[2024] 7 S.C.R. 218 : 2024 INSC 480

Dharmendra Kumar @ Dhamma
v.
State of Madhya Pradesh

(Criminal Appeal No. 2806 of 2024)

08 July 2024

[Surya Kant* and K. V. Viswanathan, JJ.]

Issue for Consideration

High Court if justified in upholding conviction and sentence of the appellant under ss. 302/34 IPC; the contradictions or discrepancies and the absence of blood group classification or inconclusive FSL results on the recovered weapon, if detrimental to the prosecution's case; the Investigating Officer's failure to obtain a fitness certificate from the medical officer, if would invalidate the consideration of the statement of the deceased recorded u/s. 161 CrPC before his death, as a 'dying declaration; and disclosure statement made by the appellant leading to the discovery and subsequent seizure of the knife, if admissible in evidence.

Headnotes†

Penal Code, 1860 – ss. 302/34 – Conviction and sentence under – On facts, dispute over construction of wall – Verbal abuses hurled at the complainant – Two persons who constructed the wall physically assaulted by the opposite party, the appellant inflicted knife blow to one, and later both of them succumbed to their injuries – Appellant convicted u/ss. 302, 147, 148, and 149 and sentenced to life imprisonment – High Court upheld the appellant's conviction u/s. 302/34, however, acquitted him u/ss. 147 and 148 – Correctness:

Held: No contradictions or discrepancies in the prosecution case that would compel to take a view different than that of the courts below – When the testimonies of eyewitnesses are consistent, unimpeachable, and duly corroborated by medical evidence or the recovery of incriminating material like the weapon used, the deficiencies, if any, in the recording of FIR alone do not constitute a valid ground to overturn the conviction or undermine the prosecution case – Non-reading of contents of FIR to the complainant would not effect the prosecution case – Presence of appellant on the place

* Author

of occurrence established – Disclosure statement by the appellant leading to the discovery and seizure of the knife admissible in evidence – Knife injury can be attributed to the appellant – Absence of blood group classification or inconclusive FSL results on the recovered weapon would not effect the prosecution case – Also, mere non-obtainment of a medical fitness certificate would not deter the court from considering a properly recorded statement u/s. 161 CrPC, to be a dying declaration – Thus, the order passed by the High Court upheld – Evidence.[Paras 44, 51, 58, 61, 69, 70]

Evidence – Contradictions in the prosecution case – Omission on the part of the Investigating Officer in marking a spot where incident took place, on the site plan – Effect:

Held: Mere omission on the part of the Investigating Officer does not deflect the prosecution case – Site plan merely denotes the location of the incident without implying further details – In light of the fact that the persons who had seen that to which they have testified, due weightage must be given to their first-hand version – Their evidence cannot be jettisoned merely because the I.O. forgot to describe the room on the spot map – It is a case where eyewitnesses corroborated each other; their depositions are reinforced by deceased himself in his statement recorded u/s. 161 CrPC, and the location of the incident is depicted on the spot map as a `brick room' – Thus, stands established that there was another Jhuggi where the deceased sought refuge and was eventually assaulted – So-called contradiction fails to invade the corpus delicti. [Paras 33, 34]

First information report – Non-reading of contents of FIR to the complainant – Effect:

Held: Subject FIR fully satisfies all the ingredients of s. 154 CrPC – During the cross-examination, the complainant-informant claimed that the Police neither read out the FIR to her nor did it mention the contents of her statements which were recorded by the Police – Assuming it to be correct, such omission did not cause any prejudice to the appellant – Not a case where the appellant was not provided with a copy of the FIR or the charge sheet, which could have hindered his ability to effectively cross-examine the informant – Also no suggestion that he was not present at the scene, that he did not participate in the incident, or that he was falsely implicated for any reason – Appellant, thus, failed to demonstrate any prejudice resulting from the alleged non-reading of the contents of the FIR

to the informant – Reading over of the information after it is written down, the signing of the said information by the informant, and the entry of its substance in the prescribed manner not obligatory, but procedural in nature, and the omission of any of them does not impact the legal consequences resulting from the information provided – Furthermore, when testimonies of eyewitnesses are consistent, unimpeachable, and duly corroborated by medical evidence or recovery of weapon used, the deficiencies, if any, in recording of FIR alone do not constitute a valid ground to overturn the conviction or undermine the prosecution case. [Paras 40-44]

Evidence – Presence of appellant on the place of occurrence, if doubtful:

Held: No reason to doubt that the appellant was not only present at the scene of crime, but he actively participated in the occurrence and gave one of the fatal blows to deceased – Submission of poor visibility owing to darkness at the spot of occurrence not tenable – Place of occurrence, was adjacent to that of the complainant making it easier for the witnesses to observe and identify the accused persons – Each accused, particularly the appellant, was familiar to the eyewitnesses – Considering that the incident occurred on a summer night, there would have been minimal obstruction to visibility for the witnesses – Appellant, in his 313 CrPC statement, nowhere took the plea of alibi also did not pursue this defence during the cross-examination of witnesses either, as also did not adduce any evidence in support thereof – Furthermore, not a case where the complainant or prosecution witness held grudges against the appellant and fabricated a story to implicate him after the incident – Rather, the name of the appellant surfaced in the very first version, duly recorded, within less than two hours of the occurrence – Also no motive to falsely implicate the appellant indicated.[Paras 48, 49, 51]

Evidence – Disclosure statement by the appellant leading to the discovery and seizure of the knife-weapon of offence – Admissibility in evidence – Knife injury, if can be attributed to the appellant:

Held: Disclosure statement of the appellant to the extent it led to the recovery of a knife correctly admitted in evidence – Prosecution version was accepted by the courts below – It cannot be ignored that both eyewitnesses, are illiterate labourers, and their testimonies were recorded after a considerable length of time had passed since

the occurrence – Both the witnesses emphatically denied that they were tutored by Police or anyone else – Unfiltered testimony of a rustic witness, even if marred with some minor inconsistencies or discrepancies, cannot debilitate its perseverance – Evidence of such witnesses has to be evaluated comprehensively and carefully, especially when the cross-examination discreetly suggests that the accused persons did make a bid to win them over by exerting some extraneous pressure – Thus, the statements of the prosecution witness does not suffer from the discrepancy of such a nature that they should be discarded – Even the testimony of the Investigating Officer is devoid of any ulterior motive or attempt to fabricate evidence or falsely implicate the appellant and his co-accused – It would be too unfair and unreasonable to expect a witness, unless parroted, to recall every minute detail of the occurrence and present it with a totally accumulative narrative – Appellant's submission that knife injury was not caused by him, bereft of any merit. [Paras 56-58]

Evidence – Absence of blood group classification – Inconclusive FSL results on the recovered weapon – Effect on the prosecution case:

Held: Upon a thorough examination of the FSL report, its confirmed that the blood group classification test conducted on the recovered knife yielded inconclusive results – However, the human blood was detected on the knife recovered at the instance of the appellant – Various weapons, including lathis and even the knife attributed to accused underwent an FSL examination, yet, no traces of human blood were found on them – Notably, human blood was solely found on the knife used by the appellant – Furthermore, non-explanation of human blood on the weapon of crime constitutes a circumstance against the accused – It is incumbent upon the accused to provide an explanation regarding the presence of human blood on the weapon – Appellant failed to do so – While it may not be a decisive factor to determine the guilt, but conspicuous silence does lend support to prosecution case. [Para 61]

Code of Criminal Procedure, 1973 – s. 161 – Statement made by deceased to a police officer u/s. 161, regarding cause of death – Admissibility as dying declaration:

Held: s.161 empowers the Police to examine orally any person who is acquainted with the facts and circumstances of the case

under investigation – Police may reduce such statement into writing also – s. 162(1), nonetheless, mandates that no statement made by any person to a Police Officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by s. 145 of the Evidence Act – However, Sub-Section (2) of s. 162 carves out an exception to Sub-Section (1) that nothing in s. 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of s. 32 of the Evidence Act – Statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and which has been recorded u/s. 161, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein – In such eventuality, the statement recorded u/s. 161 assumes the character of a dying declaration – Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon. [Para 64]

Code of Criminal Procedure, 1973 – s. 161 – Consideration of the statement of one of the deceased recorded u/s. 161 before his death, as a dying declaration – Non-obtainment of a medical fitness certificate by the investigating officer from the medical officer – Effect:

Held: As regard to the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind – This is because there are no rigid procedures mandated for recording a dying declaration – If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification – Requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence – On facts, investigating officer recorded the statement instantly, a day after the incident, categorically stating that the medical report did not mention that the condition of the declarant, was serious in nature – On perusal of the statement, it is clear that the declarant was in a fit condition as not only did he properly explain the incident but has also markedly specified the role of the appellant – That

apart, the injuries found during the post-mortem examination conducted by the doctor have duly corroborated the statement of deceased – Mere non-obtainment of a medical fitness certificate would not deter the Court from considering a properly recorded statement u/s. 161 to be a dying declaration. [Para 70]

First information report – Object of:

Held: FIR is not a substantive piece of evidence, and it can be used only to corroborate or contradict the version of an informant – Also written complaint to register the FIR not necessary – Even an oral communication to the Police disclosing the commission of a cognizable offence is sufficient to register the FIR – Object of the FIR is to inform the jurisdictional Magistrate and the Police Administration of the offence reported to the Police Station; to acquaint the Judicial Officer before whom the case is ultimately tried as to what are the actual facts stated immediately after the occurrence and on what materials the investigation commenced; and most importantly, to safeguard the accused against subsequent variations, exaggerations or additions. [Paras 38, 39]

Case Law Cited

Shivanna v. State of Hunsur Town Police [2010] 10 SCR 410 **: (2010) 15 SCC 91;** *State v. N.S. Gnaneswaran* **(2013) 3 SCC 594;** *State (NCT of Delhi) v. Navjot Sandhu* [2005] Supp. 2 SCR 79 **: (2005) 11 SCC 600;** *Heera v. State of Rajasthan* **[2007] 7 SCR 1065 (2007) : 10 SCC 175;** *Nathuni Yadav v. State of Bihar* [1996] Supp. 10 SCR 905 **: (1998) 9 SCC 238;** *Pulukuri Kottaya v. Emperor* **(1946) SCC OnLine PC 47;** *Raja @ Rajinder v. State of Haryana* [2015] 3 SCR 947 **: (2015) 11 SCC 43;** *John Pandian v. State* [2010] 15 SCR 1012 **: (2010) 14 SCC 129;** *Mukeshbhai Gopalbhai Barot v. State of Gujarat* [2010] 9 SCR 632 **: (2010) 12 SCC 224;** *Sri Bhagwan v. State of U.P.* [2012] 12 SCR 774 **: (2013) 12 SCC 137;** *Pradeep Bisoi v. State of Odisha* [2018] 12 SCR 947 **: (2019) 11 SCC 500;** *Koli Chunilal Savji v. State of Gujarat* [1999] Supp. 3 SCR 284 **: (1999) 9 SCC 562;** *Laxman v. State of Maharashtra* [2002] Supp. 1 SCR 697 **: (2002) 6 SCC 710 – referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Evidence Act, 1872.

List of Keywords

Contradictions or discrepancies; Absence of blood group classification; Inconclusive FSL; Medical fitness certificate; Statement of the declarant recorded u/s. 161 CrPC before his death; Dying declaration; Disclosure statement; Admissible in evidence; Testimonies of eyewitnesses; First information report; Plea of alibi; Onus to prove; Test Identification tests.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2806 of 2024

From the Judgment and Order dated 19.12.2017 of the High Court of M.P. Principal Seat at Jabalpur in CRA No.193 of 2006

Appearances for Parties

Dushyant Dave, Sr. Adv., Kuldip Singh, Mrs. Ayushi Gaur, Gaurav Yadava, Advs. for the Appellant.

Ms. Mrinal Gopal Elker, Saurabh Singh, Ashish Rawat, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Surya Kant, J.

Leave granted.

2. This appeal is directed against the judgment dated 19.12.2017, passed by the High Court of Madhya Pradesh at Jabalpur **(hereinafter, 'High Court')**, dismissing the Criminal Appeal filed by the Appellant against his conviction and sentence under Section 302 read with Section 34 of the Indian Penal Code, 1860 **(hereinafter, 'IPC')** awarded by the Learned Additional Sessions Judge, Bhopal **(hereinafter, 'Trial Court')** vide judgment and order dated 10.11.2005.

FACTS :

3. At this juncture, it is imperative to delve into the factual matrix to set out the context of the present proceedings.

4. FIR No. 268 dated 20.06.2004 was registered at Police Station Kamla Nagar, Bhopal under Sections 307, 147, 148, and 149 of IPC on the

statement of Usha Bai (P.W.10). The said Complainant stated that on the night of 20.06.2004, at around 9:30 pm, she was overseeing the construction of the wall of her Jhuggi (hut) by Devi Singh @ Tillu, and Tularam. At that moment, accused persons, Ahmad and his wife, Kanija Bi, arrived and objected to the construction. Tillu asserted that it was their Jhuggi and they had the right to build the wall. Meanwhile, other accused persons, including Vijay, Dharmendra @ Dhamma **(Appellant)**, Katchu @ Ramswaroop, Ballu, Ravi, and Asgar, arrived and began verbally abusing the Complainant, Tillu, and Tularam. The situation intensified as all the accused, including the Appellant, rushed to physically assault Tillu. In defence, Tillu sought refuge inside a nearby unoccupied Jhuggi belonging to one Bhairav Shastri, locking the door from inside. However, the accused forcibly entered Bhairav Shastri's Jhuggi by breaking open the door. Once inside, they surrounded Tillu, with the Appellant delivering a knife blow to Tillu in his abdomen, while Asgar inflicted another blow slightly lower on his stomach. Following this, the other accused persons also physically assaulted Tillu using their fists and sticks. Meanwhile, Tularam attempted to intervene, but he too was subjected to blows from Katchu and Ahmad, resulting in injuries to his head and hands. Upon hearing the commotion, residents from the locality arrived at the scene, prompting the accused to flee. The Complainant further stated that she attempted to intervene but was threatened with dire consequences if she did not leave the area.

