

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.497 of 2013**

Arising Out of PS. Case No.-19 Year-2008 Thana- ASANWA District- Siwan

1. Rishikesh Singh and Anr Son Of Rampyar Singh Resident Of Village - Shivpur Sakara, Polic Staiton - Asawan, District - Siwan
2. Raju Singh Son Of Late Ram Sagar Singh Resident Of Village - Shivpur Sakara, Polic Staiton - Asawan, District - Siwan

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Baxi SRP Sinha, Sr. Adv Mr. Lokesh Kumar Singh, Advocate
For the Respondent/s	:	Mr. S.N. Prasad, APP
For the Informant	:	Mr. Raghav Prasad, Adv

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT**

Date: 27-06-2025

Heard Mr. Baxi S.R.P. Sinha learned Senior counsel for the appellant assisted by Mr. Lokesh Kumar Singh, Mr. Raghav Prasad, learned counsel for the informant and Mr. S.N. Prasad learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of Code of Criminal Procedure, 1973 (hereinafter referred as 'Cr.P.C') challenging the judgment of conviction dated 06.07.2013 and order of sentence dated 09.07.2013 passed in Sessions Trial No. 142 of 2009 in connection with Asanwa P.S. Case No. 19 of 2008 passed by learned Ad-hoc Additional District and Sessions Judge-III, Siwan whereby and where-under the appellant no.1 has been



convicted for the offence under Sections 304 part II of the Indian Penal Code (hereinafter referred as 'IPC') and sentenced to undergo rigorous imprisonment for 7 years and fine for Rs. 10,000 and in default of payment of fine further sentenced to undergo six months imprisonment. Further, appellant no. 2 has been convicted for the offence under Sections 304 part II read with 34 of the IPC and sentenced to undergo rigorous imprisonment for 7 years and fine for Rs. 10,000 and in default of payment of fine further sentenced to undergo six months imprisonment.

3. The brief fact leading to the filing of the present appeal on the basis of the written information of the informant Hare Krishna Pandey on 10.07.2008 at about 8 PM in the night, he was taking meal inside the house. In the meantime the appellants appeared there and entered into his house, dragged him out and assaulted him by fist and slaps, stick and *lathi*. When the informant fell down the villagers came and intervened. It appears that the informant during the course of treatment is said to have died on 12.07.2008.

4. Further on the basis of the written information of the informant, a case was registered in Asanwa P.S. Case No. 19 of 2008 was instituted on 10.07.2008 for the offences under Sections 448, 341, 323 and 325 read with 34 of the IPC. It may



further be added that the charges against the appellants were framed under Sections 302 read with 34 of the Indian Penal Code. It further appears that in view of the aforesaid on 18.07.2008 Section 304 of the Indian Penal Code was also added in the case. The charge sheet was submitted for the offence under Sections 304 (ii) read with 34 of the Indian Penal Code. The cognizance was taken and the case was committed to court of Sessions for trial with the result aforesaid.

5. The prosecution examined altogether 9 witnesses to substantiate the charges leveled against the appellants, who are namely, PW-1 Puja Kumari (daughter of the deceased), PW-2 Indrapati Devi (mother of the deceased), PW-3 Parasnath Pandey (father of the deceased), PW-4 Thakurji Pandey (brother of the deceased), PW-5 Satyanarain Pandey (brother of the deceased), PW-6 Dr. Azhar Ahmad (conducted Postmortem of the deceased), PW-7 Chhathu Pandey, PW-8 Umesh Prasad (Investigating Officer) and PW-9 Vijay Singh (Wireless operator). CW-1 Dr. Prem Kumar (Medical Officer), CW-2 Ramaji Tiwari (Formal Witness) and on behalf of defence only one witness has been examined i.e., DW-1 Gandhi Yadav.

6. PW-1 Puja Kumari (daughter of the deceased) in her examination-in-chief stated that the alleged incidence took place about one year two months ago at 8:00 PM. She



further stated that her family members were resting after dinner and her father was alone at home. At that time Rishikesh Singh appellant no. 1 and Raju Singh appellant no. 2 came to her house and started using abusive language and forcefully took her father out of her home to the road while beating him and injured him by hitting him with sticks, fists and slaps, due to the aforesaid injuries, he fell down on the ground and his scalp got fractured and the blood started oozing out. Upon making noise, the villagers arrived and intervened and the accused person ran away from there. She further stated that her grandfather took her father to the hospital for treatment but he succumbed to the aforesaid injury.

6.i In her cross-examination, she stated that her nuptial home is at Jamapur Bazaar and she did not know since when there was enmity with the accused persons and also not personally know about the enmity between both the parties and she did not have any information regarding the dispute which earlier took place between both the parties and also had no information regarding the dispute with Satyanarayan Pandey.

