Supreme Court of India
State Of Uttar Pradesh vs Ram Sagar Yadav And Ors on 18 January, 1985
Equivalent citations: 1985 AIR 416, 1985 SCR (2) 621
Author: Y Chandrachud
Bench: Chandrachud, Y.V. ((Cj)

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
RAM SAGAR YADAV AND ORS.

DATE OF JUDGMENT18/01/1985

BENCH:
CHANDRACHUD, Y.V. ((CJ)
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CHANDRACHUD, Y.V. ((CJ)
SEN, AMARENDRA NATH (J)

CITATION:
1985 AIR 416 1985 SCR (2) 621
1985 SCC (1) 552 1985 SCALE (1)108
CITATOR INFO :
R 1992 SC1817 (17)

ACT:
Indian Penal Code. ss. 300 302 and 304-Murder and culpable homicide not amounting to murder-Distinction between.

Indian Evidence Act-Evidence-Appreciation of-Dying declaration-If true, whether corroboration necessary-Death caused and/or atrocities perpetrated while in police custody-Burden of proof-Need for re-examination by legislature.

Criminal Law-Petty details and minor contradictions in evidence-Whether can tilt the scale of justice.

HEADNOTE:
Respondent 1 was the Station House Officer and Respondents 2 to 4 were attached as constables to the Police Station. The prosecution alleged that a complaint was filed against the deceased for cattle trespass. The Respondent pursuant to the said complaint sought to extort illegal gratification from the deceased for hushing up the case. Respondent 2 succeeded in obtaining Rs. 100 and made a further demand of Rs. 200. The deceased refused to oblige him and made a complaint to the Superintendent of Police,

who forwarded it to Respondent 1 for inquiry and report. This incensed Respondent 1. The deceased was arrested and brought to the Police Station by Respondents 3 and 4 at about 10.00 A.M. Same day at about 6.00 P.M. the deceased succumbed to injures which were caused to him by Respondents while he was in their custody.

The Sessions Court tried the four Respondents, convicted each of them under section 304 Part 2 of the Penal Code while Respondent I was also convicted under section 220 of the Penal Code and all were sentenced to different terms of imprisonment.

The Respondents appealed to the High Court and a Single Judge set aside their order of convictions and sentences.

Allowing the Appeal of the State,

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HELD: 1. It is impossible to sustain the judgment of the High Court as it has totally overlooked crucial evidence led by the prosecution and taken an unrealistic view of unequivocal facts. It has not even adverted to the reasons given by the trial court for holding the Respondents guilty of the offences of which they were convicted. [625B-C]

2. It is quite clear that upon the evidence led by the prosecution only one conclusion is possible, which is, that the Respondents inflicted injuries upon Brijlal while he was in their custody, thereby causing his death. [635F]

3. It is well-settled that, as a matter of law, a dying declaration can be acted upon without corroboration. There is not even a rule of prudence which has harden d into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort Or the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only If the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration. [628D-E]

The instant case. is a typical illustration of that class of cases in which the Court should not hesitate to act on the basis of an uncorroborated dying declaration The circumstances leave no doubt that the dying declaration made by the deceased to the Judicial Magistrate to the effect that he was beaten by Darogah and the constables at the Police Station is true in every respect and it is safe to accept the same. [628F; G; 629A-B]

Khushal Rao v. The State of Bombay, [1958] SCR 552, Harbans Singh v. State of Punjab, [1967] Supp. ISCR 104 and Gopalsingh v. State of M.P, [1972] 3 SCC 268, followed.

4. The distinction between murder and culpable hom cide not amounting to murder is often lost sight of, resulting in undue liberality in favour of undeserving culprits like the respondent-police officers Except in cases covered by five

exceptions mentioned in section 300 of the Penal Code, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of section 300, namely, 2ndly, 3rdly and 4thly. [630 F-G]

The instant case, appears to fall under the clause '2ndly' of section 300 since the act by which the death of was caused, was done with the intention of causing such bodily injury as the Respondents knew to be likely to cause his death. It is regrettable that the Sessions Court convicted the Respondents under section 304 instead of convicting them under sect on 302 of the Pen 11 Code. This Court, would not however pursue the matter further since the State did not fled an appeal against the judgment of the Sessions Court. [630H; 631A]

5. The record of the case is disproportionately bulky to the narrow Point which is involved in the case. It is not an unusual experience that the wood is missed for the trees when a Judge is confronted with a jumbled-up mass of data
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relevant and irrelevant. it is necessary in such cases to find the central point of the case and to concentrate upon evidence which bears upon that point. Petty details which befog the real issue and contradictions in the evidence which are inevitable when a story is narrated under the stress of a grave crime, ought not to be permitted to tilt the scales of justice. The more a Judge gets bogged down in superfluous details the greater is the likelihood of his straying away from evidence which can clinch the issue. [625C-E] R

In the instant case, the High Court missed or mistook the salient features of the case and embarked upon a hair-splitting exercise while appreciating the evidence.