5. After the incident, Tillu and Tularam, both injured, were taken to Katju Hospital for medical aid. The Emergency Medical Officer, Dr. R.S. Vijayvargiya (P.W.4), noted Tillu's lack of pulse, as well as two stab wounds in his chest and three stab wounds in his abdomen, indicating a critical condition. Upon examining Tularam, Dr. Vijayvargiya observed severe injuries to the occipital and temporal regions of his head. Subsequently, both injured persons were referred to Hamidia Hospital for further treatment.

6. Tillu unfortunately succumbed to his injuries and was declared dead, while Tularam was still alive and was admitted to Hamidia Hospital.

7. Dr. C.S. Jain (P.W. 13) conducted the post-mortem examination on Tillu, determining that the cause of death was shock and haemorrhage resulting from multiple stab wounds across the body and head injuries. The wounds were inflicted by a sharp, penetrating weapon, causing the stab injuries, while the head injuries were inflicted by a hard and

blunt object. The combined injuries to the head and abdomen were deemed sufficient to cause death.

8. Girish Bohre, the Investigating Officer (P.W.14), commenced the investigation by preparing a spot map (Ex.P.2) and also seized the blood-stained pieces of the floor from the place of occurrence (Ex.P.31).

9. As Tularam was alive though critically injured, the Investigating Officer (P.W. 14) documented his statement (Ex.P.40) under Section 161 of the Code of Criminal Procedure, 1973 **(hereinafter, 'CrPC')** wherein Tularam recounted the events during the subject incident. Tularam mentioned that he and Tillu were constructing the wall of Usha Bai's Jhuggi at Navgrah Mandir. Around 9:15 pm, Ahmad and his wife, Kanija Bi, approached and opposed the construction. Despite Tillu's assertion that it was their wall, Ahmad persisted in preventing them. Shortly after, Vijay, Dharmendra @ Dhamma (Appellant), Katchu @ Ramaswaroop, Ballu, Ravi, and Asgar arrived, initiating verbal abuse. The accused then assaulted Tillu, who sought refuge inside Bhairav Shastri's nearby Jhuggi, locking himself inside. The assailants forcibly entered and surrounding Tillu, Dhamma (Appellant) inflicted a knife blow to Tillu's abdomen, while Asgar also stabbed him near the navel. Additionally, the other accused engaged in physical assault using sticks, lathis, and fists. When Tularam attempted to intervene, Katchu and Ahmad struck him with sticks, inflicting injuries to his head, hands, and body. Tularam noted that Lallu (P.W.11) and one Ramesh were eyewitnesses to the incident.

10. Tularam too passed away approximately five days after undergoing surgery in Hamidia Hospital. Dr. Neelam Srivastava (P.W.15) conducted his post-mortem examination, concluding that the cause of death was cardio-respiratory failure resulting from a head injury. Moreover, the severity of the injury was such that it could have led to death under normal circumstances. This injury, deemed homicidal, was inflicted by hard, blunt, and heavy objects.

11. During the course of investigation, the Investigating Officer (P.W. 14), following a disclosure statement (Ex.P.14) made by the Appellant, recovered a knife, which the Appellant had concealed in Barrack No. 2 of Police Line Nehru Nagar. Lallu Vishwakarma (P.W.11) was a witness to this recovery. The knife was then submitted for forensic examination (Ex.P.39), where the human blood on the knife was detected but the blood group classification was inconclusive.

12. After the investigation, all the accused persons, including the Appellant, were charged under Sections 147, 148, 302/149, 307/149 of IPC.

13. In the trial, the prosecution examined as many as 15 witnesses to bring the guilt home, including Usha Bai, P.W.10 (Complainant) and Lallu Vishwakarma, P.W.11, both eyewitnesses. The prosecution case is largely based upon the version of these two eyewitnesses, who claimed that the fatal blows were caused to the victims in front of them.

14. The Trial Court, having found the version of the two eyewitnesses (P.W.10 and P.W.11) to be trustworthy, which was duly corroborated by the testimony of the Investigating Officer (P.W.14), the medical evidence and the recovery of the weapon, held the Appellant guilty of offences under Sections 302, 147, 148, and 149 of IPC and sentenced him to undergo life imprisonment.

15. The High Court, vide the impugned judgment, upheld the Appellant's conviction under Section 302 read with Section 34 of the IPC, though it has acquitted him under Sections 147 and 148 of the IPC. The High Court has held that: (i) The presence of the Appellant stood established through the testimony of Lallu Vishwakarma (P.W.11), and his cross-examination further confirms that there was no motive for falsely incriminating the Appellant; (ii) The allegations against the Appellant, as detailed by eyewitnesses Usha Bai (P.W.10) and Lallu Vishwakarma (P.W.11), were duly corroborated by the medical opinions of Dr. C.S. Jain (P.W.13) and Dr. Neelam Shrivastava (P.W.15); (iii) The statement given by deceased Tularam, as recorded by P.W.14, aligns with other evidence relied upon for conviction; (iv) The weapon (knife) was seized based on the disclosure statement of the Appellant, making the recovery admissible under Section 27 of the Indian Evidence Act, 1872 **(hereinafter, 'IEA')**; and (v) the testimony of Investigating Officer, P.W.14, also corroborated the weapon's seizure.

