

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Against the judgment of conviction dated 29.09.2003 and the order of sentence dated 30.09.2003, passed by learned Additional Sessions Judge IV, Bokaro in Sessions Trial Case No. 45 of 2000)

Criminal Appeal (D.B.) No.1066 of 2004

Rajendra Khatik, son of Sri Kishore Lal Khatik, Jhopri Colony, PS Bokaro Steel City, District Bokaro, Jharkhand ... **Appellant(s).**

Versus

The State of Jharkhand ... **Respondent(s).**

PRESENT

**SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.**

For the Appellant(s) : Mrs. Vani Kumari, Advocate

For the Respondent(s) : Ms. Lily Sahay, APP

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JUDGMENT

CAV on : 22.11.2024

Pronounced on : 10/12/ 2024

Per Ananda Sen, J.: This Criminal Appeal arises out of the judgment of conviction dated 29.09.2003 and the order of sentence dated 30.09.2003 in Sessions Trial Case No. 45 of 2000 whereby and whereunder learned Additional Sessions Judge IV, Bokaro convicted the appellant under Sections 302/34 of the Indian Penal Code and sentenced him to undergo imprisonment for life under section 302/34 of the Indian Penal Code with a fine of Rs. 1,000/-.

2. The learned counsel appearing on behalf of the appellant submitted that there is no eye witness to the occurrence and the case is solely based on the dying declaration of the deceased. As per the learned counsel if the dying declaration is disbelieved, there remains no material to implicate this appellant in this case. As per her, the deceased was not in a position to give the dying

declaration and if there is any doubt about the veracity of the dying declaration, conviction cannot be sustained. It would not be proper to convict the appellant solely on the basis of the dying declaration without corroboration. Admittedly there is no other corroborative evidence thus this appeal needs to be allowed.

3. The learned counsel for the State opposes the prayer and submitted that the dying declaration cannot be doubted. The evidence of the witnesses clearly suggests that the deceased was in a position to give a dying declaration. She also submitted that it is well settled that solely on the basis of the dying declaration conviction can also be sustained. As per the evidence of the doctor and the other witnesses the deceased was in a fit state of mind while giving the declaration. Thus this appeal be dismissed.

4. The story of the prosecution is on the basis of the *fardbeyan* of the informant Shankar Gorain. On 14.02.1998 at about 6:30 PM the informant was in his house along with his family members when Suraj Kumar Ram of Jhopri Colony came to his house and called Mahesh Gorain the brother of the informant and Mahesh Gorain went with Suraj Kumar Ram. At about 7:00-7:30 PM a person from LH came and informed that Mahesh Gorain was lying in an injured condition at LH and he should be taken to hospital for treatment. The informant along with his another brother Kashi Nath Gorain went there by hiring a Tempo and saw his brother Mahesh Gorain lying in an injured condition, who was conscious and asked the informant to take him to the hospital for treatment. On being asked, Mahesh Gorain told that Madhu Topno and Rajendra Khatik had assaulted him with knife and Suraj Kumar Ram had call him from his house. On the way to hospital he repeated the aforesaid names. During course of

treatment Mahesh Gorain died on the same day. On the basis of his *fardbeyan*, FIR was registered being B.S. City P.S. Case No. 57 of 1998 under sections 302/34 of the Indian Penal Code.

5. After investigation, the Investigating Officer submitted chargesheet against the appellant for the offence punishable under Sections 302/34 of the Indian Penal Code.

6. On the basis of chargesheet and materials available on record, cognizance was taken and case was committed to the Court of Sessions where charges were framed under Sections 364, 302, 120B of the Indian Penal Code and trial proceeded.

