STATE OF HARYANA

v.

MANGE RAM AND ORS.

DECEMBER 11, 2002

[Y.K. SABHARWAL AND K.G. BALAKRISHNAN, JJ.]

Penal Code, 1860—Sections 302 read with 34 and 325, 326 read with 34—Accused causing grievous injuries to a person who later succumbed to his injuries—Trial Court acquitting them for murder, however convicting for voluntarily causing grievous hurt—High Court discarding the testimony of doctors, eye witness and the dying declarations, acquitting the accused—Appeal—Held: View of High Court is not reasonable and reasons for discarding the testimony of eye witness and dying declaration are wholly untenable—Hence Trial Court rightly convicted accused for the offence of causing grievous hurt.

Evidence Act, 1872:

Dying declaration—Admissibility of—Held: It is not necessary that the maker of the statement, at the time of making statement, should be under the shadow of death and should entertain the belief that his death was imminent.

Natural witness—Evidentiary value—Discussed.

According to the prosecution, on account of previous enmity respondents inflicted grievous injuries to a person by weapons and ran away. PW-5 and one S witnessed the incident. Injured victim was taken to the hospital, where Head Constable recorded his statement and on that basis FIR was recorded. Injured victim thereafter succumbed to his injuries. Respondents were charged under section 302 read with section 34 IPC. Sessions Judge acquitted them under section 302 read with section 34, however, convicted and punished them for offence under section 325/34 and section 326/34 IPC. In cross appeals High Court allowed the appeal of respondents and acquitted them. Hence the present appeal.

Appellants contended that respondents deserved to be convicted for offence under section 302/34 IPC.

A Allowing the appeal, the Court

HELD: 1.1. Having gone through the testimony of the doctors, PW5 and PW9 and the dying declaration, the view of High Court is not a reasonable view and the reasons for discarding the testimony of eye witness PW5 and the dying declaration are wholly untenable. [40-D]

B

1.2. High Court committed basic infirmity in assuming that for a dying declaration to be admissible in evidence, it is necessary that the maker of the statement, at the time of making statement, should be under the shadow of death and should entertain the belief that his death was imminent. Section 32 of the Indian Evidence Act does not say this and this C is not the law in India. High Court further committed infirmity in assuming that there was any delay in recording the statement. High Court rightly recorded that the deceased was not under shadow of death when statement was recorded. Evidently, there was not a great emergency to record the statement. Be that as it may, it was fully established that there D was no delay at all. Therefore it is not reasonable to conclude that there was any delay in recording of the statement and drawing inference therefrom that the intervening time was utilized for deliberation and false implication on account of previous enmity. [40-F, G, H; 40-A, D, E]

1.3. Undisputedly, the injured was fully conscious. He watched the E accused giving injuries on his person. It would be too much to imagine that despite seeing these injuries inflicted on him, he would, while making the statement, implicate respondents on account of previous enmity leaving the real person who had inflicted injuries altogether free. The injured in his statement gave a detailed account of the injuries as also the manner F in which PW5 witnessed the occurrence and tried to intervene in the matter and rescue and save him. There was no plausible reason to discard the statement of the victim and testimony of PW9. The statement of the victim inspires confidence and was rightly relied upon by Sessions Court. Also the prosecution had given up S as he had business dealing with the accused and had been won over. [41-E, F; G]

G

1.4. High Court lost sight of the fact that PW5 was a resident of the same village as the accused and the deceased. The fact that PW8 in his police statement failed to mention about the presence of PW5 at the place of occurrence was an irrelevant circumstance for disbelieving PW5. PW5 gave details of all the injuries inflicted by the accused. Nothing worthwhile H could be extracted in his cross-examination. He was a natural witness. He

tried to intervene and save the deceased. He went to the house of the deceased to inform his family members about the incident. PW5 was an independent witness. Despite the fact that he did not go to the hospital but independently the injured in his statement stated about the presence of PW5 at the time of occurrence and his efforts to save the deceased. Therefore, PW5 is a natural, truthful and credible witness and his testimony was rightly relied upon by Sessions Judge in convicting the respondents. [42-A, B; C]

1.5. Sessions Judge concluded that the possibility of the injured having died because of blood reaction cannot be ruled out though doctor conducting post mortem had deposed the cause of death as rupture of liver on account of injuries. The view taken by Sessions Judge is a plausible view and, therefore, respondents were rightly convicted for offence under sections 325 and 326 read with section 34 IPC by Sessions Judge.
[42-G, H; 43-A]

1.6. Having regard to the facts of the case, the ends of justice would be met if each of the respondents is sentenced to rigorous imprisonment for a period of four years instead of seven years and five years as directed by Sessions Court. [43-B; C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 538 of 1994.

From the Judgment and Order dated 10.7.1986 of the Punjab and Haryana Court in Crl. A. No. 530 of 1985.

Praveen Kumar Rai and Ranbir Yadav, for the Appellant.