16. Discontented with his conviction, the Appellant is in appeal before us.

***Contentions Of Parties* :**

17. Mr. Dushyant Dave, learned Senior Counsel for the Appellant, argued that the High Court erred in upholding the Appellant's conviction under Section 302/34 IPC. Substantiating this, he made the following submissions:

a) The prosecution's case presented inherent contradictions. On the one hand, the two eyewitnesses (P.W.10 and P.W.11),

relied upon by the courts below, testified that the entire incident unfolded inside Bhairav Shastri's Jhuggi, situated near that of the Complainant, (P.W.10). On the other hand, the Investigating Officer (P.W.14), during his cross-examination, stated that no quarrel took place near P.W.10's Jhuggi, and that there was no 'Bhairon Baba Temple' or residence near the site of occurrence. It was argued that since the incident admittedly occurred inside a Jhuggi, it is unbelievable that the eyewitnesses could have seen it.

b) It was contended that the presence of the Appellant at the place of incident is stoutly disputed, and such an inference can be well drawn from the statement of the Complainant herself. The incident took place around 9:30 pm, posing visibility challenges for the witnesses. Usha Bai (the Complainant, P.W.10) has deposed that she was familiar with accused Ahamd, Asghar Ali, Ravi, and Kanija Bi but was aware of the other accused by name only. This clearly indicates that P.W.10 was not acquainted with the Appellant. Barring the eyewitness account, there is no other credible evidence to suggest that the Appellant was present or participated in the occurrence.

c) Further, the knife injury could not be attributed to the Appellant, as testified by Lallu Vishwakarma (P.W.11), who explicitly stated that he couldn't discern who assaulted whom.

d) That apart, it was urged that the weapon confiscated from the Appellant underwent a Forensic Science Laboratory **(hereinafter, 'FSL')** examination, producing inconclusive results, which bolsters the Appellant's case that he was falsely implicated.

e) Finally, it was canvassed that the statement of the deceased Tularam, recorded by Investigating Officer Girish Bohre (P.W.14) under Section 161 CrPC, could not have been considered a 'dying declaration' due to the absence of certification from the doctor regarding Tularam's mental fitness.

f) Even otherwise, a dying declaration made before the Investigating Officer/ Police is always shrouded by suspicious circumstances and no reliance thereupon can be made.

18. *Per Contra*, Ms. Mrinal Gopal Elker, learned counsel on behalf of the State, argued that the impugned judgment dated 19.12.2017 does not warrant any interference by this Court. She submitted as follows:

a) The Courts below have expressly affirmed the presence of the Appellant at the site of incident and his involvement in the occurrence, based on the testimony of Lallu Vishwakarma (P.W.11). She argued that Vishwakarma's cross-examination provides no reason to doubt his version qua the Appellant.

b) There is a specific accusation against the Appellant of inflicting the knife blow on the deceased Tillu's abdomen, which is supported by the Medical Legal Certificate (MLC) conducted by Dr. R.S. Vijayvargiya (P.W.4), who confirmed the presence of a stab wound on the abdomen with profuse bleeding.

c) After he was apprehended, the Appellant voluntarily disclosed the location of the concealed knife to the Investigating Officer in the presence of witnesses. Such a recovery is admissible in evidence as an incriminating material against the Appellant.

d) Finally, Ms. Elker highlighted that the courts below have rightly considered the statement of deceased Tularam recorded under Section 161 of CrPC as a 'dying declaration', corroborating the prosecution's case against the Appellant beyond any doubt.

***ANALYSIS* :**

19. Having heard learned Senior Counsel/Counsel for the parties at a considerable length and on perusal of the statements of eyewitnesses along with other relevant material on record, we find that the following three questions fall for our consideration in the present appeal:

A. Have the Courts below erred in not appreciating the contradictions or discrepancies which would dislodge the prosecution's case?

B. Is the absence of blood group classification or inconclusive FSL results on the recovered weapon detrimental to the prosecution's case?

C. Does the Investigating Officer's failure to obtain a fitness certificate from the medical officer invalidate the consideration of the statement of Tularam recorded under Section 161 CrPC before his death, as a 'dying declaration'?

A. CONTRADICTIONS IN THE PROSECUCTION'S CASE:

20. Since the prosecution case against the Appellant predominantly hinges upon the testimonies of Usha Bai (P.W.10), Lallu Vishwakarma

(P.W.11), Dr. C.S. Jain (P.W.13), Dr. Neelam Shrivastava (P.W.15) and Girish Bohre (P.W.14), we deem it appropriate to briefly summarise their testimonies hereunder:

21. Usha Bai (P.W.10) swore that on 20.06.2004, around 9.00 p.m., she was overseeing the construction of wall of her Jhuggi by Devi Singh alias Tillu and Tularam. Ahmad and Kanija Bi, two of the accused, arrived and ordered them to halt construction. Following this, Ahmad struck Tularam on the head with a lathi. Subsequently, Asgar, Ahmad's son, incited the other accused to attack, prompting all the accused to rush in and assault Tillu, Tularam, and Lalaram with various weapons like sticks, rods, and pipes. When P.W.10 attempted to intervene by grabbing Ahmad's lathi, she was verbally abused and told to step aside. Consequently, she retreated to the sidelines. The accused continued to beat Tillu and Tularam until they were incapacitated. Tillu succumbed to his injuries at the scene, while Tularam was barely breathing. Immediately after the incident, Tillu, Tularam, and Lalaram were rushed to Hamidia Hospital for treatment by the Kamla Nagar Police Station. Tillu passed away *en route* to the hospital. P.W.10 lodged a First Information Report (FIR) (Ex.P.7) detailing the incident.

22. Lallu Vishwakarma (P.W.11) recounted that the incident occurred near a wall owned by Usha Bai (P.W.10). Around 8-9:30 pm, Ahmad arrived wielding a lathi at the place of construction of Usha Bai's wall, where P.W.11 and Tillu were sharing a meal. Ahmad confronted them, objecting to the wall's construction. In response, Tillu urged them to allow the construction to proceed. Subsequently, all the other accused arrived and assaulted Tillu and another individual, although P.W.11 couldn't discern the specific assailants. The accused wielded various weapons such as lathis, knives, sticks, rods, and pipes during the attack. Tillu was found injured inside Bhairon Baba's room, while Tularam lay injured at the construction site. P.W.11 then arranged for the injured to be transported in an auto. He noted that Tillu's intestines were protruding, which he wrapped in cloth and placed in the auto. Additionally, Tularam had suffered traumatic and haemorrhagic shock due to multiple injuries. The injured were then taken to Hamidia Hospital. The Police subsequently confiscated the knife and sticks from the Appellant (Ex.P.14) and prepared a memorandum, which P.W.11 signed.

23. In addition to the two eyewitnesses, the prosecution so as to lend corroboration to the ocular evidence, called upon medical experts, namely Dr. C.S. Jain (P.W.13) and Dr. Neelam Shrivastava (P.W.15), who conducted the post-mortem examinations of Tillu and Tularam, respectively.

24. Dr. C.S. Jain, P.W.13, reported that Tillu's body was brought in for post-mortem examination on 21.06.2004, revealing four stab wounds on the front side of the abdomen, along with a laceration on the head and three abrasions. He concluded that the stab wounds were inflicted by a hard, sharp, and penetrating weapon, while the head injuries were caused by a hard and blunt object. The combined injuries to the head and abdomen were deemed sufficient to cause death.

25. Dr. Neelam Shrivastava, P.W.15, testified that Tularam's body was brought for post-mortem examination on 24.06.2004, revealing multiple radial fractures, subdural subarachnoid haemorrhage, and various wounds. She concluded that Tularam's death resulted from respiratory failure due to a head injury and its associated complications. The severity of the injury was sufficient to cause death in the ordinary course of nature, and it was determined to be homicidal, inflicted by a hard, blunt, and heavy weapon. During cross-examination, she clarified that Tularam did not sustain any injuries from knives or swords on his body.