7. To prove the prosecution case, altogether 15 witnesses were examined by the prosecution, who are:-

- i. PW1 :- *Ram Balak Pathak*
- ii. PW2 :- *Saryug Ram*
- iii. PW3 :- *Sukanya Devi*
- iv. PW4 :- *Sashi Bhushan Singh*
- v. PW5 :- *Mahesh Singh*
- vi. PW6:- *Deo Raj Singh*
- vii. PW7:- *Dilip Gorain*
- viii.PW8:- *Santosh Gorain*
- ix. PW9:- *V. K. Gupta, I.O.*
- x. PW10:- *Alnunu Gorain*
- xi. PW11:- *Jamuna Gorain*
- xii. PW12:- *Kashi Nath Gorain*
- xiii. PW13:- *Dr. Bibhuti Bhusan Karunamai*
- xiv.PW14:- *Dr. Chandra Bhusan Prasad Singh*
- xv.PW15:- *Shankar Gorain (informant)*

8. Following documents have been exhibited :

- i. Ext.1 - *Fardbeyan*
- ii. Ext.1/a - *Signature of informant on fardbeyan*
- iii. Ext.1/b - *Signature of Barhunu Gorain upon fardbeyan*
- iv. Ext.1/1 - *Formal FIR*
- v. Ext.2 - *Carbon copy of inquest report*
- vi. Ext.3 - *Injury report of deceased Mahesh Gorain*
- vii. Ext.4 - *Postmortem report of deceased Mahesh Gorain*

9. After going through the evidence, I find that there is no eye witness to the assault. The case of the prosecution is based on the dying declaration of the deceased Mahesh Gorain. Save and except the oral dying declaration there is no other material. This dying declaration was given before the witnesses, soon after the deceased got injured.

10. The Hon'ble Supreme Court in the case of "**Uttam v. State of Maharashtra**" reported in (2022) 8 SCC 576 has summarized the principles governing dying declaration at paragraph no. 14 which is hereunder:

"14. In Paniben v. State of Gujarat [Paniben v. State of Gujarat, (1992) 2 SCC 474 : 1992 SCC (Cri) 403] , on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus : (SCC pp. 480-81, para 18)

"18. ... (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. [Munnu Raja v. State of M.P., (1976) 3 SCC 104 : 1976 SCC (Cri) 376])

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav [State of U.P. v. Ram Sagar Yadav, (1985) 1 SCC 552 : 1985 SCC (Cri) 127] ; Ramawati Devi v. State of Bihar [Ramawati Devi v. State of Bihar, (1983) 1 SCC 211 : 1983 SCC (Cri) 169] .)

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor [K. Ramachandra Reddy v. Public Prosecutor, (1976) 3 SCC 618 : 1976 SCC (Cri) 473] .)

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. [Rasheed Beg v. State of M.P., (1974) 4 SCC 264 : 1974 SCC (Cri) 426])

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P. [Kake Singh v. State of M.P., 1981 Supp SCC 25 : 1981 SCC (Cri) 645])

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. [Ram Manorath v. State of U.P., (1981) 2 SCC 654 : 1981 SCC (Cri) 581])

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra

v. Krishnamurti Laxmipati Naidu [State of Maharashtra v. Krishnamurti Laxmipati Naidu, 1980 Supp SCC 455 : 1981 SCC (Cri) 364] .

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Ojha v. State of Bihar [Surajdeo Ojha v. State of Bihar, 1980 Supp SCC 769 : 1979 SCC (Cri) 519] .

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanhau Ram v. State of M.P. [Nanhau Ram v. State of M.P., 1988 Supp SCC 152 : 1988 SCC (Cri) 342])

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan [State of U.P. v. Madan Mohan, (1989) 3 SCC 390 : 1989 SCC (Cri) 585] .)"

11. Further the Hon'ble Supreme Court in the case of "**Makhan Singh vs. State of Haryana**" reported in "**2022 SCC OnLine SC 1019**" has held that if the dying declaration is reliable, the conviction can be sustained based on the sole dying declaration.

