

A.F.R.
HIGH COURT OF MADHYA PRADESH, JABALPUR

Criminal Appeal No.	358 of 1994
Parties Name	State of M.P. Through Police Station Hoshangabad, District Hoshangabad (M.P.) Vs. 1. Raju alias Rajendra Singh, S/o Takhat Singh, aged about 25 years, R/o Budhni, District Sehore (M.P.) 2. Hari Singh alias Harsharan Singh, S/o Beni Singh, aged about 25 years, R/o Raja Mohalla, Hoshangabad (M.P.) 3. Dr. Mohd. Vaseem, S/o S.S. Ibrahim, aged about 45 years, R/o Balaganj, Hoshangabad (M.P.)
Bench Constituted	Hon'ble Shri Justice S.K.Gangele & Hon'ble Shri Justice Anurag Shrivastava
Judgment delivered by	Hon'ble Shri Justice Anurag Shrivastava
Whether approved for reporting	Yes/No
Name of counsels for parties	For appellant/State: Shri A.N.Gupta, Government Advocate For respondent: Shri S.K. Gangrade, Advocate
Law laid down	

Significant paragraph numbers	
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J U D G M E N T
(28.11. 2017)

This appeal under Section 378(1) of Cr.P.C., has been preferred by the appellant/State against the judgment dated 1st November, 1993 passed by Additional Sessions Judge, Hoshangabad in S.T. No.62/1992, whereby the respondents has been acquitted of the charge of offence punishable under Sections 302, 302/115 of IPC.

2. The case of the prosecution in brief is that respondent Dr. Mohd. Wasim Siddiqui was living as a tenant in the house of Kanchedi Lal situated at Hoshangabad. Kanchedi Lal wanted to evict Dr. Mohd. Wasim from rented premises and they were having a long old dispute on account of this premises. Deceased Gopal was the son of Kanchedi Lal. In the month of September, 1991 Dr. Mohd. Wasim had beaten Gopal with the help of other respondents. A report of this incident was lodged at Police Station Hoshangabad. On 05.10.1991 at about 12 O' clock in the noon Kanchedi Lal and Gopal were present in their house where a construction work was going on. Respondent Dr. Wasim came there alongwith respondent Hari Singh and Raju and by indicating towards Gopal, Dr. Wasim told the other respondents that they have to do away Gopal. It is further alleged by the prosecution that at about 5 O'clock in the evening Gopal went to his new house where construction work was going on. He was sprinkling water

on the plaster of the wall by a pipe. Meanwhile, respondents came there, they caught hold of Gopal and at the point of knife they forcibly thrust the pills of pesticides sulphas into his mouth and forced him to swallow the pills. Thereafter respondents ran away. Gopal returned his house and started vomiting. He narrated the incident to his wife and father Kanchedi Lal. As his condition became serious he was brought to District Hospital Hoshangabad where he was examined by Dr. Hasan. An intimation of incident was sent to Police Station by the doctor. Head Constable Krishna Kumar visited hospital and a dying declaration of deceased was got recorded by Naib Tahsildar. Thereafter deceased was referred to Medical College, Bhopal for treatment. Deceased was being taken to Bhopal but on the way he had expired. Than again he was brought to District Hospital Hoshangabad. The police registered the offence and initiated the inquest. The panchanama of dead body was prepared and body was sent for postmortem. The visra of the deceased was sent for chemical investigation to FSL. The investigation report confirms the presence of sulphas. During investigation the statement of witnesses were recorded and charge-sheet has been filed.

3. The respondents have been charged under sections 302, 302/115 of IPC. They abjured guilt and pleaded innocence. The prosecution has examined fifteen witnesses, whereas respondents have not given any evidence in their defence.

4. The trial Court on appreciation of evidence disbelieved the dying declaration of the deceased and statement of his father Kanchedi Lal and found the case of prosecution not proved beyond reasonable doubt and acquitted the respondents of the charges of alleged offence. Against the judgment of acquittal present appeal has been preferred by the State.

5. It is argued by the learned counsel after the incident the deceased has narrated about the incident to his father Kanchedi Lal and also given dying declaration to Naib Tahsildar. The postmortem report shows that the death was caused due to sulphas poisoning. Naib Tahsildar who has recorded the dying declaration has categorically deposed that he has recorded the dying declaration as per statement of the deceased. He was fully conscious and mentally fit at the time of making statement. This fact is duly corroborated by the doctor who had examined the deceased at the time of recording of the dying declaration. This is also corroborated by the statement of Kanchedi Lal. The trial Court on erroneous appreciation of evidence has disbelieved the dying declaration and statement of Kanchedi Lal without assigning cogent reasons. There was enmity between Dr. Wasim Siddqui with the deceased on account of eviction proceedings. The dying declaration is wholly reliable and trustworthy. On the basis of the evidence on record the guilt of respondents are duly proved. Therefore, appeal is to be allowed and respondents may be punished.

