

HIGH COURT OF MADHYA PRADESH, BENCH AT INDORE

Case No.	CRIMINAL APPEAL NO.585/2014
Parties Name	Kuldeep Choudhary @ Kuldeep Yadav & another Vs. <i>State of Madhya Pradesh</i>
Date of Judgment	26/02/2021
Bench Constituted	Division Bench: Justice Sujoy Paul Justice Shailendra Shukla
Judgment delivered by	Justice Sujoy Paul
Whether approved for reporting	Yes
Name of counsels for parties	Shri Surendra Singh, learned Sr.Counsel with Shri Vaibhav Jain, learned counsel for appellant No.1 and Shri Vivek Singh, learned counsel for appellant No.2. Ms.Archana Kher, learned Dy.A.G. for respondent/State.
Law laid down	*Section 32(1) of Indian Evidence Act, 1872- If nature of injuries found on the person of deceased were not grievous in nature and were not sufficient to cause death, oral dying declaration/statement given by him does not fall within the ambit and scope of “dying declaration” envisaged in Section 32(1) of the Act. The Court needs to examine carefully whether injuries on the person are sufficient to cause death and this depends on the factual matrix of each case. *Dying Declaration- If person is promptly hospitalized because of injuries and during treatment developed other complications, death can be said to be natural consequence of injuries caused and not because of any negligence or any external factor. The statement of

dying declarant falls within the ambit of Section 32 of Indian Evidence Act.

***Opinion of the Doctor/Expert-** Courts are not absolutely guided by report of experts. Credibility of expert opinion depends on the reasons stated in support of his conclusion and the data and material furnished which formed the basis for his conclusion. In the instant case, PW-29, who conducted the postmortem deposed in the Court that reason of death is cardio vascular failure. In the postmortem report, he also gave a finding that reason of death is because of injuries on the body by hard and blunt object. Thus, his deposition in the Court varies from his finding given in the report. Thus, such statement does not inspire confidence of the Court.

***Section 65 of Evidence Act, 1872 – Photocopy of document –** The photocopy of document can be treated as 'secondary evidence' provided it satisfies the conditions enumerated in any of the clauses of Section 65 of Indian Evidence Act. In absence of showing original one and existence of original copy to which evidence is the photocopy, the document cannot be treated as secondary evidence.

***Oral dying declaration –** If such dying declaration is reliable, conviction can be accorded on its basis alone. Requirement of corroboration by Doctor or declaration regarding mental fitness of deceased is merely a rule of prudence.

***Section 374 of Cr.P.C.- Judicial Review –** If Court below has taken a plausible view in the impugned

	judgment, no interference is warranted in appellate jurisdiction.
Significant paragraph numbers	

J U D G M E N T
26.02.2021

As per: Sujoy Paul,J.

In this appeal filed u/S.374 of Code of Criminal Procedure (Cr.P.C) the appellants have challenged the judgment dated 5/4/2014 passed by Addl.Sessions Judge, Badwahaa, District Khargone in ST No.50/2011 whereby convicting and sentencing the appellants as under:-

Name of accused	Section	Punishment	Default sentence
Kuldeep Choudhary @ Kuldeep Yadav	147 of IPC	RI for one year	
	302/149 IPC	RI for life with fine of Rs.10,000	One year RI
	201/149 IPC	RI for five years with fine of Rs.5000	Six months RI
	25 (1-b) of Arms Act	One year RI with fine of Rs.500	Three months RI
Yogesh Bobysingh @	147 of IPC	One year RI	
	302/149 IPC	RI for life with fine of Rs.10000	One year RI
	201/149 IPC	Five years RI with fine of Rs.5000	Six months RI

Background Facts:-

[2] In short, the relevant facts which have given rise to this matter are that deceased Omprakash was working as Salesman in the liquor shop of Rinku Bhatia situated at Khargone bus station. On 27/10/2010 at around 7.00 PM