6.ii. She further stated that her uncle said her to give the statement. When she first saw Harekrishna Pandey then he had a single injury, he was bleeding and lying on the ground. 50-60 persons came at the place of occurrence when



Harekrishna Pandey was lying. She further stated that the place of occurrence is the road.

7. PW-2 Indrapati Devi (mother of the deceased) in her examination-in-chief stated that the occurrence took place 15 months ago at around 8:00 PM. They were seated in home after having dinner. At the same time, Rishikesh and Raju Singh entered the house using abusive language and dragged Harekrishna Pandey to the road. Rishikesh started to hit him with stick and Raju gave fist blows. She further stated that her son Harekrishna sustained injuries on his head and his head started bleeding and he fell down. The family members took him for treatment, but he died.

7.i. She in her cross-examination stated that she was not present at the place of alleged occurrence. She further stated that Harekrishna Pandey had not sustained any injury on that day and Satyanarayan Pandey and Harekrishna Pandey were on speaking terms. On the night of the occurrence, Harekrishna Pandey already had his dinner. Harekrishna Pandey had sustained injuries due to falling due to which he become unconscious. She saw the injury on the back of Harekrishna's head. The injury was bandaged, but she did not see what it was bandaged with.

8. PW-3 Parasnath Pandey (father of the



deceased) in his examination-in-chief stated that the alleged incidence took place on 10.07.2008 at 8:30 PM, while he was seated at his door after dinner. Rishikesh Singh and Raju Singh forcefully entered inside his house and dragged his son out of the house and hit him on the head with stick and Raju Singh gave fist blows. He further stated that after sustaining the injury his son fell down right there and upon hearing the noise the villagers arrived and the accused persons ran away from the place of occurrence. He further stated that he along with his younger son and daughter took his son Harekrishna to the Police Station. His injured son gave an application to the police station which was written by Barhos Babu @ Vijay Babu as per the statement of his son Harekrishna Pandey. His son made his signature on that application. They took him to Dr. B.N Chaudhary at Meerganj, from there he was referred to Gorakhpur, my son died on the way near Devariya. They brought the dead body to Sadar Hospital, Siwan, where the postmortem was conducted. Before the incident, a dispute occurred between his son and the accused persons in the bank regarding getting a draft issued.

8.i. He in his cross-examination stated that at the time of the incident, he was not in Delhi. He frequently visit his sons Ravi and Shashi in Delhi. He didn't remembered that on



which date he returned home before the incident. Sometimes he would return from Delhi on a reservation ticket and sometimes on a general ticket. The S.I recorded his statement 5-6 days after the death of his son. The written report and the inquest report does not bear his signature. He further stated that at the time of alleged incident he was at his home. When the deceased sustained injuries he went to the police station first and then to the hospital. He took the injured to the Sub Health Centre and there the Doctor told us to take him to Siwan after getting his statement recorded. After that he went to the police station and from there he took him to Siwan. No application was given at the police station. He took him to Dr. B.N. Chaudhary in Siwan. Dr B.N Chaudhary was not present in Siwan. Therefore, he could not be treated in Siwan. He did not take his son to Siwan Sadar Hospital. No treatment of Harekrishna was done at Siwan. He stated that at the clinic of Dr. B.N. Chaudhary, he underwent treatment for three hours. He never told the S.I that they stayed at the clinic of Dr. B.N Chaudhary for three hours. He did not receive any prescription of the treatment. His son Harekrishna Pandey died at 10 o'clock in the night. The dispute occurred at 6 o'clock in the evening. He was not present there. The whole incident lasted for 10-15 minutes. Wireless staff @ S.H.O had written the statement, He had stated the statement before the



S.1. At that time, when S.H.O wrote his statement, the S.I was present there. He had stated before the S.I that his son had made his signature on that application. He had stated before the S.I, that the injury report was prepared by the S.H.O.

9. PW-4 Thakurji Pandey (brother of the deceased) in his examination-in-chief stated that the incident occurred one and half years ago at 8 o'clock in the night. At that time, he was on the terrace of his house. Rishikesh Singh and Raju Singh entered his house and started using abusive language. They dragged his brother to the road from the house. Rishikesh Singh hit his brother with stick on his head. His brother fell right there. Raju Singh gave fist blows to his brother. Upon hearing the noise, the villagers arrived, then the accused persons ran away. This incident took place regarding the passport. He further stated that the incident took place between his brother and Rishikesh Singh and Raju Singh regarding dispute over getting a bank draft issued.

