

## **Govind Narain And Another vs State Of Rajasthan on 31 March, 1993**

**Equivalent citations: AIR1993SC2457, 1993CRILJ2598, 1993SUPP(3)SCC343, AIR 1993 SUPREME COURT 2457, 1993 AIR SCW 2179, 1993 (3) SCC(SUPP) 343, (1993) 3 ANDH LT 452, (1993) 2 LS 335, 1994 APLJ(CRI) 150, 1993 SCC(CRI) 1012, 1993 JT (SUPP) 522, (1994) 1 APLJ 52**

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**Bench: N.P. Singh**

### **JUDGMENT**

1. Two brothers Govind Narain and Ganesh Narain, (appellants in Criminal Appeal No. 852/ 85, filed under Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970) along with their third brother Ram Narain (respondent in Criminal Appeal No. 197/ 87 and 279/88) and father Kalu Ram, who died during the trial were tried for an offence under Section 302, I.P.C. in connection with an occurrence which is alleged to have taken place on the night intervening 23rd and 24th June, 1974 at about 1.00 a.m. According to the prosecution case, the deceased Gopi Chand was sleeping in his house when on hearing the barking of dogs, he got up and went out. While he was trying to look for the miscreants on account of whom the dogs might have barked, he was assaulted by all the four accused and pushed into a dry well. He cried for help and the villagers gathered there. Nanda PW 2 was sent into the well to bring out the deceased and after the deceased was so brought out, his brother Mohan Lal PW 17 and others made arrangement for the deceased to be removed to the hospital. PW 17 Mohan Lal claiming to be an eye-witness of the assault on the deceased by all the four accused persons and having witnessed the deceased being pushed into the well, went to the Police Station and lodged F.I.R. at about 2.30 a.m. After registration of the case, the deceased was sent to Sanganer Medical Dispensary and after being provided with medical aid was rushed to hospital at Jaipur where he is alleged to have died at about 7.10 a.m. on 24-6-74.

2. The prosecution with a view to connect the accused with the crime relied upon the following pieces of evidence:

- (1) Statement of eye-witness Mohan Lal, P.W. 17;
- (2) three oral dying declarations;
- (3) one dying declaration reduced into writing, exhibit P-3;
- (4) medical evidence.

3. According to the prosecution case the motive for the assault was the existence of hostility between the deceased and the accused persons and litigation was pending between the parties. This enmity was sought to be proved from exhibit P-21 and exhibit P-22.

4. The trial court after analysis of the evidence on the record disbelieved the sole eye-witness Mohan Lal, P.W. 17. The trial court also disbelieved all the three dying declarations and the alleged dying declaration which had been reduced into writing, exhibit P-3. So far as the medical evidence is concerned, according to the trial court, it was of a neutral character in the sense that the doctor had not ruled out the possibility of all the injuries being caused to the deceased by a fall. Having disbelieved the sole eye-witness and the dying declarations, the trial court acquitted all the accused. Kalu Ram accused had however, died during the pendency of the trial. Against the acquittal of the accused persons, the State filed an appeal in the High Court. The High Court also disbelieved the sole eye-witness P.W. 17. The dying declaration allegedly reduced into writing exhibit P-3 was also not believed. After taking into account the three oral dying declarations, reliance was placed by the High Court on the testimony of P.W. 10 Narain, a witness to the second oral dying declaration, who had deposed that the deceased had named Govind Narain and Ganesh Narain as the persons who had pushed him into the well. The testimony of none of the other witnesses to the so called dying declarations was accepted by the High Court and on a consideration of the matter, the High Court refused to interfere with the acquittal of Ram Narain and Kalu Ram, deceased. It, however, accepted the appeal of the State in so far as accused Govind Narain and Ganesh Narain are concerned. Both the appellants were convicted for the offence under Section 302, I.P.C. and sentenced to suffer the imprisonment for life. The State as well as the complainant had filed appeals, on special leave being granted, against the acquittal of Ram Narain and both Govind Narain and Ganesh Narain have filed an appeal against their conviction and sentence.