26. The prosecution also examined Girish Bohre, Investigating Officer (P.W.14), of the subject incident. He testified how the investigation was conducted, a spot map (Ex.P.2) of the location was prepared, and a blood-stained piece of flooring was also seized from the place of the incident. Additionally, he conducted a panchnama on Tillu's dead body (Ex.P.32). He apprehended the Appellant and interrogated him in the presence of witnesses. During interrogation, the Appellant confessed to hiding the knife used in the assault in Barrack No. 2 of the Police Line Nehru Nagar. P.W.14 then drafted a memorandum, leading to the recovery of an iron knife at the instance of the Appellant. Following this, he arrested the Appellant and other co-accused. P.W.14 also prepared a panchnama (Ex.P.34) of Tularam's dead body.

27. It is pertinent to mention at this stage that Ajjharruddin (P.W.1), Sukhram (P.W.2), and Reshambai (P.W.3) were also brought in as eyewitnesses to the incident. However, they were deemed hostile by the prosecution, as according to them, no incident occurred in their presence.

28. It is noteworthy to mention here that during the trial of the Appellant and other co-accused, one of the accused, Vijay Singh absconded. Subsequent to the judgment of the Trial Court in 2005, that Vijay Singh was apprehended and tried. The Trial Court vide another judgment delivered in the year 2007, convicted him based on the testimony of eyewitness Usha Bai (P.W.10), duly supported by the medical opinions of Dr. C.S. Jain (P.W.13) and Dr. Neelam Shrivastava (P.W.15) as well as the testimony of Girish Bohre, the Investigating Officer (P.W.14).

29. Having elaborated on the testimonies of the key witnesses in the instant case, we may now dredge up the contradictions highlighted on behalf of the Appellant.

A.1 Bhairav Shastri's Jhuggi

30. It was vehemently agitated that there is a latent dissension in the testimonies of the witnesses regarding the location of the occurrence. While Usha Bai, P.W.10 and Lallu Vishwakarma, P.W.11, deposed that the deceased Tillu entered the Jhuggi of Bhairav Shastri, where he was subsequently surrounded and assaulted in the abdomen by the Appellant wielding a knife, the Investigating Officer (P.W.14) veraciously admitted during cross-examination that he was unaware of any individual named Bhairon Baba residing near the scene of the incident. The I.O. further clarified that there was no house or temple associated with Bhairon Baba in the vicinity of the incident, which is why he did not name it in the spot map (Ex.P.2).

31. We have thoroughly scrutinized the testimonies of the witnesses in this regard. We find a consistent mention of Bhairav Shastri across all prosecution accounts, with Bhairav Shastri also being loosely referred to as Bhairon Baba. Lallu Vishwakarma, P.W. 11, has unerringly stated in his testimony that the deceased Tillu was discovered inside Bhairon Baba's room following the incident. Additionally, the presence of Bhairon Shastri's Jhuggi is noted in Section 161 CrPC statement of the deceased Tularam recorded by Girish Bohre, the Investigating Officer (P.W.14), wherein he unequivocally stated that Tillu sought refuge inside Bhairav Shastri's hut and locked himself in. The mention of Bhairon Shastri's Jhuggi is also evident in the FIR (Ex.P.7) filed by the Complainant, P.W.10, as well as in her statement (Ex.D.1) recorded under Section 161 CrPC.

32. It is true that while Girish Bohre (P.W.14), as per his statement, was unaware of any Bhairon Baba near the scene of occurrence, the location referred to as 'Bhairon Shastri's Jhuggi' by the other witnesses is indeed depicted on the spot map (Ex.P.2) prepared by him. A plain examination of the spot map (Ex.P.2) reveals a marked structure labelled 'B', identified as a `brick room' where the deceased took refuge. Even though the said structure is not captioned as Bhairav Shastri's Jhuggi or by any other name, it gives credence to the version of the eye witnesses that Tillu was attacked in the neighbouring Jhuggi. Moreover, the defence has not disputed the depictions in the spot map while cross-examining the I.O. (P.W.14).

33. A mere omission on the part of the Investigating Officer in marking a spot on the site plan does not deflect the prosecution's case. It is well-established that the site plan merely denotes the location of the incident without implying further details.[1] In light of the fact that the persons who had seen that to which they have testified, due weightage must be given to their first-hand version. Their evidence cannot be jettisoned merely because the I.O. forgot to describe the room as 'Bhairav Shastri's Jhuggi' on the spot map.

34. It is a case where eyewitnesses have corroborated each other; their depositions are reinforced by deceased Tularam himself in his statement recorded under Section 161 CrPC, and the location of the incident is depicted on the spot map (Ex.P.2) as a `brick room'. It, thus, stands established that there was another Jhuggi where the deceased sought refuge and was eventually assaulted. Given these circumstances, the so-called contradiction miserably fails to invade the *corpus delicti.*

A.2 Legal Effect of Non-reading of Contents of FIR to the Complainant

35. It was then argued that the Complainant, Usha Bai (P.W.10), in her cross-examination, has candidly admitted that the FIR (Ex.P.7) was not read out to her and she put her thumb impression under the instructions of the Police. Reliance is placed on her deposition during cross-examination where she claims to have thumb marked on a blank paper, whereupon Ex.P.7 was prepared.

1 Shivanna v. State of Hunsur Town Police (2010) 15 SCC 91

36. In order to appreciate the contention, we have gone through the translated version of the statement of Usha Bai (P.W.10), which the Appellant has appended along with the original paper book as well as a part of "Compilation of Depositions of Witnesses". Since the translated version was seemingly incorrect, making it difficult to discern as to what the witness had deposed, we have also gone through the original Hindi version of Usha Bai's (P.W.10) statement.

37. The statement of a witness has to be extolled in its entirety. It may be recapitulated that Usha Bai (P.W.10), in her complaint which led to the registration of the subject FIR, had categorically stated that, "Vijay, Dharmendra @ Dhamma, Katchu @ Ramswaroop, Ballu, Ravi, Asgar all came shouting that Tillu was indulging in Dadagiri and he be finished today……..." The FIR further states that, "*ye sabhee log*" [all these persons] started attacking, Tillu ran towards Bhairav Shastri's Jhuggi, entered and closed the door from inside to save himself. "*Sabhee ne"* (all of them) forcefully broke the door open and entered the Jhuggi and surrounded Tillu ….. and Dharmendra @ Dhamma (Appellant) then gave a knife blow in the abdomen of Tillu.

38. It must also be borne in mind that FIR is not a substantive piece of evidence, and it can be used only to corroborate or contradict the version of an Informant. It is also not necessary that there should always be a written complaint to register the FIR. Even an oral communication to the Police disclosing the commission of a cognizable offence is sufficient to register the FIR.