6. Remand orders are often passed mechanical,y without a proper application of mind. In this case, the Magistrate was led into passing an order of remand on the basis of the usual statement that the offence of which the accused was charged was still under investigation. What is important is that deceased had not committed any offence at all for which 1- could be remanded and, far from being an accused, he was in the position of a complainant. Respondent 1 was the architect of his remand and the motive for obtaining the remand order was to keep him in custody so as to prevent him from disclosing to his people who beat him and where. [627D-F]

7. It is necessary that the Government amends the law appropriately so that policemen l who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone and none else. can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in

such situations and when they choose to speak they put their own glass upon facts and pervert the truth. The result is that persons on whom atrocities are perpetrated by the police in the sanctum sanctorum OF the Police Station, are left without evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens, who look to them for protection. [631C-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No 69 of 1 975 .

From the Judgment and Order dated 13th May, 1974 of the Allahabad High Court in Criminal Appeal No. 269 of 1973.

M.R. Sharma, Dalveer Bhandari, H.M. Singh and Miss Rachna Joshi, for the Appellant R.K Garg, V J. Francis and N.M. Popli for the Respondents.

The Judgment of the Court was delivered by CHANCRACHUD, C.J. This is an appeal by the State of U.P., against the judgment of a learned single Judge of the Allahabad High Court, setting aside the order of conviction and sentence passed by the learned Sessions Judge, Fatehpur against the four respondents. Respondents 1 and 2, Ram Sagar Yadav and Shobha Nath alias Pujari were convicted by the learned Sessions Judge under section 304. Part 2, of the Penal Code and were sentenced to rigorous imprisonment for seven years. Respondent 1 was also convicted under section 220 of the Penal Code for keeping a person in confinement corruptly and was sentenced to rigorous imprisonment for five years Respondents 3 and 4 were convicted under section 304, Part 2 of the Penal Code and were sentenced to rigorous imprisonment for three years.

Respondent l, Ram Sagar Yadav, was the Station House Officer of the Hussainganj Police Station, District Fatehpur, while the remaining three respondents were attached to that police station as constables. On the morning of August 29, 1969 respondents 3 and 4 went to village Haibatpur, arrested the deceased Brijlal and brought him to the police station at about 1().()0 A.M. Brijlal died the same day at about 6.00 P.M. due to the injuries which were caused to him between the time that he was brought to the police station and the forenoon of August 29.

The case of the prosecution is that the respondents wanted to extort illegal gratification from Brijlal in connection with a complaint which was filed against him by one Faheeman Faqirin for cattle trespass. Respondent 2, Shobha Nath, had succeeded in obtaining a sum Of Rs. 100 from Brijlal with an assurance that no steps will be taken against him in that complaint. Respondent 2 demanded a further sum of Rs. 200 from Brijlal for hushing up the case. which the latter refused to pay. Instead, on August 7, 1969 he sent a complaint (Exhibit Ka-2) to the Superintendent of Police, Fatehpur, complaining that a bribe was being demanded from him by respondent 2, a policeman of

the Hussainganj Police Station. That complaint was forwarded by the Superintendent of Police to respondent I for inquiry and report. Being incensed by the 'audacity' of Brijlal in complaining against a policeman under his charge, respondent I sent respondents 3 and 4 to bring Brijlal to the police station in order that he could be taught a proper lesson. That is the genesis of Brijlal's arrest. Apart from Faheeman Faqirin's complaint that Brijlal's bullock had damaged her crop, there was no complaint or charge against him.

We have heard this appeal at reasonable length and both Shri M.R. Sharma, who appears on behalf of the appellant and Shri R.K. Garg who appears on behalf of the respondents, have taken us through the relevant evidence and the judgments of the High Court and the Sessions Court. Upon a consideration of that evidence, we find it impossible to sustain the judgment of the High Court. Ii has totally overlooked crucial evidence led by the prosecution in support of its case and, with respect, taking an unrealistic view of unequivocal facts, it has not even adverted to the reasons given by the trial court in support of its conclusion that the respondents are guilty of the offences of which it convicted them.