9.i. He in his cross-examination stated that he got to know about the incident on the same day that the incident occurred regarding issuance of bank draft for passport. He heard it from his father. My brother was not unconscious. He reached the Govt. Hospital at 11 o'clock. He had stayed there for about 2 hours and got administered saline. The Doctor gave him some



medicine. He did not see whether his wound was stitched or not. They departed from Mirganj at 3 o'clock in the day. Harekrishna Pandey did not get unconscious on the road. He talked to him. His forehead was bleeding. He further stated that he has no knowledge as to how his deceased brother had died. He can't state the number of persons present at the time of incident. He stated before the S.I that he saw his brother's head was bleeding and he had fallen on the ground. He had not stated the fact that his brother got unconscious after getting injured.

10. PW-5 Satyanarain Pandey (brother of the deceased) in his examination-in-chief stated that the incident occurred on 10.07.2008 at 8:00 PM. At that time, he was on the terrace of his house. Rishikesh Singh and Raju Singh entered our house and started using abusive language and dragged my brother Harekrishna Pandey from the house to the road. Rishikesh Singh hit his brother with stick and Raju Singh gave fist blows, due to which his brother fell down. He and his father took Harekrishna Pandey to Asaon P.S on Tata Sumo, where his brother Harekrishna got his statement recorded before the A.S.I (wireless) at the police station. His brother made his thumb impression to the same. The S.I prepared the documents upon seeing the injuries on the body of his brother and sent him to hospital and from there he was taken to Sadar Hospital, Siwan.



They came to Siwan, but did not go to Sadar Hospital. They took the deceased to Dr. B.N. Chaudhary at Mirganj for treatment, but from there too, the Doctor told to go to Gorakhpur. his brother died as they reached Devariya. The dead body was brought to Sadar Hospital, Siwan, where he made his signature. A dispute had occurred between the accused persons and his brother regarding the bank draft and for this reason, the accused persons committed this incident.

10.i. He in his cross-examination stated that Harekrishna Pandey has sustained severe injury on head. He did not get injured due to falling and his brother was not unconscious. After the incident, the deceased was taken to the police-station first and then to the hospital. They reached the Govt. Hospital at 11 o'clock and they had stayed there for about 2 hours and his brother was not treated at the said hospital. The Doctor did a simple treatment at hospital and administered saline. The Doctor gave him some medicine. He did not see whether his wound was stitched or not. They again went to the P.S from hospital. The statement of Harekrishna Pandey was again recorded at the police station. The police arrived before the postmortem and this enquiry was made by the police in the hospital and he stated about the incident to the police in the hospital itself. PW5 identified his signature on the fardbeyan



upon seeing it which is marked at Ext-A. He had not given such a statement before the police that at the premises of Sadar Hospital, Siwan, he had given his statement in the presence of his father Parasnath Pandey that on 10.07.2008 at 8.30 o'clock in the night, a dispute arose between my brother Harekrishna Pandey and Rishikesh Singh and his other accomplices, in which his brother Harekrishna Pandey had sustained injuries on his head. PW5 identifies the signature of his father Parasnath Pandey on the fardbeyan which is marked as Ext- P/1.

11. PW-6 Dr. Azhar Ahmad (who conducted postmortem of deceased) on 12.07.2008 he was posted at Sadar a medical office and on that day at 12.45 PM a dead body in Tata Sumo was-brought by chaukidar 9/3 Surendra Kumar Manjhi and Satya Narayan brother of the deceased Harekrishna Pandey S/o of Parasnath Pandit of village Arakpur P.S Asaon District, Siwan. at 2:05 PM. He performed postmortem examination on the dead body of Hare Krishna Pandey and aged about 45 years. Rigor mortis found on all four limbs, and found antemortem injuries on the dead body:

(i) Lacerated wound found over the right perital region of the head 2"x1/2" x scalp deep.

(ii) On dissection- Blood and clots found in the sub scalf region of right perital and occipital region of the head.



(iii) Fracture of right parietal bone of Skull. Blood and clots found in the Cranial cavity with laceration of brain matter.

(iv) Heart Right chamber Contains blood and left chamber empty.

(v) liver-found enlarged. Clots found on in the base of gall bladder.

(vi) stomach- Contains dark colour fluid about 200 ml.

(vii) Urinary bladder full of urine. Other visceras of the body were found intact.

Cause of death- Due to shock and hemorrhage due to above mentioned antemortem injuries caused by hard and blunt Substance on head.

Time since death to postmortem examination- 9 to 24 hours. This postmortem report is in my pen and bears my signature. It is marked as Ext.2.

