative value which is almost unassailable, unlike other statements which he may have made earlier, when death was not lurking around, indicating the cause of his death. That is to say that a person might be quite willing to implicate an innocent person but would not do so when death is knocking at his door. That is why a Dying Declaration, to conform to this unique specie, should have been made when death was in the contemplation of the person making the statement/declaration.”

Thus, keeping in view the aforesaid principles of law we proceed to examine the evidence of the present case to see whether the prosecution has been able to bring home the charge against the appellant on the basis of dying declarations.

16. In their dying declarations (Ex.P/23 & P/24) both the deceased

persons have categorically stated that when they were watching TV in the house, the appellant along with four-five persons entered their house, poured kerosene on them and set them ablaze. Surekha has clarified the motive in her dying declaration stating there is a maintenance case going on between them, the appellant has already deserted his first wife and after deserting her (Surekha) he wants to contract third marriage. The aforesaid dying declarations bear the thumb impression of both the declarants. A tip has also been recorded by the Executive Magistrate (PW-15 Shrikant Verma) who recorded the declarations, that on account of there being injury on their right hand their thumb impressions have been obtained. In cross-examination also this witness has denied the suggestion that as the deceased persons had sustained burn injury on both of their hands, they were not in a position to even put their thumb impression on the dying declarations. The Executive Magistrate has duly supported the prosecution case and there is no evidence that he was having any ill-will with the appellant.

17. As regards fitness of mind of the declarants, in the dying declarations the Executive Magistrate has also noted that as Dr. VR Meshram (PW-14) had already certified the patients to be fit for making statement, he proceeded to record their dying declarations. Even otherwise, it is a settled principle of law that mere absence of certification regarding fitness of mental condition of the declarant would not make the otherwise reliable and credible dying declaration doubtful or unacceptable. When it is recorded, no oath is necessary nor is the presence of a Magistrate or the doctor absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for

recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise.

18. As per record, certificate regarding mental fitness was given by the doctor at 1.15 am and the dying declarations were recorded at 3.15 am. In the meanwhile, Dehati Nalishi (Ex.P/28) was also recorded at 2 am at the instance of deceased Surekha wherein she has categorically stated as to the manner in which she and Droupadi were burnt by the appellant and 3-4 other persons due to some family dispute. This statement of Surekha can also be treated as her first dying declaration. Though as per Ex.D/2 & D/4 it appears that some sleep inducing drugs (Fortwin & Compose) were administered to the deceased persons, however, there is no evidence in the cross-examination of the doctor (PW-14) administering such drugs that after such medicines, the patients would not be in a position to make any statement for a particular time period. Rather this witness (PW-14) has himself certified

vide Ex.P/20 & P/21 at 1.15 am that both the patients are in a fit state of mind to make statement. The Executive Magistrate in his cross-examination has also clarified in the Court that he proceeded to record the dying declarations only after satisfying himself about the fitness of their mental condition to make any such statement.

19. For the reasons stated above, we are of the opinion that the dying declarations made by the deceased persons were voluntary and made in a fit state of mind and there is no reason for this Court of disbelieve the same.

20. We find no substance in the argument of the appellant that the dying declaration is doubtful because earlier the deceased persons had not disclosed the name of the appellant as the perpetrator of the crime and for the first time in their dying declaration they stated so. Admittedly they had sustained 95% to 100% deep burn and as such they must be under severe pain and shock. In such a situation they cannot be expected to give a detailed description of the incident. Even otherwise, it is not for the first time in their dying declarations that they named the appellant but in the Dehati Nalishi (Ex.P/28) recorded at 2 am also deceased Surekha has named the appellant as perpetrator of the crime. Further, we also find no substance in the argument of the appellant that as the culprits had covered their faces, there was no question of their identification. True it is that in the documents of Ex.D/2 & D/4 the deceased persons had stated that five unknown persons who had covered their faces threw kerosene on them but in their dying declarations as also the Dehati Nalishi recorded at the instance of deceased Surekha, they have categorically stated that it is the

appellant who along with 4-5 other persons entered their house and set them on fire. The aforesaid dying declaration and Dehati Nalishi (which is considered to be her first dying declaration) have already been found to be duly proved and worth reliance. Even otherwise it defies the logic as to why the persons lying on deathbed or in contemplation of death would spare the real culprits and resort to falsehood for any ulterior motive, and rather a man will not meet his maker with a lie in his mouth.

The argument of the appellant that the appellant and the deceased persons were residing in different villages and therefore, it was not possible for the appellant to commit the offence, also does not appeal to reason because distance between the two villages is hardly 22 km which can easily be covered by anyone within a short span of time.

21. On the basis of aforesaid discussions, we are of the opinion that the prosecution has been able to prove its case based on the dying declarations of the deceased against the appellant beyond all reasonable doubt. As such, findings recorded by the trial Court holding the appellant guilty under Section 302 of IPC are hereby affirmed.

22. In the result, the appeal fails and is, accordingly, dismissed. The appellant is reported to be on bail, therefore, his bail bonds stand cancelled and he is directed to be taken into custody forthwith to serve out the remaining part of his sentence.

Sd/

(Pritinker Diwaker)
Judge

Sd/

(R.P. Sharma)
Judge