The record of the case is disproportionately bulky to the narrow point which is involved in the case. It is not an unusual experience that the wood is missed for the trees when a Judge is confronted with a jumbled-up mass of data, relevant and irrelevant. It is necessary in such cases to find out the central point of the case and to concentrate upon evidence which bears upon that point. Petty details which befog the real issue and minor contradictions in the evidence which are inevitable when a story is narrated under the stress of a grave crime, ought not to be permitted to tilt the scales o justice. The more a Judge gets bogged down in superfluous details, the greater is the likelihood of his straying away from evidence which can clinch the issue. In the instant case, the High Court missed or mistook the salient features of the case and, in the result, embacked upon a hair-splitting exercise while appreciating the evidence.

We do not propose to discuss more than is strictly necessary since it is quite clear that upon the evidence led by the prosecution only one conclusion is possible, which is, that the respondents inflicted injuries upon Brijlal while he was in their custody, thereby causing his death.

Brijlal was hale and hearty on the morning of August 29, 1969. He was ploughing his field when respondents 3 and 4 reached Haibatpur in order to arrest him. They took him on foot to the Hussaniganj Police Station which is about 3 km away from Haibatpur. They reached the police station at 10.00 A.M. Two hours later, Brijlal was taken in a police van to the Court of the learned Additional District Magistrate for obtaining remand. Shri R.C. Nigam, the Presiding Officer of the Court, had finished the winding list of the remand applications, at the end of which the Moharir of the Court informed him that a remand order had remained to be passed against an accused who was brought from the Hussainganj Police Station and that the accused could not be produced in Court since he was lying in the verandah in a badly injured condition. Shri Nigam (P.W. 5) says in his evidence that since the accused could not be brought to the Court-room, he himself went to the verandah where the accused was lying and he asked him his name. The accused was unable to respond at first since his condition was "very serious" but, on repeated inquiries, the accused told Shri Nigam that his name was Brijlal. On being questioned as to how he came to receive the injuries,

Brijlal replied that 'the Darogah of Hussainganj and the constables had beaten him very badly'. Shri Nigam made a note of the statement made by Brijlal on the remand application (Exhibit Ka-l). That application bears Shri Nigam's signature and the thumb impression of Brijlal.

Shri Nigam's evidence is of a crucial character since it establishes , beyond any doubt, that Brijlal had extensive injuries on his person and that, at the earliest opportunity, he involved the policemen of the Hussainganj Police Station as the authors of those injuries, It is as transparent, as any fact can be, that the injuries which were found on the person of Brijlal were caused to him at the Hussainganj Police Station. The few and simple steps in the logical process leading to that conclusion are that Brijlal had no injuries on his person when he was arrested at Haibatpur in the morning or when he was brought to the police station at about 10.00 A.M, and that, when he was sent for remand he had a large number of injuries on his person which had induced a state of shock. We are unable to see what other explanation can reasonably be given of this chain of facts except that the injuries were caused to Brijlal by the policemen attached to the Hussainganj Police Station. Who, from amongst them, is or are responsible for causing the injuries has undoubtedly to be considered. But, there is no escape from the conclusion that Brijlal was assaulted while he was in custody of the respondents at the Hussainganj Police Station.

The evidence of Laxmi Narain, P.W. No. 17, who was one of the constables attached to the Hussainganj Police Station has an important bearing on the guilt of the respondents, an aspect which has escaped the attention of the High, Court. Laxmi Narain says that when he went to the police station at about 10.45 a.m. On August 29,1969, respondent 1, the Station House Officer, and the other three respon-

dents were present at the police station; that Brijlal was lying in the lock-up of the police station shrieking in pain; and that, when Brijlal was handed over to his custody for being taken to the Magistrate, there were a number of injuries on his arms and legs. According to Laxmi Narain, and that is undisputed, respondent 1 also accompanied him and Brijlal to the Magistrate's court. It seems to us surprising that respondent I was nowhere on the scene in the Magistrate's court, especially in the light of the fact that Brijlal's was an unusual case in which, the prisoner for whom remand was to be obtained was in a precarious condition due to the injuries suffered by him. It was respondent I who, being the S.H.O., had the custody and care of Brijlal. Instead of making himself available to the Magistrate for explaining how Brijlal came to be injured, he resorted to the expedient of deputing Laxmi Narain to face the Magistrate. Laxmi Narain has also stated in his evidence that Brijlal told the Magistrate that the Darogah and the constables of the Hussainganj Police Station had assaulted him.