Rajiv Dutta, Brijender Chahar, Ms. Jyoti Chahar, Vinay Garg, for the Respondents.

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J. The father, his two sons and a brother-in-law, respondents herein, were charged for causing grievous injuries to the deceased on 7th June, 1984 at 8.00 p.m. The deceased succumbed to the injuries at a hospital at Rohtak on 10th June, 1984 at 6.30 a.m.

All the four accused were charged for offence punishable under Section

A 302 read with Section 34 of the Indian Penal Code (IPC). The Sessions Judge, Rohtak, acquitted all the four accused for the offence under Section 302/34 IPC. They were, however, found guilty of having committed offences punishable under Sections 325/34 and 326/34 IPC. All were sentenced to seven years' rigorous imprisonment for offence under Section 326/34 IPC and five years for offence under Section 325/34 IPC.

B

The aforesaid conviction and sentence was challenged by the prosecution as well as the respondents by filing appeals in the High Court the State contending that the respondents were liable to be convicted for offence under Section 302/34 IPC and the respondents contending that they were wrongly C convicted for the offences as aforesaid and deserved to be acquitted. The High Court, by the impugned judgment, allowing the appeal of the respondents, acquitted them altogether and resultantly the State appeal was dismissed.

The State has filed this appeal on grant of leave.

D According to the prosecution, on the date of occurrence, Mange Ram, who at that time was about 58 years of age attacked the deceased by giving a lathi blow on his left calf, his son Krishan gave a pharsa blow on his right foot and the other son Joginder Singh hit him with ballam on the right calf and Kaptan Singh, brother-in-law of Mange Ram, gave him a lathi blow on the left wrist. Joginder also gave ballam blow on left elbow of the deceased E felling him on the ground whereafter all the four accused inflicted more injuries on the deceased while he was lying on the ground. After inflicting these injuries, they ran away from the place of occurrence which was witnessed by PW5 Bhim Singh and one Sant Ram, in front of whose house the deceased was smoking hukka. Information regarding the occurrence was given by F PW5 to the Sube Singh (PW8), father of the deceased. PW8 came to the spot. The deceased was removed to Civil Hospital, Bahadurgarh and was medically examined by PW4 Dr. D.S. Rana who discovered the following injuries on his person :

1. A swelling covering whole upper two-third left leg, crepitus G present. Movements were restricted and tenderness was present. Advised X-ray of the left leg, upper two-third A.P. and lateral view.

2. A stab incised wound 1.5 cm x 1 cm x muscles cut on anterior aspect of right leg, 7 cms below right knee joint, blood clots H were removed from the wound. Bleeding was present with a

swelling around the wound. X-ray was also advised.

3. Incised wound 7 cm x 3 cms x muscle deep. Bleeding was present on the lateral aspect of the right ankle and foot. Wound was curved in shape.

4. Contusion 12 cms x 2.5 cms reddish in colour, on lower lateral aspect right side of chest.

5. A lacerated wound 1.2 cm x 0.5 cm x skin deep on lateral aspect of right arm, 6 cms above right elbow joint. Bleeding was present. Advised X-ray of right arm, lower one-third A.P. and lateral view.

6. An abrasion 1.5 cm x 1 cm on posterior lateral aspect right thigh, 3 cms above mid point.

7. A lacerated wound 3 cm x 0.75 cm on lateral side of left elbow joint. Bleeding was present. Advised X-ray.

8. A swelling 5 cms x 3 cms on medial and lower aspect of left forearm. Advised X-ray.

9. A contusion 10 cm x 2.5 cm reddish, on posterior aspect of right side of the chest scapular region.

10. A contusion 8 cm x 1.5 cm reddish in colour, on posterior aspect of right side of chest at right angle to injury No. 9.

Injuries 1, 2 and 8 were declared grievous. After the medical examination, the deceased, on the advise of the doctor, was removed from Civil Hospital, Bahadurgarh to Medical College and Hospital, Rohtak. As already noticed, the deceased succumbed to injuries on 10th June, 1984. The autopsy of the dead body was performed by PW3 (Dr. Veena Bansal). PW3 also noticed the aforesaid injuries. On opening of the chest, PW3 found that the ribs at the deceased had been fractured from both sides and the liver was ruptured. In the opinion of PW3, rupture of liver was sufficient to cause death in the ordinary course.

While in hospital, the statement of the deceased was recorded by Head Constable Dharamvir (PW9) at 10.30 a.m. on 8th June, 1984, on the basis whereof, formal first information was recorded under Sections 324 and 323 read with Section 34 IPC.

Relying upon the prosecution evidence, in particular, the statement of

A PW5 and PW9 and the statement of the deceased recorded by PW9 which, after the death, was treated as dying declaration, the Sessions Judge convicted all the four accused in the manner aforestated. The dying declaration is Exhibited PQ.