6. Heard arguments, perused the record.

7. It is not disputed that on 05.10.1991 deceased Gopal was brought to the District Hospital, Hoshangabad, on account of consuming poisonous substance sulphas. He was admitted in the hospital for treatment. After initial treatment he was referred to Medical College, Bhopal, in the night. Later on, he was brought dead in the hospital at around 11:15 pm in the night by his relatives. Dr. S.N. Katariya (PW-6) deposed that on 06.10.1991 at District Hospital, Hoshangabad, he had performed the postmortem of deceased Gopal. There was sign of poisoning in the body. He preserved visra and directed for its chemical examination. It is also not disputed that the visra of the deceased was sent to FSL for examination. The FSL report (Ex.P/22) confirms the poison aluminum phosphide (sulphas) in the visra. Thus, relying upon the above evidence it is rightly proved by the trial Court that the death of the deceased was caused due to poisoning.

8. Now the question arises whether the respondents had administered the sulphas poison to deceased forcibly. There is no eye witness to the incident. The case of prosecution mainly rests upon the testimony of Kanchedi Lal (PW-7) and the dying declaration of the deceased (Ex.P/2) recorded by the Naib Tahsildar. Since, Kanchedi Lal is the father of deceased and also he had inimical terms with the respondent Dr. Wasim Siddiqui due to eviction proceedings, we have to scrutinize the statement of Kanchedi Lal with due care and circumspection.

9. Kanchedi Lal (PW-7) in his statement para-6 deposed that at around 5:30 – 6:00 pm in the evening Gopal came back from the house where a construction work was going on. The condition of Gopal was not good. He was vomiting. Gopal told him that when he was sprinkling water to the newly constructed wall of the house, respondents came there. Raju took out a knife and kept the point of knife on his abdomen thereafter Hari Singh thrust the pills of sulphas forcibly into his mouth and pushed the water pipe in his mouth. The sulphas pills were swallowed by him with the water coming from the pipe. It is further stated by Kanchedi Lal that he immediately sent his son Gopal to Government Hospital by an auto with his neighbour Govind and Anita the wife of deceased. He remained at home because he was having problem in his legs. Later on, at about 11:30 pm he was informed that his son Gopal had expired.

10. In cross-examination we find material omission and contradictions in his statement and the statement of given under Section 161 of Cr.P.C to police. In his police statement (Ex.D/1) it is not mentioned that his son Gopal had told him that at the time of incident Raju had pointed the knife on his abdomen. It is also not mentioned that Hari Singh had inserted the water pipe forcibly in the mouth of Gopal. The witness has admitted that he was not keeping good relations with his tenant Dr. Wasim Siddiqui and they had quarrel many times prior to the incident. This shows the previous enmity

between the respondent Dr. Wasim Siddiqui and Kanchedi Lal.

11. Kanchedi Lal is the father of the deceased, he remained present through out the inquest proceedings, but neither he has lodged any complaint to police against the respondents nor his statement has been recorded by Investigating Officer soon after the incident. It appears that his police statement (Ex.D/1) was recorded on 20.10.1991 some 15 days after the incident.

Hon'ble Apex Court in case law ***Harbeer Singh Vs. Sheesh Pal and others (2016) 16 SCC 418*** observed that:-

"Delay in recording statement of witnesses does not necessarily discredit their testimonies. The court may rely on such testimonies if they are cogent and credible and delay is explained to the satisfaction of court. However, delay in recording of statements of prosecution witnesses under Section 161, although such witnesses were or could be available for examination when investigating officer visits scene of occurrence or soon thereafter, might cast a doubt upon the prosecution case. Such delay needs to be properly explained."

In the present case, the delay in recording police statement of Kanchedi Lal is not properly explained by the Investigating Officer. When the deceased has made first dying declaration before this witness than his statement has to be recorded at earliest. This creates doubt on the testimony of Kanchedi Lal. Further more, Kanchedi Lal deposed that deceased had informed him about the respondent Dr. Wasim Siddiqui and Raju who were present at the time of incident and forcibly made

the deceased to consume poison. Whereas in subsequent dying declaration (Ex.P/2) recorded by Naib Tahsildar deceased had not stated the name of Dr. Wasim Siddiqui and Raju. If these two respondents were also present and participated in commission of crime then why the deceased had not stated their names in his dying declaration (Ex.P/2). This discrepancies creates doubts on the testimony of Kanchedi Lal. The trial Court considering his statement and other discrepancies therein has rightly disbelieved the testimony of Kanchedi Lal.

12. Now we will consider the law in respect of multiple dying declarations Hon'ble Apex Court in case ***Shudhakar Vs. State of M.P. (2012) 7 SCC 569*** in para 21 observed as under:-

"Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the Court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters. In the case of Lakhan

(supra), this Court provided clarity, not only to the law of dying declaration, but also to the question as to which of the dying declarations has to be preferably relied upon by the Court in deciding the question of guilt of the accused under the offence with which he is charged. The facts of that case were quite similar, if not identical to the facts of the present case. In that case also, the deceased was burnt by pouring kerosene oil and was brought to the hospital by the accused therein and his family members. The deceased had made two different dying declarations, which were mutually at variance. The Court held as under :

"9. The doctrine of dying declaration is enshrined in the legal maxim *nemo moriturus praesumitur mentire*, which means "a man will not meet his Maker with a lie in his mouth". The doctrine of dying declaration is enshrined in Section 32 of the Evidence Act, 1872 (hereinafter called as "the Evidence Act") as an exception to the general rule contained in Section 60 of the Evidence Act, which provides that oral evidence in all cases must be direct i.e. it must be the evidence of a witness, says he saw it. The dying declaration is, in fact, the statement of a person, who cannot be called as witness and, therefore, cannot be cross-examined. Such statements themselves are relevant facts in certain cases.