It is notorious that remand orders are often passed mechanically without a proper application of mind. Perhaps, the Magistrates are not to blame because, heaps of such applications are required to be disposed of by them before the regular work of the day begins. Shri Nigam has to be complimented for the sense of duty and humanity which he showed in leaving his seat and going to the verandah to see an humble villager like Brijlal. It is obvious that he was led into passing an order of remand on the basis of the usual statement that the offence of which the accused was charged was still under investigation. What is important is that Brijlal had not committed any offence at all for

which he could be remanded and, far from being an accused, he was in the position of a complainant. Respondent I was the architect of his remand and the motive for obtaining the remand order was to keep Brijlal in custody so as to prevent him from disclosing to his people who beat him and where.

After obtaining the remand order, Brijlal was sent to the Fatehpur District Jail at 3.40 p.m. Sheo Shanker Sharma, P.W.8, who was the Assistant Jailor of the Fetehpur Jail, says that when he examined Brijlal at about 3.45 p.m. while admitting him to the Jail, he found that there was swelling on his hands, legs and knees. Brijlal was unable to get up and on being questioned, he told Sharma that the policemen belonging to the Police Station arrested him H from his field, took him to the Police Station and committed "marpit" on him, as a result of which the was unable to stand. Finding that Brijlal's condition was serious, he called the Jail Doctor.

Dr. S. C. Misra P W. 21, went to the District Jail at about 5.20 IS p.m. He found that there were 19 injuries on the various parts of Brijlal 's person. On being questioned, Brijlal told him in a faltering voice that he had been beaten by the policemen. Dr. Misra says that Brijlal's condition was precarious but that, he had neither any fever nor any symptoms of Pneumonie. The evidence of Dr Misra proves that Brijlal died on account of the injuries received by him and that, the suggestion made by the defence that he died on account of some kind of a fever or on account of the pneumonic condition of his lungs, is utteiy baseless. The congestion in his lungs was the result of the beating administered to him.

It is well-settled that, as a matter of law, a dying declaration can be acted upon without corroboration. (See Khushal Rao v. The State of Bombay(1);Harbans Singh v.State of Punjab,(2) and Gopalsingh v. State of M.P.)(3) There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration. The ease before us is a typical illustration of that class of eases in which, the Court should not hesitate to act on the basis of an uncorroborated dying declaration. Brijlal had no reason for involving the policemen falsely for having assaulted him. There was no possibility of anyone tutoring him, for the simple reason that he was in the exclusive custody of the policemen of Husssainganj Police Station. It is the respondents who were in a position to exert influence over him. No one else had access to him, which not only excludes the possibility of his being tutored, but which also excludes the possibility that he was assaulted by any one else. Indeed, the circumstances of the case leave no doubt that the dying declaration (1) [1958] SCR 552.

(2) [19621 Supp. 1 SCR 104, (3) 119721 3 SCC 268.

made by Brijlal to Shri Nigam is true in every respect. We consider it safe to accept the statement made by Brijlal to Shri Nigam that he was beaten by the 'Darogah and the constables' of the Hussainganj Police Station.

The only question which remains for consideration is as to the identity of the persons belonging to the Hussainganj Police Station who participated in the assault on Brijlal. Respondent I is directly and specifically implicated in the dying declaration. He was the "Darogah`' of that Police Station. Laxmi Narain says in his evidence that at 10.45 a.m. when Brijlal was brought to the police station by respondents 3 and 4 respondent I was present. It is difficult to believe that The police constables would beat an accused so mercilessly in the police station without the connivance, consent or coollaboration of the Station House Officer. The Police Station of Hussainganj is not so large that the Station House Officer would not know what is happening there during his presence. The possibility of any other officer being a "Darogah" is removed by the evidence of S.I. Bajrang Bahadur Singh, P.W. 19, who says that, at the relevant time, there was no other Second Officer at the Hussainganj Police Station except him.