Mahendra was sitting in the shop whereas another co-accused Sanjay was unloading the liquor boxes from a vehicle. The appellant Kuldeep and Baby Singh @ Yogesh Chouhan came in a vehicle with driver and two other persons in the shop and forcibly took Mahendra with them. Kuldeep assaulted Mahendra with the *butt* of a revolver on his head. In the said vehicle they took him towards Kasrawad road. Mahendra was beaten by accused persons by sticks, kicks and fists. Mahendra found that another salesman of liquor shop Omprakash was sitting and weeping in the said vehicle. Omprakash was also assaulted by sticks, slaps and fists. After some time, Mahendra became unconscious. When Mahendra gained consciousness, he found himself in the office of liquor contractor of Badwahaa namely Rinku Bhatia. At this place also, Mahendra and Omprakash were beaten by sticks, belts, kicks and fists. Mahendra again became unconscious. On 29/10/2020 at around 7.30 AM when Mahendra gained consciousness, he found Omprakash is lying in another room in an unconscious stage. Mahendra could fled away from the said house and reached Indore where he narrated the said incident to brother Ramvachan. Later on 31/10/2020, Gourishankar informed him that Omprakash was taken to Sunderson Hospital on 29/10/2010 from where he was referred to M.Y. Hospital, Indore where he died on 31/10/2010.

[3] As per information of incident furnished by Mahendra, ASI O.S. Kushwaha (PW.28) lodged the report and *murg* intimation was also recorded. The postmortem report was also obtained along death notification letter Ex.P/34 issued by the M.Y. Hospital. The intimation of death Ex.P/39 was recorded. The postmortem report Ex.P/38 was procured. Mahendra was

subjected to medical examination and serious injuries were found on his body. Resultantly, after investigation against present appellants and three other persons, offences u/Ss.342, 364, 365, 302/149, 307/149 read with 201 of the IPC were registered by way of FIR Annexure P/34.

[4] After completion of investigation, challan has been filed. In turn, matter was committed to the Court of Additional Sessions Judge. Appellants and co-accused persons abjured the guilt. The Court framed nine issues for determination.

[5] The Court below after recording the statements of prosecution witnesses, permitted the appellants to put forth their defence. In their statements recorded u/S.313 Cr.P.C, the appellants pleaded that they are innocent and have been falsely implicated. One defence witness namely Dr.Varsha Dhakad (DW.1) from M.Y. Hospital, Indore deposed in favour of the defence.

[6] The Court below by impugned judgment found that the prosecution has satisfactorily and beyond reasonable doubt proved the charges against the appellants and resultantly convicted them and imposed the sentence mentioned in the previous paragraph.

Appellants' Submissions:-

[7] Shri Surendra Singh, learned Sr.Counsel for appellant No.1 and Shri Vivek Singh, learned counsel for appellant No.2 urged that both the appellants were Managers of a liquor shop whereas deceased Omprakash was a salesman. As per prosecution story, the present appellants abducted Omprakash and demanded money to release him. The said incident had taken place on 27/10/2010. Mahendra is an injured eye

witness who did not support the prosecution story. Reliance is placed on para 13 of the impugned judgment wherein it is recorded that Mahendra did not identify the accused persons during investigation. He did not narrate while entering the witness box that he was either abducted or assaulted by accused persons. Mahendra was declared hostile. During his cross examination also, he did not depose anything against the accused persons. Thus, Court below has rightly opined that statement of Mahendra Yadav does not help the prosecution and accordingly appellants deserve exoneration from committing offence u/S.364 of the IPC.

[8] As per said story, Omprakash was initially hospitalized in Sunderson Hospital, Badwahaa on 29/10/2010. The statement of Dr. Taygore PW.1 and Ex.P/10 were referred to by appellants to contend that in this letter written by Sunderson hospital to Station House Officer (SHO), Police Station, Badwahaa, it is mentioned that Prakash was brought to the hospital in unconscious condition and is suffering from Hyperglycemia and is in coma. Since nobody is with him, arrangements may be made to send him for further treatment to M.Y. Hospital Indore. This document is referred to show (i) Prakash was brought to Sunderson Hospital in unconscious stage; (ii) Sunderson Hospital informed the police about his unconscious stage on 29/10/2010 itself. Thereafter, Omprakash was taken to M.Y. Hospital. He remained hospitalized in M.Y. Hospital on 30th and 31st October, 2010. Omprakash died on 31/10/2010. It is common ground taken by learned counsel for appellants that the injuries found on the person of Omprakash were not fatal in nature. Injuries were not on the vital parts of the body. It cannot be said that injuries were so grave in nature