12. Thus based on the aforesaid proposition of law, I have to judge as to whether the dying declaration is reliable and has been given in a fit state of mind or not. PW15 is the brother of the deceased and the informant. He stated that the deceased Mahesh Gorai was taken by Suraj Ram for some work. After one hour a person came running and informed him that Mahesh Gorai is lying in an injured condition in a pool of blood at LH Street No. 10. This witness rushed to the place and saw his brother in an injured condition but he was conscious. His brother disclosed that Madhu Topno and Rajendra Khatik had assaulted him with knife. He was taken to the hospital. He also stated that in the hospital also he repeated the same names.

13. PW12 is another witness who is also the brother of the deceased. His deposition is important on two counts. Firstly, he

stated that he had seen this deceased going with Suraj Ram and two other accused. The second part of his evidence suggests that a person came rushing to his house and stated that the deceased was lying in an injured condition, when this witness and the informant went to the place of occurrence and saw his brother in an injured condition. His brother narrated that it is this appellant and other assaulted him with a sharp edged weapon.

14. PW8 another brother of the deceased also narrated that in his presence the deceased had taken the name of this appellant as one of the assailants. Thus the dying declaration of the deceased is before three persons i.e. informant, PW8 and PW12. All of them stated that the deceased was in a fit state of mind and was conscious to give his statement.

15. Another important witness is PW13 who is Dr. Bibhuti Bhushan Karunamai. He examined Mahesh Gorai on 14.02.1998. In examination-in-chief he gives the detail of the injuries (which, I will deal at the later stage). In cross examination by the accused he stated that Mahesh Gorain i.e. injured patient was in a position to give his statement. He stated that he disclosed name of some person who had assaulted him, but this witness had not given any particular name. Thus, from the evidence of the doctor, I find that the deceased was in a fit state of mind and was in a position to speak and had also spelt out names of the assailants. Conjoint reading of the evidence of the witnesses before whom the deceased disclosed the name of the appellant, as the dying declaration, and the statement of the doctor suggests that his dying declaration can be accepted and there is nothing to disbelieve it. The same inspire confidence.

16. The injuries found by PW13 the doctor who had initially treated the injured Mahesh Gorain are as follows:

I. Incised wound on right cheek 1" x $\frac{1}{4}$ " x skin deep. Incised wound in right angle of mouth 1" x $\frac{1}{4}$ " x $\frac{1}{2}$ " skin deep. Incised wound on lower limb $\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep. Incised wound left side of neck $\frac{1}{2}$ " x $\frac{1}{4}$ " x skin deep. Incised wound on left hand 1" x $\frac{1}{2}$ " x $\frac{1}{2}$ " x skin deep. Incised wound on right buttock 2" x $\frac{1}{2}$ " x skin deep.

All the injuries above of simple nature caused by sharp cutting instrument.

II. Penetrating wound in the abdomen

a. 1" length about 2 $\frac{1}{2}$ " superolateral (leg) to umbilicus through which omentum is coming out. This injury is grievous in nature, caused by pointed sharp cutting instrument.

b. $\frac{1}{2}$ " length in right iliac possa x $\frac{1}{4}$ " width.

Nature of injury to be ascertained by surgeon.

III. Incised wound right fore-arm 1" x $\frac{1}{2}$ " x $\frac{1}{4}$ " skin deep.

Simple in nature caused by sharp cutting instrument.

IV. Stab/penetrating wound in the back.

i. 2" x $\frac{1}{2}$ " above 2" lateral (right) from lower thoracic spine.

ii. $\frac{1}{2}$ " x $\frac{1}{4}$ " in mid back

iii. 1" x $\frac{1}{4}$ " about 3" left lateral in lower thoracic spine.

All the injuries are caused by sharp weapon. He deposed in his cross examination that injury nos. 1 and 3 may be caused by single weapon. At the time of medical examination, patient was in a position to record his statement.

17. From the aforesaid injuries it is quite clear that repeated blow was given on the deceased by this appellant and another.