Any doubt lurking about the involvement of respondent I in the incident is removed by his own conduct. Though he was unquestionably present at the police station at the material time, he prepared a false record in order to show that he had gone for the purpose of an identification parade to another place. We agree with the leaned Sessions Judge that the record was thus prepared by respondent 1 falsely in order to support the defence of alibi. That, indeed, was his defence at the trial. He also prepared false record to show that Brijlal was involved in a dacoity case and was brought to the police station for that reason. There was no such charge against Brijlal and yet, respondent ], as the S.H.O., authorised or allowed respondents 3 and 4 to go Haibatpur for arresting Brijlal. The true reason for arresting him was that the respondent were incensed at the complaint made by Brijlal against respondent 2 for extorting a bribe.

In so far as respondent 2 is concerned, he is truly the cause of the assault on Brijlal. It was he who had extorted a bribe from Brijlal and was attempting to get some money from him. Brijlal sent a complaint on August 7, 1969 to the Superintendent of Police, Fatehpur, complaining against respondent 2. That complaint having been referred for inquiry and report to the Hussainganj Police Soltion, respondents hatched a conspiracy to put Brijlal under arrest, bring him to the police station and assault him.

In so far as respondents 3 and 4 are concerned, it is they who arrested Brijlal on a false charge of dacoity and brought him to the police station at 10 a.m., on August 29. Shortly thereafter, constable Laxmi Narain found that Brijlal was lying in the lock-up in a badly injured condition and was shrieking in agony.

In the light of these findings, it is unnecessary to refer to the evidence of P.Ws. 6. 7 and 9 who are respectively the nephew, the daughter and the wife of Brijlal. We agree with the learned Sessions Judge that these persons went to the police station immediately after Brijlal was taken there under arrest. It is not, however, possible to say with a reasonable amount of certainty that they saw the respondents assaulting Brijlal. They reached the police station quite some time after Brijlal was taken there and it would be too much of a coincidence to suppose that they arrived at the police station precisely at the time when Brijlal was being beaten. They might have heard the shrieks of Brijlal who was writhing in pain. But, standing outside the police station, as they were, it could not have been possible for them to see who was assaulting Brijlal. The limited relevance of their

evidence is for showing, apart from the other circumstances stated above, that Brijlal was lying injured in the police station.

For these reasons, we allow this appeal, set aside the judgment of the High Court and affirm that of the Sessions Court. It is to be greretted that the learned Sessions Judge convicted the respondents under section 304 instead of convicting them under section 302 of the Penal Code. The distinction between murder and culpable homicide not amounting to murder is often lost sight of, resulting in undue liberality in favour of undeserving culprits like the respondent-police officers, Except in cases covered by the five exceptions mentioned in section 300 of the Penal Code, culpable homicide is murder if the act by which the death is caused is done with the intention of causing death, or if the act falls within any of the three clauses of section 300, namely, 2ndly, 3rdly and 4thly. In this case, the injuries suffered by Brijlal would appear to fall under the clause '2ndly' of section 300, since the act by which his death was caused was done with the intention of causing such bodily injury as the respondents knew to be likely to cause his death. However, we will not pursue that matter any further since the State did not file an appeal against the judgment of the learned Sessions Judge asking that the respondents should be convicted under section 302 of the Penal Code and since the prosecution did not lead sufficient evidence through the Medical Officer in order to bring out the true nature of the injuries suffered by Brijlal.

Before we close, we would like to impress upon the Government the need to amend the law appropriately so that policemen who commit atrocities on persons who are in their custody are not allowed to escape by reason of paucity or absence of evidence. Police Officers alone, and none else, can give evidence as regards the circumstances in which a person in their custody comes to receive injuries while in their custody. Bound by ties of a kind of brotherhood, they often prefer to remain silent in such situations and when they choose to speak, they put their own gloss upon facts and pervert the truth. The result is that persons, on whom atrocities are perpetrated by the police in the sanctum sanctorum of the police station, are left without any evidence to prove who the offenders are. The law as to the burden of proof in such cases may be re-examined by the legislature so that hand-maids of law and order do not use their authority and opportunities for oppressing the innocent citizens who look to them for protect on. It is ironcial that, in the instant case, a person who complained against a policeman for bribery, was done to death by that policeman, his two companions and his superior officer, the Station House Officer. The vigilant Magistrate, Shri R.C. Nigam, deserves a word of praise for dutifully recording the dying declaration of the victim, which has come to constitute the sheet anchor of the case of the prosecution.

A. P. J. Appeal allowed.