11.i. In his cross-examination he stated that the dead body presented before him after approx 18 hours from the death of the deceased. Dead body was brought from out side by a vehicle. In morning hours the urinary bladder remain full. Such injury is possible also if a person falls from height on hard and blunt substance. If a person collides his head in anger on wall build of bricks in running condition and be there such injury as possible. He has examined the dead body Carefully and Cautiously and has found only one external injury on the body of deceased.

12. PW-7 Chhathu Pandey in his examination-in-Chief stated that the incident occurred on 10.07.2008. At that time, he was at his home. It was half past eight o'clock in the



night when he heard noise which was coming from the house of Parasnath Pandey. Upon hearing the noise, he went there and saw that Rishikesh Singh and Raju Singh dragged Harekrishna Pandey out from his house. Rishikesh Singh began to hit Harekrishna Pandey with stick and Raju Singh assaulted him with fist blows, due to which he sustained injury on his head and fell down. Satyanarayan Pandey and his family members took Harekrishna Pandey to Asaon P.S. There, his statement was recorded. They took him to Siwan hospital, then on the way to Gorakhpur, he died on the way. He made his signature on the inquest report of Harekrishna Pandey. The signature is already marked Ext-1.

12.i. He in his cross-examination stated that he don't know what has been written on the inquest report. He was present there at the time of making the signature. He had brought the dead body from home and Satyanarayan Pandey, Parasnath Pandey, Vijay Pandey were with me. The dead body was of Harekrishna Pandey. We left at 8 o'clock in the morning. It took 1.5-2 hrs to reach Siwan and they reached Siwan at 10 o'clock in the day. They were traveling in Bolero, which also had the dead body of Harekrishna Pandey.

13. PW-8 Umesh Prasad (Investigating Officer) in his examination-in-chief stated that on 10.07.2008, he was



posted as an A.S.I at Asaon P.S. and Vijay Singh was posted as the wireless operator that day at Asaon P.S and is still serving there. Harekrishna Pandey had come to the police station at night and stated before Vijay Singh regarding the incident and he wrote the said application, which was given by Harekrishna and in the handwriting of Vijay Singh, which he identified and marked as Ext-3. The endorsement on this application is in the handwriting of Kamleshwar Prasad, S.H.O, Asaon, which he identify and marked as Ext-4.

13.i. The formal F.I.R in this case is in the handwriting of Vijay Singh, which has been signed by Kamleshwar Kumar, which he identified and marked as Ext-5. He took over the charge of investigation at 22 Hrs and recorded the re-statement of Harekrishna at the police station. He saw the injuries on his body and referred him to P.H.C Andar. He recorded the statement of the witness Puja Kumari. The place of occurrence is the brick soled road which runs from Asaon to Singhpur Sakra in front of the house of Harekrishna Pandey at village- Araghpur. The boundary of the place of occurrence is as follows- Pucca building of Ramchandra Sharma made of bricks in the east, Pucca building of Harekrishna Pandey in the west, brick soled road in the north, brick soled road in the south. The pucca house of Rajkishore Singh is adjacent to the road. He



recorded the statement of the witness Indrapati Devi, Thakurji Pandey, Rajendra Sharma. Received the inquest report of the deceased Harekrishna Pandey which is in the handwriting of A.S.I Keshav Prasad Yadav and bears his signature and it is a carbon copy which has been prepared in a single process. He identified it and marked it as Ext- 6. He wrote the inquest report in the diary.

13.ii. The case diary is in his hand. Before commencing the investigation in the case, he had no knowledge about this case. First of all, he copied the fardbeyan in the diary and copied the same date in the diary which was written in the fardbeyan. This action is taken after taking over the charge of investigation. If the charge of investigation is taken after five days, then also, the same date will be copied in the diary on which the fardbeyan was written. First of all, the written application and fardbeyan is copied in the diary. Thereafter, commenced further action from 11.07.2008. He don't remember at what time on 11.07.2008, he recorded the statement of alleged injured. He had not found any evidence of motion or fight and neither found blood stain. He had not recovered stick at the place of occurrence, from which it can be said that an incident had occurred there. He can't state how far is the house of the informant from the place of occurrence, because it is not



mentioned in the diary.

14. PW-9 Vijay Singh (Wireless operator) in his examination-in-chief, stated that on 10.07.2008, he was posted at Asaon as a wireless operator, Harekrishna Pandey came in an injured state at 10:00 PM for reporting complain. The Bada Babu (senior most among the policemen present) asked him to write the application. He read it over to him, then he made his impression upon finding correct. This is the same application, which he had written on the dictation of Harekrishna. He identify it. This bears my signature, which is already marked Ext- 3. He further stated that he has not marked the time on this application at which it was written. He did not know Harekrishna Pandey since before and has not made his signature. He has even not written the place anywhere. He further stated that he did not see any injury on his body. He don't write ferd bayan and he did not remember whether he has written any other application besides this. The person who had come was incapable to write the application, he was not literate. He wrote the application on his saying. He can not state that whether Harekrishna Pandey was a literate person or not.