which could have become reason for his death. In support of this contention, statement of Dr. Prashant Rajput PW.29 is relied upon who conducted the postmortem of Omprakash. The nature of injuries found on the person of Omprakash is referred to from his statement where he stated that reason of death of Omprakash is cardio vascular failure. Heavy reliance is placed on para 7 of statement of PW.29 wherein he stated that as per admission card and medical reports, it is clear that when Omprakash was admitted in M.Y. Hospital he was unconscious. On 31/10/2010 also, he was unconscious. As per medical documents, Omprakash was in unconscious stage on 30/10/2010 also. Omprakash died at 11.45 PM on 31/10/2010. As per this deposition, the reason of death is not the said injuries indeed he died because of cardio vascular failure. On the strength of the statement of Dr.Prashant Rajput who was working in Forensic Medicine Department of M.Y. Hospital, it is urged that Omprakash was brought in unconscious stage and he continuously remained unconscious till his death. Thus, question of any oral dying declaration by Omprakash did not arise. To strengthen this argument, reliance is also placed on the statement of Dr.Varsha Dhakad (DW.1). This Doctor was working as Assistant Professor in Surgical Department of M.Y. Hospital. She deposed that Omprakash was brought for treatment by his brother Gourishankar (PW.4) on 29/10/2010 in unconscious stage. He was admitted in ICU. Next day on 30/10/2010, it was found that he is suffering from diabetic disease. His sugar count was on higher side i.e. between 500-600. He died during treatment on 31/10/2010 in ICU. In view of expert opinion of PW.29 and DW.1, it is canvassed that the deceased during entire period of

treatment in Badwahaa and Indore remained unconscious and died in the same stage.

[9] Great deal of arguments were advanced to show that statement of PW.4 Gourishankar, brother of deceased is not trustworthy. This witness brought the deceased to M.Y. Hospital. It is submitted that during his deposition, a photocopy of his application was produced before the trial Court to establish that an application (photocopy) regarding incident was submitted by Omprakash before police station, Badwahaa. The prosecution raised serious objection against this photocopy on the strength of Sec.65 of the Evidence Act. Learned Sr.Counsel drew the attention of this bench to the note mentioned in the deposition of PW.4 wherein the Court rejected the objection on the said photo copy for the reason that witness stated that the original application was preferred before police station on which acknowledgment was duly given. By placing reliance on Sec.65 of Evidence Act and judgments of Supreme Court reported in **(2009) 6 SCC 681 Ram Suresh Singh Vs. Prabhat Singh & another and (2013) 2 SCC 114 U.Sree Vs. U.Srinivas**, it is argued that in absence of satisfying necessary ingredients mentioned in different clauses of Sec.65 of Indian Evidence Act, a photocopy cannot be treated as secondary evidence. The Court below has erred in permitting this application (Ex.D.1) as secondary evidence. This Ex.D.1 is the only document, submits Shri.Singh, learned Sr.Counsel which shows that with quite promptitude Gourishankar informed the police station regarding reason of death i.e. beating by present appellants. He submits that this is a fabricated document which was prepared later on and for this reason, neither Omprakash nor Investigating Officer O.S. Kushwaha PW.28 could produce

the original of this application. Hence, Ex.D/1 pales into insignificance and it cannot be treated as a piece of legal evidence. In absence thereof, it is clear that about the incident which had taken place on 27/10/2020, for the first time in his statement recorded u/S.161 Cr.P.C on 4/12/2010, PW.4 stated about the oral dying declaration and reason of death. In other words, after five weeks from the date of incident, Omprakash deposed his statement u/S.161 on 4/12/2010 and stated about oral dying declaration. This is clearly an afterthought. For the same reason, statements of widow Gitadevi (PW.5) and son Rajan Kumar Jaiswal (PW.6) of deceased are not trustworthy.