10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the

dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon. (Vide *Khushal Rao v. State of Bombay*, *Rasheed Beg v. State of M.P.*, *K. Ramachandra Reddy v. Public Prosecutor, State of Maharashtra v. Krishnamurti Laxmipati Naidu*, *Uka Ram v. State of Rajasthan*, *Babulal v. State of M.P.*, *Muthu Kutty v. State of Rajasthan v. Wakteng and Sharda v. State of Rajasthan.*)

13. In the present case, we find three dying declarations of the deceased. The first dying declaration is said to have been made before the father of deceased. Second one is made before treating doctor and third one is recorded by Naib Tahsildar. We have already discussed about the truthfulness of first dying declaration made by the deceased before his father Kanchedi Lal and found it doubtful. Now we will consider the third dying declaration (Ex.P/2) made by the deceased to Naib Tahsildar G.P. Sharma (PW-2). Naib Tahsildar G.P. Sharma (PW-2) deposed that on 05.10.1991 at around 9:40 pm in the night he went to District Hospital, Hoshangabad and recorded the dying declaration of deceased Gopal who was admitted in the hospital. Dr.

Maheshwari examined the deceased and certified that he was capable of making statement. Doctor had endorsed a certificate of fitness on dying declaration also. Thereafter G.P. Sharma recorded the dying declaration of deceased (Ex.P/2) wherein deceased had stated that at the time of incident he was present in his house where a construction work was going on. Respondent Hari Singh Thakur and one other persons came there and they compelled him to eat pills of sulphas at the point of knife. They forcibly thrust the sulphas pills into his mouth and forced him to swallow it.

14. In this dying declaration the deceased had not stated about the presence and participation of respondent Dr. Wasim Siddiqui and Raju. There is no other evidence available on record to establish the presence of these two respondents on the spot at the time of incident. Who was the other person present with Hari Singh is not described by the deceased in his dying declaration. Therefore, case of prosecution against Dr. Wasim Siddiqui and Raju becomes suspicious.

15. Further more we find one more dying declaration made by the deceased to treating Dr. Hasan (PW-12) who had examined the deceased when he was brought to hospital. Dr. N. Hasan (PW-12) deposed that on 05.10.1991 at about 6:55 pm in District Hospital, Hoshangabad deceased Gopal was brought to hospital by his relatives. He had examined the deceased. The deceased told him that he had consumed sulphas pills than he sent an intimation (Ex.P/13) to police station.

Thus, it appears that the deceased had informed the treating doctor that he himself had consumed the sulphas poison. This is contradictory statement.

16. On perusal of the statement of witnesses and record, we find some material discrepancies regarding the time of recording of dying declaration (Ex.P/2). The dying declaration shows that it has been recorded between 09:45 pm to 10:05 pm in the night. Head Constable Krishna Kumar Pandey (PW-10) deposed that after the receipt of intimation (Ex.P/13) he had recorded the FIR (Ex.P/14) and went to hospital where later on the dying declaration of the deceased was got recorded by Naib Tahsildar. This shows that the FIR (Ex.P/14) was registered prior to recording of dying declaration. But, in FIR Head Constable had mentioned the contents of dying declaration, which is only possible when the dying declaration would have been recorded prior to recording of FIR (Ex.P/14). This discrepancies creates a doubt on the timings of recording of dying declaration. The trial Court has considered the various evidence available on record in this regard and doubted the subsequent dying declaration (Ex.P/2).

17. In the present case, we find three dying declarations. In first dying declaration, which is made to Kanchedi Lal deceased had given the names of all three respondents in commission of crime. Whereas subsequent dying declaration made to Dr. Hasan, the deceased had stated that he himself had consumed the poison. Thereafter in third dying declaration before Naib

Tahsidlar deceased had given the name of only one respondent Hari Singh Thakur. All the three dying declaration are inconsistent and contradictory. In view of aforesaid, the trial Court on appreciation of evidence has arrived at the findings that the dying declaration (Ex.P/2) cannot be believed beyond reasonable doubt. The findings and conclusions given by learned trial Court cannot be said as perverse. When two view are possible than a view which is in favour of the accused persons has to be accepted.

18. In view of aforesaid discussion we do not find any illegality or perversity in the findings of innocence recorded by the trial Court in favour of respondents. The trial Court has rightly acquitted the respondents of the charges of alleged offence.

19. We do not find any merits in this appeal, it is hereby dismissed.

(S.K.Gangele)
Judge

(Anurag Shrivastava)
Judge

Vin**