15. CW-1 Dr. Prem Kumar (Medical Officer), he was on 10.07.2008 posted as Medical Officer at Andar Primary Health Center. On that day, injured Harekrishna Pandey, age-45



years, s/o- Parasnath Pandey, r/o- village- Arghpur came to the hospital for treatment, whose outdoor prescription no. 22009 dated 10.07.08 was recorded by him. He gave injured the necessary treatment and referred him to Sadar Hospital for further investigation and treatment. This prescription is in his handwriting and bears his signature, he identify it. (Mark it Ext-7).

15.i. The Hindi handwriting on the prescription is not his hand-writing. No one can write the medicine on the prescription of a Govt. Hospital without name and registration number. He has not written anywhere that the patient was serious. He has written “needful” and not written “for test and treatment”. He had not informed the local police. The local police also did not give demand application for the injury report. He had asked the patient to go to the police. He has not written about any injury. He has not written about the details of any injury. He did not know the patient since before. When a patient comes, then his visible injuries are written. The Munshi (clerk) had come to him with the letter of the A.P.P. He does not know the name of the Munshi (clerk). He have not mentioned the date below my initial signature. Time has not been mentioned on the prescription, whereas it should be given. If it is an emergency, then first the witness is given treatment, then O.P.D slip is issued



to the police.

16. CW-2 Ramaji Tiwari (Formal Witness) This report bears the signature of Dharmnath Singh of Primary Health Center. He identify the initial signature (Marked Ext-8). The signature was not made before him. He don't have know about the facts written in the report. He has not worked with the Doctor. This is not correct to say that he has made a wrong identification of the initial signature.

17. DW-1 Gandhi Yadav in his examination-in-chief stated that he is the Headmaster of Middle School, Arghpur (Government). He has brought the admission register of the school on the order of the Court. At serial no. 63 dated 20.01.1972 in the admission register, Harekrishna Pandey, s/o- Parasnath Pandey, village- Arghpur, Post- Shivpur Sakritila, Siwan has been admitted in class 4. He has passed class seven from his school in the year 1975. The student who has passed class 7 from my school is able to read and write Hindi and English. This entry in the admission register is in the handwriting and initial of the then Principal Parasnath Pandey, which he identify. Mark it as Ext- A. The certificate is in the handwriting of the former Headmaster of his school Shri Rajyamohan Prasad and bears his signature, which he identify. Mark it as Ext-B.



17.i. The certificate marked ext-B has been issued on 10.4.2008. The certificate is issued upon the oral or written application of the concerned student. In ext-A, the sub-column of the register is not filled, some unnecessary columns are empty. The column designated for the signature of the Headmaster is empty. The column designated for the date of leaving school is empty. The column designated for the class in which the student was admitted before leaving the school is empty. This is not the fact that I have prepared the ext-3 in collusion.

18. After closure of the prosecution evidence, the appellants were examined under Section 313 of the Cr.P.C where they claimed that the prosecution evidence is false and they are innocent and have been falsely implicated in the present case.

19. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence from the perusal of the evidences adduced on behalf of the prosecution it is crystal clear that the place of occurrence in this case has not been shown by the prosecution. It has not been established and



there is contradiction in the statements of witnesses regarding the place of occurrence.

19.i. Learned counsel further submitted that no such occurrence took place and the witnesses did not see any incident. A false FIR was lodged in collusion with the wireless operator and the deceased Harekrishna Pandey was not given any treatment. He further stated that the PW-2 during her cross examination has stated that an occurrence took place with his son Satyanarayan Pandey at 8 PM and she was not present at that time and on that day, the deceased, Hare Krishna Pandey did not sustained any injury. The statement of PW-3 is not trustworthy for the reason that in paragraph no. 15, he stated that he along with injured and other family members first reached police station and gave fardbeyan to Darogaji and at the same time in paragraph no. 18 he stated that the doctor suggested him to move police station and then move to Siwan. Both statements are contradictory. In paragraph 19, he accepted that he moved to P.S. He also stated that no treatment was given to the injured at Siwan later in contradiction of his own statement he stated about going to Siwan, Mirganj, Dewariya, Gorakhpur for treatment but no prescription is available for that this creates doubt regarding the authenticity of the statement.