[10] At the cost of repetition, On the basis of statement of Dr.Rajput (PW.29) and Dr.Varsha Dhakad (DW.1), it is submitted that there is no manner of doubt that Omprakash was unconscious during entire treatment and, therefore, question of giving information about beating by present appellants or giving any oral dying declaration did not arise. The story of prosecution is unreliable. The test about dying declaration is laid down by Supreme Court in ***Jagbir Singh Vs. State (NCT of Delhi) (2019) 8 SCC 779***. In para 21(iv) and (v) of the judgment, the Court held that where dying declaration is suspicious it should not be acted upon without corroborative evidence. Similarly, where deceased was unconscious and could never make any dying declaration, the evidence with regard to it is to be rejected.

[11] Reference is made to ***Imran Khan Vs. State of M.P. 1994 MPLJ 862*** wherein by following a passage from *Manaye's* on Criminal Law of India (IV Edition) the Court opined that death should be connected with act of violence and dying declaration can be accepted only if nature of injury caused to

the deceased are of such nature which can result into his death. In the instant case, it is contended that nature of injuries were not grievous in nature at all. No vital part of body was injured. At best, offence u/S.323 IPC can be made out. Unless transaction or injury is of such nature which could have resulted into his death, the alleged statement of Omprakash cannot be treated to be a oral dying declaration as per Sec.32 of the Indian Evidence Act.

[12] To elaborate, Shri Surendra Singh, learned Sr.Counsel urged that the reason of death of Omprakash as per medical opinion is diabetics or coma. The said disease, by no stretch of imagination can be outcome of beating or injuries caused by beating. ***Pirthi Vs. State of Haryana (1994) supplementary 1 SCC 498*** is relied upon to contend that in this case, the deceased Jia Lal was kicked by the appellants therein on his testicles as a result of which he fell down. Another attack on same body part was made. Injured was taken to his house and was shifted to hospital after two days. Because of blackening and gangrene, deceased died on April 5, 1986. The Apex Court opined that lack of immediate medical help became reason of gangrene attack because of which Jia Lal died. Hence conviction of appellants u/S.304-II IPC was converted into Sec.323 of IPC. Shri Singh submits that in the instant case also, at the most appellants could have been convicted u/S.323 of IPC.

Respondent's Submissions:-

[13] Mrs. Archana Kher, learned Dy.A.G supported the impugned judgment and urged that the Court below has given justifiable reasons in support of its conclusions. Even DW.1

deposed that Gourishankar informed her that Omprakash was beaten by appellants by hard and blunt object. This statement of defence witness itself shows that story of dying declaration is not cooked up as an afterthought. More so, when report Ex.P.41 also shows that reason of death of Omprakash is beating. By placing reliance on postmortem report and other documents, learned Dy.A.G supported the impugned judgment.

[14] No other point is pressed by learned counsel for parties.

[15] We have heard the learned counsel for parties at length and perused the record.

Findings:-

[16] The case of appellants is that when deceased Omprakash was hospitalized in Sunderson hospital, Badwaha, the treating doctor O.P. Taygor (PW.1) recorded in Ex.P/2 that on the body of patient Omprakash, there are no injury marks. He promptly through letter dated 29/10/2010 (Ex.P/1) communicated the police station that Omprakash is unconscious and there is nobody to support him and, therefore, he should be transferred to MY Hospital, Indore. On the strength of these communications, it is sought to be established that case of appellants is clear like a mirror which leaves no room for any doubt that deceased Omprakash was not subjected to any beating etc. because of which he was admitted in Sunderson hospital. The Court below discarded this defence. We will deal with this aspect little later in this judgment. The prosecution intended to establish on the basis of letter/application of Gauri Shankar (PW.4) - Ex.D/1 which is written to the police station regarding intimation of injuries on 29/10/2010. Admittedly, original of this document was not produced before the Court. As

per appellants' contention, this is the only document by which prosecution intended to fill the gap and show that Omprakash promptly informed the police regarding beating and injury to deceased Omprakash. The Court below has committed an error in accepting this photocopy as secondary evidence despite objection and in absence of fulfilling the requirement of Section 65 of Evidence Act. We find substance in this contention. A photocopy can be treated as secondary evidence provided one of the clauses/conditions enumerated in Section 65 of Evidence Act are satisfied. In absence thereof, a photocopy cannot be treated as secondary evidence. Either existence of original to which photocopy is produced must be established or in alternatively, any of other clauses of Section 65 must be satisfied. In the instant case, prosecution has not satisfied the said requirement and, therefore, we have no hesitation to hold that Court below has erred in accepting the photocopy as secondary evidence. The impact of ignoring this piece of evidence namely Ex.D/1 will be dealt with by us in later paragraphs.