5. We have, with the assistance of learned Counsel for the parties, been taken through the evidence on the record and have also perused the judgment of the trial court as well as the High Court. The trial court, dealing with the evidence of the sole eye-witness PW. 17, observed:

His claim to be an eye-witness of the occurrence is false and it can be said without any hesitation that he was falsely introduced as an ocular witness in the case.

The High Court while dealing with the testimony of P.W. 17 observed :

In the instant case, P.W. 17 claims himself to be an eye-witness, but looking to the facts narrated in the F.I.R. it can be inferred that the version given at the trial is not worthy of credence. This is an admitted fact that this witness Mohan Lal is the real brother of the deceased and, therefore, it is inconceivable that he failed to mention the essential features in the F.I.R. (Ex.P. 20). The fact that he has not mentioned the incident in Ex.P. 20, strongly suggest that he had not seen the occurrence and he was not in a position to say as to how the deceased fell down in the well.

6. In our opinion the comments made by the courts below with regard to Mohan Lal P.W. 17, brother of the deceased, are cogent and sound and we agree with the findings recorded by both the

courts to the effect that P.W. 17 has been falsely introduced as an eye-witness and that he had not seen the occurrence. In fairness to the learned Counsel appearing for the State as well as the learned Counsel appearing for the complainant, we may record that they have not placed any reliance on the testimony of P.W. 17 Mohan Lal, the alleged eye-witness. We, therefore, rule out of consideration the testimony of P.W. 17 not only for the reasons recorded by the High Court, but also for some other tell tale circumstances. A look at the First Information Report suggests that P.W. 17 had not seen the occurrence and he very cleverly left the F.I.R. vague so that he could improve upon the same at the trial. In the F.I.R. Exhibit P-20, PW 17 Mohan Lal merely stated that at dead of night on hearing the barking of dogs, he was woken up and on coming out on to the balcony, saw that his brother Gopi Chand had come out to see why the dogs were barking and that after sometime he heard the cries of his brother Gopi Chand and saw the accused Govind Narain, Ganesh Narain and Kalu running in different directions. It is significant to note that the manner of the assault or the occurrence relating to pushing the deceased in the well are conspicuous by their absence in the F.I.R. It is inconceivable that he would have omitted these vital details from the F.I.R. if he had seen the occurrence. That apart, from the evidence of the other prosecution witnesses, who had also reached at the well after hearing the cries of the deceased, Mohan Lal P.W. 17 had enquired from the deceased as to how he fell in the well. An eye-witness would not have made such an enquiry. We are, therefore, satisfied, that P.W. 17 had not seen the occurrence and he was falsely introduced as an ocular witness in the case.

7. Having come to the conclusion that Mohan Lal P.W. 17 has been falsely introduced as an ocular witness in the case, the duty of the court to scrutinise the other evidence more carefully becomes even greater because with the taint in the investigation having been established, the court has to be careful to analyse the other evidence with caution.

8. The three oral dying declarations, which are alleged to have been made by the deceased, require our attention at this stage.

9. The first dying declaration, according to the prosecution, was made by the deceased to P.W. 2, Nanda, who descended into the well to bring out the deceased from the well. According to his testimony, on hearing the alarm that "the enemies had killed", he went to Khati Wali Kui, which is at a distance at about 60-70 ft. away from the house of Gopi Chand deceased. On reaching the Kui, he found nearly 20/-25 people including Mohan Lal P.W. 17, Devi Lal, Laxmi Narain, Babu Lal and Narain etc. gathered at the well. He was requested to descend into the well since the deceased was crying for help. After he went into the well he found Gopi chand injured at the bottom of the well in a sitting position. According to the witness, he had conversation with Gopi Chand for about 20/ 25 minutes and on his enquiry as to how he had been pushed into the well, the deceased is alleged to have stated that it was the accused persons, all the four of them, who had over powered him and after giving him beating with lathis had pushed him into the well.