19.ii. Learned counsel also submitted that PW-6



the doctor who conducted postmortem has found one lacerated wound over the right partial region and during cross-examination, the doctor opined that the injury may be caused due to fall on hard blunt substance and he also opined that if any person got injury of such type, then the person will die instantly. It means that the deceased was not in a position to give fardbeyan to police. Learned counsel further submitted that PW-7 the neighbour of the deceased stated that on hulla he came to the place of occurrence and narrated tutored story of the occurrence as stated by other prosecution witnesses as during his cross examination in paragraph no. 5, he stated that he along with others moved to Siwan with dead body of the deceased. This shows the description of treatment given by other prosecution witnesses seems to be concocted and false. In paragraph no. 9, he has stated that his statement has never been taken before I.O., S.P. or D.S.P. It means that he deposed before the court for the first time. Any fact stated by him is not reliable and trustworthy.

19.iii. He further submitted that PW-8 in his deposition stated that the deceased has come to P.S. and gave statement to Vijay Kumar, wireless operator. On investigation he had not found any evidence of scuffle and blood at the place of occurrence which creates doubt with respect to the alleged



occurrence. PW-9 is the writer of the statement of the deceased had not seen any injury over the body of the deceased. He further submitted that as far as the question of common intention is concerned, it cannot be inferred that the intention of the appellants was to commit murder or culpable homicide not amounting to murder. The weapon used are fists, slaps and a stick. Thus the common intention if at all of the appellants was to cause assault by fists and slaps and the stick. Therefore, in the aforesaid circumstance, there is no question of sharing and acting in furtherance of any common intention, which was to kill the deceased. The facts and circumstances of the case, clearly states that the act of the appellants was never be that of culpable homicide amounting to murder or murder. The aforesaid facts is also obvious from the fact that the deceased died after two days of the occurrence. So far as the appellant no. 2 is concerned, it cannot be said that he is not responsible for any act disclosed in the occurrence. Therefore, he should have acquitted out rightly. In view of the above facts it can be said that the appellants are innocent and have not caused any injury to the deceased.

19.iv. Learned counsel further submitted that as this appeal is of the year 2013 and occurrence is of the year 2008, where, the appellants have suffered and undergone



persistent agony on the account of the same and are struggling for the defence since last 12-15 years. So, the appellants should have been acquitted from the conviction as sentenced against them.

20. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellants beyond all reasonable doubts. Declaration given to a police officer is not hit by Section 162(2) of Cr.P.C. He further submitted that in the present case, the statement of a victim is recorded by the police as a first information and if there is a dying declaration, it is safe to rely on the dying declaration. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

21. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court. I have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both parties.

22. On deeply studied and scrutinized all evidences, it is evident to note that the deposition of PW-2



stating that the deceased did not sustained any injury can be disbelieved on the basis of the fact that she was not present at the place of occurrence and she is not the eye witness of the alleged occurrence. But when the appellants entered into the house and dragged the deceased from the house she was present in the house at that time, so it cannot be disregarded that occurrence did not took place. PW-3, PW-4 and PW-5 stated that they took the deceased to the police station where PW-9 recorded his statement and there after they went to the hospitle for the treatment of the deceased. The same statement is corroborated by the IO and PW-9, where IO in his deposition stated that deceased came at the police station and gave his statement about the alleged occurrence to PW-9 and PW-9 in his hands wrote the said application which he identifies and marked as ext. 3. Further PW-9 in his deposition stated that deceased came at the police station in the injured condition and on instruction of senior officials he wrote the application of the deceased as narrated by him. PW-6 doctor in his deposition also confirmed that the cause of death is the injury sustained by the deceased in the same transaction.

23. Further, the statement of the victim was recorded by the police as a first information and if there was a declaration, it is safe to rely on the declaration as dying



declaration. As declaration given to a police officer is not hit by Section 162(2) of Cr.P.C. In the case of ***Khushal Rao v. State of Bombay (AIR 1958 SC p.22)***, Hon'ble apex court has held that uncorroborated dying declaration can be the basis for conviction. Following are the principles laid down in the said judgment:

- (i) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated,*
- (ii) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made,*
- (iii) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence,*
- (iv) that a dying declaration stands on the same footing as another piece of evidence has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence,*
- (v) that a dying declaration which has been recorded by a competent magistrate in the proper manner that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon the oral testimony which may suffer from all the infirmities of human memory and human character, and*
- (vi) that in order to test the reliability of a dying declaration the court has to keep in*



view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night, whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it, and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.'