[17] It was strenuously contended that incident had taken place in last week of October 2010. Omprakash was hospitalized in Badwaha and MY hospital, Indore from 29/10/2010 to 31/10/2010. He died on 31/10/2010, but after about five weeks, Gauri Shankar (PW.4) deposed his statement under Section 161 of Cr.P.C. wherein for the first time, he disclosed about factum of beating and oral dying declaration of Omprakash given to him. This aspect needs careful consideration. Dr. Varsha Dhakad entered the witness box on behalf of defence as DW.1. She was working with MY hospital. In her deposition, she candidly admitted that Gauri Shankar

(PW.4) informed her that Omprakash was beaten by hard and blunt object. In view of this statement of defence witness, there is no manner of doubt that story of beating/assault and hospitalization because of that was not cooked up or outcome of any afterthought on the part of family members namely Omprakash and widow and son of deceased.

[18] In the application submitted for conducting postmortem also (Ex.P/42), Gauri Shankar (PW.4) specifically mentioned that reason of death is "*Marpit*". Hence, we are unable to hold that for five weeks, Omprakash did not inform anybody regarding beating/assault by appellants. In our view, Omprakash was not obliged to mention in the application seeking postmortem that deceased has given him dying declaration.

[19] In view of foregoing analysis, even if police complaint Ex.D/1 is ignored and it vanishes into thin air, it will not cause any dent to the prosecution story because as per statement of Dr. Varsha Dhakad (DW.1) and application for postmortem, it is clear that Gauri Shankar (PW.4) informed about injuries available on the person of deceased. He also informed that reason of hospitalization was the said injuries.

[20] Now coming to the statement of Dr. Taygor (PW.1), it is noteworthy that Court below disbelieved his statement and document Ex.P/2 in which he opined that no injuries were there on the body of Omprakash. The said statement and documents were disbelieved by holding that in Ex.P/2 the name of relative and attendant of deceased Omprakash and his cell number was mentioned which makes it clear that Omprakash was not alone in the hospital. Indeed, a relative was accompanying him. For this reason, Court below disbelieved the communication

dated 29/10/2010 (Ex.P/1) whereby OP Taygor (PW.1) informed Police Station- Badwaha that there is nobody with Omprakash and considering his serious condition, he must be shifted to MY hospital. Apart from the aforesaid, Court below disbelieved it for yet another reason, which in our opinion is a plausible reason. It was held that if there had been no injuries on the person of Omprakash and it was not a medico-legal case, there was no occasion for Dr. Taygor (PW.1) to inform the police station regarding factum of admission and need of transfer of patient to MY hospital. The appreciation of evidence and analysis by Court below is in accordance with law and we do not find any infirmity which warrants our interference. Hence, we are unable to hold that statement of Dr. Taygor (PW.1) supports the appellants and establishes that no injuries were there when Omprakash was admitted in Sunderson hospital, Badwaha.

[21] Shri Surendra Singh, learned Senior Counsel placed heavy reliance on the statement of Dr. Prashant Rajput (PW.29), who conducted the postmortem and prepared the report. In his Court statement, PW.29 assigns singular reason for death of Omprakash i.e. "cardio vascular failure". In view of this statement, two fold submissions were advanced:-

- (i) None of the injury on the body of Omprakash were grievous and fatal. Injuries were not on any vital part of the body.
- (ii) Reason of death was not injuries, indeed it was because of cardio vascular failure.

On the first blush, argument appears to be very attractive, but on microscopic reading of evidence, it has lost much of its shine.