39. The object of the FIR is three-fold: firstly, to inform the jurisdictional Magistrate and the Police Administration of the offence that has been reported to the Police Station; secondly, to acquaint the Judicial Officer before whom the case is ultimately tried as to what are the actual facts stated immediately after the occurrence and on what materials the investigation commenced; thirdly and most importantly, to safeguard the accused against subsequent variations, exaggerations or additions.

40. The subject FIR (Ex.P.7) fully satisfies all the ingredients of Section 154 CrPC. The occurrence is reported to have taken place on 20.06.2004 at 9.30 p.m., and the FIR was recorded on the same day at 10.45 p.m. The names of all the eight accused who allegedly participated in the occurrence are duly recorded. The FIR is written in a natural, consistent flow of handwriting, with no signs of spaces being left, words being overwritten or shrunken, or any word or sentence being

interpolated. The last line of the FIR categorically records that the report was read out and explained to the Informant. The FIR is in the prescribed format and Usha Bai (P.W.10) has thereafter put her thumb impression.

41. It is true that during her cross-examination, Usha Bai (P.W.10), has claimed that the Police neither read out the FIR (Ex.P.7) to her nor did it mention the contents of her statements which were recorded by the Police on 5-6 occasions. She further stated that it could not be determined what version was included in Ex.P.7 since she is not a literate person. It seems that the Appellant made an overt attempt to influence the witness. However, despite Usha Bai's innocuous intent to help the Appellant from the wrath of law, she could not deny the fact that the FIR was registered on her complaint or that Tillu and Tularam suffered fatal injuries in the occurrence reported by her.

42. Assuming that the Police failed to read out or apprise the informant about the contents of the FIR, the question that falls for consideration is whether such omission has caused any prejudice to the Appellant? In our considered opinion, the answer has to be in the negative. This is not a case where the Appellant was not provided with a copy of the FIR or the charge sheet, which could have hindered his ability to effectively cross-examine the Informant. The record reveals that Shri A.K. Shrivastava, Advocate, cross-examined Usha Bai (P.W.10) on behalf of the Appellant. Usha Bai did try to help the Appellant by not disclosing his name as one of the accused, but she could not hide the fact that besides Ahmad, Asgar, Ravi and Kanija Bi, she also knew the other accused by their names. The Appellant is admittedly one of those accused. She has further deposed that *sabhee ne* (all of them) assaulted Tillu with lathi, rods and pipes. She further stated that when she tried to intervene, Ahmad abused her and threatened to kill her. She then went and stood at some distance and witnessed that those *aaropigan*, i.e., all the accused, had given fatal assaults to Tillu and Tularam. Most importantly, she further testified that she, along with Lalaram, then went to the Police Station Kamla Nagar, whereafter the Police Officials immediately sent Lalaram and Tularam for treatment at Hamidia Hospital. Tillu, however, could not reach the hospital as he succumbed to the injuries on the way. Additionally, in paragraph 4 of her deposition, Usha Bai (P.W.10) unmistakably states that she reported the matter to Police Station Kamla Nagar through Ex.P.7,

which is thumb marked by her. This part of her deposition has not been questioned by the Appellant while cross-examining Usha Bai (P.W.10). We have also gone through the Appellant's own statement recorded under Section 313 CrPC. Aside from a vague denial and claims of false implication, there is no suggestion that he was not present at the scene; that he did not participate in the incident, or that he was falsely implicated for any reason. The Appellant, thus, has failed to demonstrate any prejudice resulting from the alleged non-reading of the contents of the FIR to the Informant. The contention raised in this regard is entirely misconceived.

43. Be that as it may, this Court in ***State v. N.S. Gnaneswaran***[2] has ruled that the stipulations outlined in Section 154 CrPC concerning the reading over of the information after it is written down, the signing of the said information by the informant, and the entry of its substance in the prescribed manner are not obligatory. These requirements are procedural in nature, and the omission of any of them does not impact the legal consequences resulting from the information provided under the section.

44. It is equally well-settled that when the testimonies of eyewitnesses are consistent, unimpeachable, and duly corroborated by medical evidence or the recovery of incriminating material like the weapon used, the deficiencies, if any, in the recording of FIR alone do not constitute a valid ground to overturn the conviction or undermine the prosecution case.

A.3 Presence of Appellant on the Place of Occurrence

45. Learned Senior Counsel for the Appellant argued that it is a case of false implication as the presence of the Appellant at the spot of occurrence has not been established beyond doubt. He relied upon the statement of Usha Bai (P.W.10), who, in the opening statement of her examination-in-chief, named Ahmad, Asgar, Ravi and Kanija Bi as accused and claimed that she did not know anyone else. It was highlighted that Usha Bai (P.W.10) not only failed to name the Appellant in her entire statement but also admitted during the cross-examination that she never provided the names of the assailants, as mentioned by the Police in the FIR (Ex.P.7).

2 (2013) 3 SCC 594

46. We are, however, not impressed by the submission. We say so for the following reasons :

(a) The statement of Usha Bai (P.W.10) has to be read and appreciated in its entirety and not in piecemeal.

(b) She, as discussed earlier, deposed that she knew the remaining accused by name. She was indisputably referring to the remaining accused who were present in court which included the Appellant as well.

(c) She deposed that "all the accused" attacked Lalaram, Tularam and Devi Singh @ Tillu with dandas, rods and pipes.

(d) She further deposed that all the accused assaulted Tillu and Tularam with the intention to kill them.

(e) She also admitted that she went to Police Station Kamla Nagar and got the FIR (Ex.P.7) lodged, which bore her thumb impression.

(f) Having admitted these material facts, it would be too far-fetched to dissect Usha Bai's version to hold that the Appellant was not present or participated in the occurrence.

(g) In any case, Lallu Vishwakarma (P.W.11), another eyewitness, explicitly stated that the Appellant was present and he participated in the incident by delivering a knife blow to Tillu's abdomen.

(h) The knife injury attributed to the Appellant has been duly established by Dr. R.S. Vijayvargiya (P.W.4) and Dr. C.S. Jain (P.W.13).

(i) The Investigating Officer (P.W.14) successfully established the recovery of the weapon of offence, namely a knife, based on the Appellant's disclosure statement. Lallu Vishwakarma (P.W.11), who witnessed the recovery, supported the Investigating Officer's testimony.

(j) To dispel any doubts, Lallu Vishwakarma (P.W.11) identified the Appellant in court and specifically pointed out, *"The person standing in front wearing a check shirt is Dharmendra".*

47. It is trite law that identification tests (TIP) do not serve as substantive evidence but are primarily intended to assist the investigating agency in ensuring that their progress in investigating the offence is on the

correct path. Holding a TIP is not obligatory. Further, a failure to hold TIP cannot be a ground to eschew the testimony of witnesses whose evidence was concurrently accepted by the trial and appellate courts.[3] Additionally, a failure to hold a parade would not make inadmissible the evidence of identification in the court.[4]

48. Similarly, the contention of poor visibility owing to darkness at the spot of occurrence is also not tenable. In analysing the incidents occurring at night, this Court in ***Nathuni Yadav v. State of Bihar***[5] has taken into account several factors, including:

(i) The proximity at which the assailants would have confronted the injured.