24. The Hon'ble Supreme Court in the case of ***Madan @ Madhu Patekar v. State of Maharashtra (2019) 13 SCC 464*** has dealt with the issue of Dying Declaration and has held that it can be the sole basis of conviction. Paragraphs 10, 11 and 12 of the aforesaid Judgment read as under:-

"10. The rule of admissibility of dying declaration is no more res integra. In the adjudication of a criminal case, dying declaration plays a crucial role. A dying declaration made by a person as to cause of his/her death or as to any of the circumstances which resulted in his/her death, in cases in which cause of death comes in question, is relevant under Section 32 of the Evidence Act. It has been emphasized number of times that dying declaration is an exception to the rule against admissibility of hearsay evidence. The whole development of the notion that the dying declaration, as an exception to the hearsay rule, is based on the formalistic view that the determination of certain



classes of evidence as admissible or inadmissible and not on the apparent credibility of particular evidence tendered.

*11. We are aware of the fact that the physical or mental weakness consequent upon the approach of death, a desire of self-vindication, or a disposition to impute the responsibility for a wrong to another, as well as the fact that the declarations are made in the absence of the accused, and often in response to leading questions and direct suggestions, and with no opportunity for cross-examination: all these considerations conspire to render such declarations a dangerous kind of evidence. In order to ameliorate such concerns, this Court has cautioned in umpteen number of cases to have a cautious approach when considering a conviction solely based on dying declaration. Although there is no absolute rule of law that the dying declaration cannot form the sole basis for conviction unless it is corroborated, the courts must be cautious and must rely on the same if it inspires confidence in the mind of the Court [see: **Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517; 1998 SCC (Cri) 1085 and Suresh Chandra Jana v. State of W.B. (2017) 16 SCC 466; (2018) 2 SCC (Cri) 187**].*

12. Moreover, this Court has consistently laid down that a dying declaration can form basis of conviction, if in the opinion of the Court, it inspires confidence that the deceased at the time of making such declaration, was in a fit state of mind and there was no tutoring or prompting. If the dying declaration creates any suspicion in the mind of Court as to its correctness and



genuineness, it should not be acted upon without corroborative evidence [see also: Atbir v. Govt. (NCT of Delhi), (2010) 9 SCC 1:(2010) 3 SCC (Cri) 1110, Paniben v. State of Gujarat (1992) 2 SCC 474: 1992 SCC (Cri) 403 and Panneerselvam v. State of T.N., (2008) 17 SCC 190: (2010) 4 SCC (Cri) 496].”

25. A dying declaration enjoys almost a sacrosanct status as a piece of evidence coming with it does from the mouth of victim. No one at the point of death is presumed to tell lie. Clause (i) of Section 32 of the Evidence Act provides that statements made by a person as to cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, are themselves relevant fact. If the general condition of victim is poor and there is no time to call the magistrate to record the dying declaration, or call to doctor to certify the fit condition of victim and only I.O. is available. Then in that case, he can also record the dying declaration of victim and in such a scenario it is not necessary to record the same in the form of question answer or according to any specific format, as the substance/fact matters not the format. Therefore, the facts mentioned to I.O. in his statement may be it was recorded under the provisions of 161 Cr.P.C., is relevant and shall be treated as dying declaration of victim.



26. In the case of *State of Rajasthan v. Ganwara* (2019) 13 SCC 687, the Hon'ble Supreme Court has again dealt with the issue of Dying Declaration, which was the sole basis for conviction. Paragraph 8 of the aforesaid Judgment is reproduced as under:-

“8. It is well settled and needs no reiteration at our hands that dying declaration can form the sole basis for conviction. At the same time, it is not the plurality of the dying declarations that adds weight to the prosecution case, but their qualitative worth is what matters. The settled legal principle is that dying declaration should be free from slightest of doubt and shall be of such nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court must exercise great caution while considering the weight to be given to a dying declaration, particularly when there are more than one dying declaration.”

27. The statement was recorded soon after the occurrence. The facts narrated by deceased is supported and corroborated by other ocular as well as medical evidences. No cross-examination has been done by defence with doctor regarding his mental condition. There was no evidence of any dictation or tutor to victim. As far as DW-1, Gandhi Yadav who is principle of middle school had proved that the deceased-cum-injured Harekrishna Pandey was literate person and thumb impression which has been provided by him on written report



ext.1 does not seem reliable. While deeply scrutinizing and on perusal it is evident that PW-6 Doctor who has conducted the postmortem of the deceased found that there was fracture on right parietal bone of skull and blood clots found in the cranial cavity with laceration of brain matter. He further found lacerated wound over the right parietal region of the head 2" x 1/2" scalp deep. It is also evident from the injury report that where the injured person parietal bone of the head is injured then in such case he would be not in a position to give his full signature rather he can give his thumb impression. Further it is also clear that the scribe of the written report i.e., PW-9 who is the wireless operator of the concerned police station will not have any interest in favour of victim or have any reason to tell lie in his deposition as he is impartial person. So, ext-5 which is written report is proved beyond all reasonable doubt that injured-cum-deceased Harekrishna Pandey had narrated the same. So, it can safely be treated as dying declaration.