[22] On the basis of first point, it was further argued that if nature of injuries were not sufficient to cause death, any statement given by person does not fall within the ambit of Section 32 of Evidence Act. Appellants relied on certain judgments of Supreme Court and judgment of this Court in *Imran* (supra). There cannot be any quarrel on this legal proposition. A careful reading of Section 32(1) leads us to the same conclusion that if injury or transaction cannot be treated to be a reason for causing death, statement of injured/declarant does not fall within the fore corners of Section 32(1) of the Act. Whether principle propounded in *Imran* (supra) can be made applicable or not depends on the facts and circumstances of each case. This depends on the nature of injuries and cause of death.

[23] As per PW.29 following injuries were found on the person of Omprakash:-

External examination:-

1. Abrasion present lateral part posteriorly which was present at back of right arm, 1 x 1 cm in size blackish colour.
2. Contusion 3 x 3 cm in size medial part of left arm mid point.
3. Contusion 4 x 2 cm size present at lower outer side of right thigh.
4. Contusion 3 x 3 cm size in anterior lateral part of right shoulder.
5. Contusion 3 x 2 cm size present on left medial meiosis.
6. Contusion was present at Centre of sole of right foot.
7. Abrasion of 6 x 4 cm size over posterior lateral mid point of right thigh.

Internal examination:-

1. The right lung was affixed to thoracic cavity.
2. The liver has been found rigid and gritty.
3. Spleen was slightly enlarged.
4. The kidneys were attached at front from both sides and

fat was deposited around it.

5. Brown liquid material about 140 ml was found in stomach. Stool was present in large intestine. All the organs were found normally congested.
6. Scalp and skull were found normal. **Upon opening the skull a small blood clot was found inside lateral frontal region.**

(emphasis supplied)

[24] If injuries mentioned in “external examination” alone are taken into account, the appellants certainly deserve to succeed based on the principle laid down in *Imran* (supra). However, finding about injuries based on “internal examination” cannot be ignored or thrown to wind. Injury No.6 is grievous, fatal and on a vital part of the body namely, frontal region of the brain. This injury could be detected only upon opening the skull during postmortem. The Court below opined that this injury was reason of death of deceased. No amount of arguments were advanced to attack finding of the Court below given in this regard in para-24 of the judgment. Existence of a grievous injury on the vital part of Omprakash shows that it could have been a reason for his death. For this reason, the principle laid down in *Imran* (supra) cannot be pressed into service. For the same reason, the judgment of *Pirthi* (supra) is of no assistance. In *Pirthi* (supra), there was delay in hospitalizing the injured by family members. Because of delay, gangrene was developed in his body and he died because of gangrene. It is not the case of appellants that there was any delay in hospitalizing Omprakash. On the contrary, the defence is that Omprakash was not injured when he was admitted in Sunderson Hospital, Badwaha. His injuries which were found at MY hospital, Indore were not fatal and not on vital parts.

[25] In *G.S.Walia Vs. State of Punjab & Ors. (1998) 5 SCC*

150 the Apex Court considered a medical evidence which shows that death was not caused because of injuries themselves. During taking bed rest because of said injuries, the deceased developed pulmonary embolism. Thus, injuries had necessitated bed rest and complication had arisen during the bed rest. The death was found to be natural consequence of injuries caused and it was not because of any negligence or external factor. Thus, it was ruled that it cannot be said that the injuries were only indirectly responsible for causing death of dying declarant and as his death cannot be said to have been caused due to the injuries caused, the statement made by him would not fall within Sec.32 of the Evidence Act. Since statement of deceased related to the cause of his death it was admissible in evidence u/S.32 and judgment of High Court was turned down which decided otherwise. This judgment of Apex Court, in our view clearly covers the instant case and brings dying declaration within the purview of Sec.32(1) of Indian Evidence Act.

[26] So far second contention aforesaid is concerned, it is based on the opinion of a doctor/expert. We are not oblivious of legal position that normally the expert opinion's must be respected. It is equally settled that expert opinion is not like a gospel truth which needs to be swallowed without examining its truthfulness and veracity. Dr. Rajput (PW.29) in his Court statement assigned singular reason of death i.e. cardio vascular failure and went on stating that there was no element of beating by stick etc to Omprakash, otherwise he would have mentioned it in his court statement or in the PM report. When his court statement was tested on the anvil of postmortem report, we found that in his written opinion reduced in writing in

PM report, he specifically mentioned another reason of death i.e. injuries on the person of Omprakash caused by hard and blunt object. Dr. Rajput did not mention about this reason in his court statement. Thus, his court statement could neither inspire confidence of Court below nor of this Court.