18. PW14 is the doctor who had conducted the postmortem upon the dead body. He also found the following injuries which are numerous:

(i) Incised wound 2" x 1" x muscle deep extending from lower 1/3rd of lip of the right side to the cheek of the right side.

(ii) Incised wound 1" x $\frac{1}{2}$ " x lip deep on the left side of lower lip.

(iii) Incised wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x skin deep on the left side of neck horizontally placed.

(iv) Incised wound 2" x $\frac{1}{4}$ " x skin deep extending from the middle of the left hand to the outer endorsal side of the hand placed transversely.

(v) Incised wound 2 $\frac{1}{2}$ " x 1" x muscle deep in the web of the left hand between thumb and index finger

(vi) Incised wound 1" x $\frac{1}{4}$ " skin deep on the distal phalanx of the index fingers of right hand.

(vii) Incised wound 1/2" x $\frac{1}{4}$ " x skin deep on distal phalanx of middle finger of right hand.

(viii) Stab wound 1" x $\frac{1}{2}$ " x abdominal cavity deep just above and left side of umbilicus

(ix) Incised wound 1 $\frac{1}{2}$ " x 1" x muscle deep on the appendicular region of abdomen on the right side.

- (x) *Incised wound 1" x ½" x muscle deep on the middle and lateral side of right forearm.*
- (xi) *Stab wound 1 ½" x ½" x abdomen deep on the right lumber region horizontally placed.*
- (xii) *Stab wound 1 ½ " x ½" x abdomen deep on the left lumber region transversally placed.*
- (xiii) *Incised wound 1" x ¼" x muscle deep on the inter scapular region at the verticular line of back.*
- (xiv) *Stab wound 1 ½" x ½" x chest deep on the right side of the lower part of the chest obliquely placed.*
- (xv) *Incised wound of 1 ½" x ½" x muscle deep on the left glutcal region, placed obliquely.*

On dissection :-

The plura and the lower lobe of the right side of lungs had penetrating wound with laceration. The pleural cavity and thoracic cavity contained blood and blood clots. The lob was collapsed. The left lung was intact and pale on section. The abdominal wall in the front and in the back had many stab injury as noted above. The peritonium and other viscera like parts of gut had cut and lacerated wound. The abdominal cavity was full of blood and blood clots. Heart-both chambers empty of blood. Brain and its membranes were pale, stomach-contained digested food materials and fluids and gas.

The doctor opined that all the injuries were ante mortem and caused by sharp edged weapon or object and cause of death is cardio respiratory failure due to massive hemorrhage shock and injury to the vital organs like lung.

19. The evidence of these two doctors clearly suggests that the death was homicidal and murder. The place of occurrence has been proved by PW9 the investigating officer. The *fardbeyan* was marked as Exhibit-1 and the formal FIR was marked as Exhibit-1/1. Investigating officer had also stated that he had recorded the statement of the witnesses. As observed earlier, a dying declaration can be accepted, if it is reliable and is without any tutoring or is uninfluenced and is given in a fit state of mind. In this case, I find that the dying declaration is reliable and the conviction of this appellant on the basis of the dying declaration needs no interference. The Trial Court has considered all the aspects and arrived at the aforesaid conclusion. There is no

otherwise compelling material to differ with the finding of the Trial Court.

20. Accordingly, this criminal appeal is dismissed.

21. The judgment of conviction dated 29.09.2003 and the order of sentence dated 30.09.2003 passed in Sessions Trial Case No. 45 of 2000 by the learned Additional Sessions Judge IVth, Bokaro is affirmed

22. Since the appellant is on bail. His bail is cancelled and he is directed to surrender before the Court concerned forthwith to serve the rest of the sentence, if he has not already served.

23. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

(ANANDA SEN, J.)

GAUTAM KUMAR CHOUDHARY, J. - I agree.

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 10/12 /2024

Tanuj/

.A.F.R.