28. It is also clear that eye witness who have been examined in the trial had not told anywhere in their deposition that the injured-deceased was unconscious as long as he was alive. So, the statement of DW-1 will not benefit the case of the defence in any manner. The contention raised by the learned counsel for the defence that Dr./Medical Witness PW-6



that the injury sustained by the deceased can also be caused due to fall on hard substance but from the said aspect there is no specific suggestion given by defence to prosecution witness by which they (prosecution witness) could clarify the same. Another contention raised by the learned counsel for the defence is that no mark of assault and no blood stain was been found at the place of occurrence. Further, PW-9 has not seen any injury mark on the deceased body. After deeply studying and scrutinizing the entire evidence, it is clear that PW-6 Medical Witness has stated in para 2 and 3 that on dissection found fracture of right parietal bone and one injury which has been stated in para 1 i.e., lacerated wound has been found over the right parietal bone which is only 2" x ½" x scalp deep. Any injury which is caused on right parietal scalp bone can be seen by anyone or blood can ooze out which would be visible at the place of occurrence. Accordingly, there is no validity and no force in the contention raised by the defence.

29. Learned counsel for the defence has pointed out several contradiction in the statements made by the eye witness which this Court has deeply scrutinized. It is evident that to take any contradiction of the facts, it is necessary to draw the attention from the previous statement of the witnesses and if he deny from that statement then he should be granted proper



opportunity to explain how and why it is written. This will be proper compliance of Section 145 of the Evidence Act, 1872 as laid down by the Hon'ble Supreme Court in the case of Karan Singh And Ors. Vs. State of M.P. (2003) 12 SC Cases 587 in Paragraph No. 5:

“5. When a previous statement is to be proved as an admission, the statement as such should be put to the witness and if the witness denies having given such a statement, it does not amount to any admission and if it is proved that he had given such a statement the attention of the witness must be drawn to that statement. Section 145 of the Evidence Act is clear on this aspect. The object is to give the witness a chance of explaining discrepancies or inconsistencies and to clear up the particular point of ambiguity or dispute. In the instant case Ext. D-4 statement as such was not put to the witness nor was the witness given an opportunity to explain it. Therefore, Ext. D-4 statement, even if it is assumed to be a statement of PW-1 Hari Singh, that is, of no assistance to prove their case of private defence.”

30. Learned counsel for the defence has not complied with the same. So, contention made by learned counsel for the defence has got no legal strength in the same. In the present matter, undoubtedly and with all concrete evidence it is established that all prosecution witness who has been examined are natural witness who have seen both the appellants



dragging injured-cum-deceased from his house and assaulted deceased at his door by stick by appellant namely Rishikesh and appellant namely Raju assaulted him with fist and legs. Both the appellants entered the house and they both had dragged the deceased out of his house and the said fact has also been supported by independent witness and PW-7 has substantially proved the same. In such condition there is no legal strength in the defence version. In the present matter, dying declaration is supported by ocular testimony and it is also corroborated from the corroborative evidence of IO and medical officer. Hence, it can be assumed safely that prosecution has successfully proved their matter beyond shadow of all reasonable doubt.

31. In the light of above discussed facts and evidences, this Court forms the opinion that the prosecution succeeded to prove its case beyond shadow of all reasonable doubt before the Trial Court and the evidences adduced by the prosecution are sufficient to attract all the three main ingredients of the offence of Section 304 (ii) of IPC for which the appellants have been convicted and this Court does not find any reason to interfere in the said conclusion of the trial Court. So far as the quantum of punishment awarded by the trial Court upon the appellants is concerned, as the victim died due to injuries caused by the blow given by the appellants, so in view of these facts,



the punishment of seven years of rigorous imprisonment awarded upon them appears to be justifiable.

32. Hence, the Judgment of conviction dated 06.07.2013 and order of sentence dated 09.07.2013 passed in Sessions Trial No. 142 of 2009 arising out of Asanwa P.S. Case No. 19 of 2008 passed by learned Adhoc Additional District and Sessions Judge-III, Siwan is upheld and sustained.

33. Accordingly, this appeal is dismissed.

34. The appellants are on bail, hence, their bail bonds is hereby canceled and they are directed to surrender before the convicting Trial Court within ten days before the Trial Court and they are directed to serve the remaining part of their sentence awarded by the Trial Court.

35. Office is directed to send back the trial court records and proceedings along with a copy of this judgment to the trial court, forthwith, for necessary compliance, if any.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	AFR
CAV DATE	08.05.2025
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