[27] In **(1992) 4 SCC 69 Mafabhai Nagarbhai Raval Vs. State of Gujarat**, the Apex Court opined that credibility of expert opinion depends on the reasons stated in support of his conclusions and the data and *material furnished which formed the basis of conclusion*. Reference may be made to relevant portion of judgment of **Dayal Singh vs. State of Uttaranchal (2012) 8 SCC 263** which reads as under:-

“The courts, normally, look at expert evidence with a greater sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution.”

The essential principle governing expert evidence is that the expert is not only to provide reasons to support his opinion but the result should be directly demonstrable. The court is not to surrender its own judgment to that of the expert or delegate its authority to a third party, but should assess his evidence like any other evidence.

We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the court in arriving at a final conclusion. Such report is not binding upon the court. The court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not.”

(emphasis supplied)

[28] As per the *ratio decidendi* of these judgments, we have no hesitation to hold that Court below has rightly disbelieved the

statement of Dr. Rajput (PW.29) regarding reason of death.

[29] Oral dying declarations given by brother of deceased Gauri Shankar (PW.4), wife of deceased Geeta Devi (PW.5) and son Rajan Kumar Jaiswal (PW.6) were assailed by contending (i) the statement of Dr. Varsha Dhakad (DW.1) and Dr. Rajput (PW.29) shows that right from the date of admission in MY hospital till his death on 31/10/2010, Omprakash was unconscious and hence there was no question of giving oral dying declaration to family members. Since dying declarations are suspicious, in view of judgment of Supreme Court in **Jagbir Singh** (supra), it requires corroboration.

[30] Dr. Varsha Dhakad (DW.1) deposed about health and condition of Omprakash at the time of hospitalization. Neither her statement nor statement of Dr. Rajput (P.W.29) contains any statement that during entire period of hospitalization, Omprakash continuously remained unconscious. Dr. Rajput (PW.29) on the basis of certain medical documents opined that there exists findings about each day's hospitalization at MY hospital that deceased was unconscious. The Court below opined that the medical documents on the strength which said statement was made by Dr. Rajput (PW.29) were not exhibited and proved by prosecution. Hence, his statement is not worthy of credence. We do not find any perversity or illegality in this finding. The finding of Court below that doctors do not remain with the patient in the hospital during the entire period of hospitalization and family members remain with the patient full time is a plausible view which does not require any interference. In that event, the statement of Gauri Shankar (PW.4) that during hospitalization Omprakash gained consciousness and informed him, his wife and son about

assault by appellants cannot be doubted.

[31] In view of foregoing analysis, we are constraint to hold that oral dying declaration can be sole basis for holding the appellants as guilty. We find support in our view from the judgment of Supreme Court and this Court. [See **AIR 2009 SC 1487 Varikuppal Srinivas Vs. State of Andhra Pradesh**) and Division Bench judgment of this court reported in **2008(3) MPHT 194 State of Madhya Pradesh Vs. Ashok & another**. In **Vikas & Ors. Vs. State of Maharashtra (2008) 2 SCC 516**], it was poignantly held that corroboration of dying declaration is not essential if dying declaration is truthful and voluntary. Requirement of doctor's endorsement as to mental fitness of deceased is merely a rule of prudence. There is no straight jacket formula that in every case oral dying declaration must be corroborated and mental condition of declarant must be certified by a doctor. [See also **(2005) 9 SCC 113 Muthu Kutty & another Vs. State of Tamil Nadu**]

[32] As analyzed above, we do not find any illegality or perversity in the impugned judgment. The prosecution has established its case beyond reasonable doubt. The Court below rightly appreciated the evidence and took a plausible view in the judgment, which does not warrant interference by this Court. (See **Maniben v. State of Gujarat (2009) 8 SCC 796**, **Madathil Narayanan v. State of Kerala (2018) 14 SCC 513**)

[33] Resultantly, appeal fails and is hereby **dismissed**.

(Sujoy Paul)
Judge

(Shailendra Shukla)
Judge