(ii) The possibility of some ambient light reaching the scene from the stars.

(iii) The familiarity of the witnesses with the appearance of each assailant.

49. In the instant case, firstly, the place of occurrence, i.e., Bharav Shastri's Jhuggi, was adjacent to that of the Complainant (P.W.10) making it easier for the witnesses to observe and identify the accused persons. Secondly, each accused, particularly the Appellant, was familiar to the eyewitnesses. Thirdly, considering that the incident occurred on a summer night, there would have been minimal obstruction to visibility for the witnesses. Fourthly and most importantly, the Appellant, in his 313 CrPC Statement, has nowhere taken the plea of *alibi*. He did not pursue this defence during the cross-examination of witnesses either.

50. There is no gainsaying that whosoever pleads *alibi* in contrast and derogation of the eyewitness version, is under cumbrous onus to prove absence from the scene and time of crime. The Appellant not only failed to raise this defence but also did not adduce any evidence in support thereof. Taking into consideration the cumulative effect of all these factors, we have no reason to doubt that the Appellant was not only present at the scene of crime, but he actively participated also in the occurrence and gave one of the fatal blows to Tillu (deceased).

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3 State (NCT of Delhi) v. Navjot Sandhu (2005) 11 SCC 600

4 Heera v. State of Rajasthan (2007) 10 SCC 175

5 [1996] Supp. 10 SCR 905 : (1998) 9 SCC 238

51. We cannot overlook the fact that in a situation where two people are killed in a heated altercation, it is highly unlikely that the eyewitnesses would want the real perpetrators to escape justice. In the absence of any prior motive, it is not plausible that they would falsely accuse the Appellant in this case. This is not a scenario where the Complainant or P.W.11 held grudges against the Appellant and fabricated a story to implicate him after the incident. Rather, the name of the Appellant surfaced in the very first version, duly recorded vide Ex.P.7, within less than two hours of the occurrence. Pertinently, no motive to falsely implicate the Appellant has been suggested during the cross-examination of the eyewitnesses.

A.4 Attribution of knife injury on the Appellant

52. It was maintained by Learned Senior Counsel for the Appellant that since the incident took place inside the Jhuggi and at night, it is highly improbable that the witnesses could see the manner in which the incident took place. Further, reliance was placed on the statement of Lallu Vishwakarma, P.W.11, who stated that he could not see who assaulted whom, and he could not tell which weapon was seized from whom. It was, thus, asserted that there is not even an iota of evidence to conclude that the knife injury was caused by the Appellant.

53. We have deeply analysed the submission. It is essential for this Court to examine the Disclosure Statement (Ex.P.14) of the Appellant, which resulted in the discovery of the weapon (knife) in question. The statement reads as under:

> "On 20.04.2004, I along with my companions Ahmad, Asgar, Ravi, Vijay, Katchu @Ramswaroop, Ballu, and Kanija Bi committed Maarpeet with Tillu @ Devi Singh with knife and stick voluntarily, the knife, by which Tillu @ Devising was assaulted by me, has been hidden by me in the Barrack No. 2 of Police Line Nehru Nagar. Come with me, I will hand over it to you."

54. The disclosure statement made by the Appellant led to the discovery and subsequent seizure of the knife, namely, the weapon of offence. Subsequently, a seizure memo (Ex.P.20) was prepared, which stated as follows:

> "One knife made of iron with wooden handle the total length of which is about 14 ½ inches, the length of handle is about 4 ¾ inches and length of blade is about 10 inches

and width of blade is about 1 ¼ inches, the tip of knife is pointed, blood is present in the front (agla) part of the blade which has dried up. On producing by accused Dharmendra @ Dhamma, the same was taken in possession of Police and sealed pack on the spot itself as evidence."

55. The question that requires determination is whether the above-stated disclosure statement is admissible in evidence? The issue regarding the admissibility of a disclosure statement within the meaning of Section 27 of the IEA was comprehensively addressed by this Court in ***Pulukuri Kottaya v. Emperor,***[6] delineating the following briefly summed up criteria:

(i) There should be a discovery of the fact.

(ii) The discovery of fact should be in consequence of information received from a person accused of an offence.

(iii) The person giving the information should be in the custody of a Police Officer.

(iv) Only that portion of information which relates distinctly or strictly to the fact discovered can be proved.

56. The testimony of the Investigating Officer (P.W.14) unfolds that the Appellant voluntarily made the disclosure statement while he was in police custody, pursuant to which the weapon of offence (knife) was recovered. Whether the said statement was made voluntarily or was secured through coercion is essentially a question of fact. In this regard, the testimony of Lallu Vishwakarma (P.W.11) assumes significance as the disclosure statement was duly witnessed by him. In our considered opinion, the disclosure statement of the Appellant to the extent it led to the recovery of a knife fulfils the basic tenets of Section 27 of IEA and has been correctly admitted in evidence.

57. We may hasten to add at this stage that the prosecution version was not only accepted by the Trial Court but the High Court has also affirmed it in appeal. In our quest to find out whether the Appellant is guilty beyond a reasonable doubt, we have expanded the wings of our limited jurisdiction and assumed the role akin to that of the 1st Appellate Court. We are conscious of the fact that the jurisdictional

6 1946 SCC OnLine PC 47

magnification ought to be an exception and be invoked with great circumspection, in a case of extreme hardship, after taking into consideration the socio-economic conditions of the victim(s) of a crime, the accused, as well as the vulnerable witnesses. Keeping such parameters in view, it cannot be ignored that both eyewitnesses, P.W.10 and P.W.11, are illiterate labourers, and their testimonies were recorded after a considerable length of time had passed since the occurrence. Both the witnesses have emphatically denied that they were tutored by Police or anyone else. The unfiltered testimony of a rustic witness, even if marred with some minor inconsistencies or discrepancies, cannot debilitate its perseverance. The evidence of such witnesses has to be evaluated comprehensively and carefully, especially when the cross-examination discreetly suggests that the accused person(s) did make a bid to win them over by exerting some extraneous pressure. We are, thus, satisfied that the statements of P.W.10 and P.W.11 do not suffer from the discrepancy of such a nature that they should be discarded. Even the testimony of the Investigating Officer (P.W.14) is devoid of any ulterior motive or attempt to fabricate evidence or falsely implicate the Appellant and his co-accused.

58. It would be too unfair and unreasonable to expect a witness, unless parroted, to recall every minute detail of the occurrence and present it with a totally accumulative narrative. The Appellant's contention is thus bereft of any merit.