10. The learned Sessions Judge disbelieved the version of this witness not only on the ground that his name was not mentioned in the F.I.R. as the person who had brought out the deceased from the well, but also for the reason that his testimony did not inspire confidence.

11. Nanda P.W. 2 was examined by the police on 25th June, 1974. He gave the following account regarding the statement alleged to have been made by the deceased :

After descending in the well I saw Gopi Chand was sitting in the well. I asked him who has pushed you in the well? When Gopi Chand told me that Ram Narayan and Ganesh Narayan accused present in the Court has over powered me near the well. I asked him how he came near to the well. He told that because of the doubt of thieves he came near to the fence. Fence is about 10 feet away from the well. Gopi Chand told further that after taking hold of him by Ram Narayan, Ganesh Narayan, Ram Narayan started hitting with lathies because of which my left leg bone was fractured and elbow of right hand was injured and got other wounds too. Gopi Chand also told me that accused Govind Narayan inserted hand in my buttocks and all the accused dragged me to the well. Accused Ganesh Narayan towed me towards the well and accused Kalu Ram and Ram Narayan pushed me in the well. It took 20/25 minutes in the conversation in the well.

According to the testimony of the other prosecution witnesses, to which we shall advert later on, the deceased was pleading from the well that he should be brought out immediately as he was dying. Obviously, looking to the nature of his injuries, the deceased must have been in great pain and agony. It could not therefore be possible for the deceased, to have given such a graphic description of the entire occurrence to the witness. Moreover his testimony to the effect that the deceased had told him that all the accused had caused him injuries with lathis stands belied by the medical evidence. It is settled law that unless a dying declaration is proved by cogent and reliable evidence it cannot be relied upon. The testimony of Nanda, P.W. 2 is certainly neither consent nor reliable to hold that the deceased had made any dying declaration in the manner as suggested by the witness and we agree with the trial court that the first dying declaration has not been proved and is also not believable. The High Court also did not place any reliance on PW 2 Nanda and in our opinion rightly.

12. The prosecution has next relied upon the second dying declaration allegedly made by the deceased when he was brought out and was placed on the cot in presence of PW 3 Babu Lal, P.W. 5 Laxminarain, PW 6 Mat. Bhonri, PW7 Devilal, P. W. 8 Ramgopal, P.W. 10 Narain and P.W. 15 Mst. Madan. According to the prosecution case, Mohan Lal P.W. 17 was also present at the time when the second dying declaration is alleged to have been made to the above named witnesses. We have perused the testimony of these witnesses and we find that there are major discrepancies in their testimony as regards the dying declaration alleged to have been made by the deceased. Whereas according to P.W. 3 Babu Lal, brother of Nanda P.W. 2, the deceased stated that Ram Narain, Kalu Ram and Govind Ram had caused injuries to him with lathis and all the four accused had pushed him into the well, P.W. 7 Devi Lal, father of the deceased, P.W. 8 Ramgopal and P.W. 15 Mst. Madan deposed that when Gopi Chand was brought out and was asked as to how he fell into the well, the deceased told them that "the four accused persons came to him, beat him with lathis and threw him into the well". Thus, according to these witnesses the deceased is alleged to have stated that the lathi