B. Effect of Absence of Blood Group Classification on Prosecution's Case

59. Learned Senior Counsel on behalf of Appellant asserted that the knife purportedly retrieved from him underwent examination at the Forensic Science Laboratory, where the test results were inconclusive, particularly regarding the determination of the blood group on the weapon. Consequently, the absence of a conclusive match in the blood group analysis should be construed in favour of the Appellant and against the prosecution.

60. Upon a thorough examination of the FSL report, it stands confirmed that the blood group classification test conducted on the recovered knife yielded inconclusive results. However, it is crucial to note that human blood was detected on the knife recovered at the instance of the Appellant (Exhibit "I" before FSL). This fact gains some importance, considering that various weapons, including lathis and even the knife

attributed to accused Asgar, underwent an FSL examination, yet, no traces of human blood were found on them. Notably, human blood was solely found on the knife used by the Appellant.

61. In line with the precedents set forth by this Court in ***Raja @ Rajinder v. State of Haryana***[7] and ***John Pandian v. State***[8]**,** the non-explanation of human blood on the weapon of crime constitutes a circumstance against the accused. It is incumbent upon the accused to provide an explanation regarding the presence of human blood on the weapon. The Appellant has failed to do so. The judgments delivered by both the Trial Court and the High Court also do not reveal that the Appellant rendered any satisfactory explanation concerning the presence of blood on the recovered knife. Top of Form While it may not be a decisive factor to determine the guilt, but a conspicuous silence does lend support to the prosecution case.

C. Consideration of Section 161 CrPC Statement of Deceased Tularam as Dying Declaration

62. It is contended on behalf of the Appellant that the courts below have erred in relying on the statement of Tularam (Ex.P.40) given to Investigating Officer, Girish Bohre (P.W.14) and that the said statement cannot be considered to be a 'dying declaration' as the Investigating Officer did not take any certification from the doctor regarding the fitness of mind of Tularam.

63. In this regard, the following part of the testimony of Investigating Officer, Girish Bohre (P.W.14), who recorded the statement of Tularam under Section 161 CrPC, becomes quintessential:

> "It is correct that I did not take permission from the Doctor about the condition of giving statement of Tularam before recording statement of Tularam. It is correct that I knew this fact at the time of recording statement that one person has died in this case. As head injury was not told to be serious in the Medical Report, so it is incorrect to say that I knew this fact that Tularam had sustained lathi blow on his head and his condition was serious. It is incorrect to say that head injury caused to Tularam was serious and his condition was

7 [2015] 3 SCR 947 : (2015) 11 SCC 43

8 [2010] 15 SCR 1012 : (2010) 14 SCC 129

> told to be serious in his medical report. It is correct that proceedings of recording dying declaration of Tularam was not conducted by me till Tularam was alive. It is incorrect to say that Tularam was not able to speak after sustaining the injuries and till his death, so I did not record his dying declaration. It is incorrect to say that due to this reason the statement of Exhibit P.40 has been falsely prepared."

64. Before we proceed further, it would be apt to recapitulate Section 32(1) of the IEA, whereunder the statement made by a person, who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, is relevant and admissible, irrespective of the fact that such person at the time of making the statement was not under expectation of death.

65. Section 161 CrPC empowers the Police to examine orally any person who is acquainted with the facts and circumstances of the case under investigation. The Police may reduce such statement into writing also. Section 162(1) CrPC, nonetheless, mandates that no statement made by any person to a Police Officer, if reduced to writing, be signed by the person making it, nor shall such statement be used in evidence except to contradict a witness in the manner provided by Section 145 of the IEA. However, Sub-Section (2) of Section 162 CrPC carves out an exception to Sub-Section (1) as it explicitly provides that nothing in Section 162 shall be deemed to apply to any statement falling within the ambit of clause (1) of Section 32 of the IEA. In other words, a statement made by a person who is dead, as to the cause of his death or to the circumstances of the transaction which resulted in his death, to a Police Officer and which has been recorded under Section 161 CrPC, shall be relevant and admissible, notwithstanding the express bar against use of such statement in evidence contained therein. In such eventuality, the statement recorded under Section 161 CrPC assumes the character of a dying declaration. Since extraordinary credence has been given to such dying declaration, the court ought to be extremely careful and cautious in placing reliance thereupon. There are a catena of decisions of this Court which lend support to the inter-play between provisions of the CrPC and the IEA, as explained above[9].

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9 See: i) Mukeshbhai Gopalbhai Barot v. State of Gujarat (2010) 12 SCC 224; (ii) Sri Bhagwan v. State of U.P. (2013) 12 SCC 137; (iii) Pradeep Bisoi v. State of Odisha (2019) 11 SCC 500

66. As regard to the assessment of mental fitness of the person making a dying declaration, it is indubitably the responsibility of the court to ensure that the declarant was in a sound state of mind. This is because there are no rigid procedures mandated for recording a dying declaration. If an eyewitness asserts that the deceased was conscious and capable of making the declaration, the medical opinion cannot override such affirmation, nor can the dying declaration be disregarded solely for want of a doctor's fitness certification. The requirement for a dying declaration to be recorded in the presence of a doctor, following certification of the declarant's mental fitness, is merely a matter of prudence.[10]

67. The Constitution Bench in Laxman v. State of Maharashtra[11] has authoritatively ruled that:

> "3. … …But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. … … What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the voluntary and truthful nature of the declaration can be established otherwise."

10 Koli Chunilal Savji v. State of Gujarat (1999) 9 SCC 562

11 [2002] Supp. 1 SCR 697 : (2002) 6 SCC 710

68. It is important in this case to appreciate that the Investigating Officer recorded the statement instantly, a day after the incident. He has categorically stated that the medical report did not mention that the condition of the declarant, Tularam, was serious in nature. More importantly, Tularam was able to convey his statement properly. Furthermore, on perusal of the statement, it is clear that the declarant Tularam was in a fit condition as not only did he properly explain the incident but has also markedly specified the role of the Appellant. That apart, the injuries found during the post-mortem examination conducted by P.W.13 and P.W.15 have duly corroborated the statement of deceased Tularam.

69. From the above discussion, it is manifest that the mere non-obtainment of a medical fitness certificate will not deter this Court from considering a properly recorded statement under Section 161 CrPC to be a dying declaration.

CONCLUSION :

70. For the reasons stated above, we are satisfied that there are no contradictions or discrepancies in the prosecution case of such a nature that would compel us to take a view different than that of the Trial Court and the High Court. We, therefore, do not find any merit in this appeal, which is, consequently, dismissed. If the Appellant is on bail, his bail bonds are cancelled, and he is directed to surrender and undergo the remainder of the sentence. However, if the Appellant is already in custody, in that event, he shall complete the remainder of the sentence.

71. Ordered accordingly.

Result of the case: Appeal dismissed.

†*Headnotes prepared by:* Nidhi Jain