blows were caused by all the four accused whereas according to P.W. 3, the deceased had named only three persons who had given him lathi blows. In contrast to their testimony, P.W. 10, Narain, on whose testimony the High Court has placed reliance to convict and sentenced Govind Narain and Ganesh Narain appellants, deposed that Gopi Chand was; asked as to how he fell down in the well. He told that accused "Govinda and Ganesh over powered him and threw him down into the well." According to this witness the deceased did not say anything regarding the part assigned to Kalu Ram and Ram Narain accused, and that the deceased did not even say that lathi blows had been given to the deceased by any of the accused persons. According to this witness the deceased is only alleged to have said that he had been pushed into the well by Govinda and Ganesh. P.W. 5 Laxmi Narain also stated that Gopi Chand on being asked had stated that the accused persons "forcibly took him to the well and pushed him down into the well". Though this witness had not so stated before the police in his statement under Section 161, Cr.P.C. exhibit D-1 with which he was duly confronted, but even otherwise this witness also did not state that Gopi Chand deceased told the witnesses that any of the accused person had given him any blow with lathis. P.W. 6 is Mst. Bhoari. She is the real sister of deceased. She also stated that Gopi Chand on being brought out of the well told all the persons who were present near the well that he had been caught hold of and over powered by the accused persons who forcibly took him to the well and threw him. According to this witness also, Gopi Chand deceased did not make any statement to the effect that the deceased had been caused any lathi blows by any of the accused persons. Thus, we find that the witnesses to the second dying declaration are totally inconsistent about the statement allegedly made by the accused to all of them. They differ on material aspects. The variation in their testimony as regards the assault by lathis and the participation of all the accused in the commission of the crime renders it unsafe to rely on them to hold that the dying declaration as alleged by the prosecution had been made by the deceased to these witnesses. Keeping in view the fact that the investigating officer has introduced a false eye-witness in this case we find it difficult to place any reliance on the testimony of these witnesses to hold that any second dying declaration as alleged by the prosecution was made by the deceased.

13. So far as the third dying declaration is concerned it was allegedly made to Kalyan P.W. 1. The trial Court as well as the High Court disbelieved the testimony of the witness and gave cogent reason for it. Learned Counsel for the State as well as the complainant also did not place any reliance on the testimony of P.W. 1 Kalyan, in so far as the third oral dying declaration is concerned. We, therefore, rule out of consideration the third dying declaration relied upon by the prosecution.

14. That takes us now to the consideration of the dying declaration alleged to have been reduced into writing, exhibit P-3. The High Court as well as the trial court have disbelieved exhibit P-3 for a variety of reasons. Even if we agree with Mr. Makwana, learned Counsel for the complainant that some of the reasons given by the High Court to discard exhibit P 3 were not sound, we find that no reliance can be placed on the document exhibit P-3 for the simple reason that the scribe of the document, Shri Jagdish Narain, constable, for the reasons best known to the prosecution, was not examined at the trial and the defence therefore, had no opportunity to cross examine him. Mohammed Ali P.W. 4 has failed to explain the cause for non production of Jagdish Narain. We are, therefore, in agreement both, with the trial court and the High Court, that there are sufficient reasons on the record to justify the discarding of the alleged dying declaration contained in exhibit P 3 and we do not place any reliance on the same.

15. Thus, it follows that none of the four alleged dying declarations can be relied upon. They have not been proved to have been made by the deceased to the satisfaction of the court and an impression has been created on our minds that these dying declarations have been pressed into aid by the investigating agency with a view to create false clues and lead false evidence.

16. So far as the medical evidence is concerned, it is almost of a neutral character as the doctor has deposed that the injuries found on the deceased could also be possible by a fall in the dry well where there were pebbles and stones. Medical evidence, therefore, cannot advance the prosecution case.

17. Thus, considered in the light of the above discussion, we find that the prosecution has not been able to prove the case against any of the accused persons beyond a reasonable doubt. The High Court fell in error in relying upon the testimony of P.W. 10 to convict Govind Narain and Ganesh Narain. As already noticed not only did P.W. 10 not state that the deceased had said that either of these two accused had caused him lathi blows, his statement has been contradicted by other prosecution witnesses as well. The judgment of the High Court cannot, therefore, be sustained. Consequently, Criminal Appeal No. 852 of 1985 filed by Govind Narain and Ganesh Narain succeeds and is allowed and their conviction and sentence is set aside. Both Govind Narain and Ganesh Narain are acquitted of the offence under Section 302, I.P.C. They are on bail. Their bail bonds shall stand cancelled.

18. The Criminal Appeals filed by the complainant and by the State against the acquittal of Ram Narain also fail and are dismissed. Respondent Ram Narain in both the appeals is on bail. His bail bonds shall stand discharged.