The motive of the crime, as established by the prosecution according
B to the judgment of the Sessions Judge, is that the deceased who was a Police Constable in Delhi Police was helping the parents of wife of accused Krishan who was being tried for the offence of his wife's murder. That finding has not been disturbed by the High Court in judgment under appeal. The trial court, as also the High Court did not rely upon the testimony of PW8. His
C presence at the scene of occurrence was considered doubtful. We would also keep out of consideration the testimony of PW8.

The High Court discarded the testimony of eye-witness PW5 as also the dying declaration (Exhibit PQ) and consequently the conviction and sentence of the respondents was set aside. We have gone through the evidence
D on record, in particular, the testimony of the doctors, that of Bhim Singh and the head constable (PW5 and PW9) and the dying declaration (Exhibit PQ). In our opinion, the view of the High Court is not a reasonable view of the evidence and the reasons for discarding PW5 and the dying declaration (Exhibit PQ) are wholly untenable.

E

The main reason for discarding Exhibit PQ is that when the statement was recorded by the Police, the deceased was not under the shadow of death and the injuries received by him were not even considered dangerous to his life. The other reason given is delay in recording Exhibit PQ with the result that there was ample intervening time for deliberation and false implication
F of the accused on account of previous enmity as also the non-examination of Sant Ram by the prosecution and introduction of PW5 as a false witness in the dying declaration. The basic infirmity committed by the High Court is in assuming that for a dying declaration to be admissible in evidence, it is necessary that the maker of the statement, at the time of making statement, should be under the shadow of death. That is not what Section 32 of the
G Indian Evidence Act says. That is not the law in India. Under Indian Law, for dying declaration to be admissible in evidence, it is not necessary that the maker of the statement at the time of making the statement should be under shadow of death and should entertain the belief that his death was imminent. The expectation of imminent death is not the requirement of law. The further
H infirmity committed by the High Court in reversing a well considered judgment

of the Sessions Court is in assuming that there was any delay in recording of Exhibit PQ. The High Court has rightly recorded that the deceased was not under shadow of death when Exhibit PQ was recorded. Evidently, there was not a great emergency, on the facts and circumstances of the case, to record the statement. Be that as it may, it was fully established that there was no delay at all. Firstly, the High Court committed an error in holding that the statement was recorded at 12.30 p.m. on 8th June, 1984. It can neither be disputed nor has been disputed that the statement, in fact, was recorded at 10.30 a.m. on 8th June. The incident had taken place at 8.00 p.m. on 7th June. The injured reached Bahadurgarh Hospital at 11.50 p.m. He was examined by PW4 (Dr. D.S. Rana). The injuries were considered serious. He was referred to Medical College and Hospital, Rohtak. PW9 received Rukka (Exhibit PE) along with copy of medico legal report of the deceased from Civil Hospital, Bahadurgarh at about 2.00 a.m. on 8th June. He went to the Hospital but found that the injured had been removed to hospital at Rohtak. He returned to the police station and went to Hospital at Rohtak next day morning at about 9-9.30 a.m., presented an application (Exhibit PN) to the doctor to find out if the deceased was fit to make statement. Doctor (PW7) gave opinion (Exhibit PN/1) to the effect that injured was fit to make a statement. After receipt of the opinion, PW9 recorded the statement of injured which was completed at 10.30 a.m. Under these circumstances, it is not reasonable to conclude that there was any delay in recording of the statement and drawing inference therefrom that the intervening time was utilized for deliberation and false implication on account of the previous enmity. On the facts and circumstances of the case, the question of any deliberation and false implication would not arise. Undisputedly, injured was fully conscious. He watched the accused giving injuries on his person. It would be too much to imagine that despite seeing these injuries inflicted on him, he would, while making statement, implicate the respondents on account of previous enmity leaving the real person who had inflicted injuries altogether free. The injured in his statement had given a detailed account of the injuries as also the manner in which PW5 Bhim Singh witnessed the occurrence and tried to intervene in the matter and rescue and save him. There was no plausible reason whatsoever to discard Exhibit PQ and testimony of PW9. The prosecution had given up Sant Ram as he had business dealing with the accused and, according to the prosecution, had been won over. The statement Exhibit PQ inspires confidence and was rightly relied upon by the Sessions Court. The High Court committed serious illegality in concluding that Exhibit PQ was inadequate to connect the accused with the crime.

A B C D E F G H

A The reasons for not believing PW5 are also wholly unsustainable. Main reason for disbelieving him was that he was a chance witness. The High Court lost sight of the fact that PW5 was a resident of the same village as the accused and the deceased. The fact that PW8 in his police statement failed to mention about the presence of PW5 at the place of occurrence, in the facts of the case, was an irrelevant circumstance for disbelieving PW5. PW5 had B given details of all the injuries inflicted by the accused. Nothing worthwhile could be extracted in his cross-examination. He was a natural witness. He tried to intervene and save the deceased. He went to the house of the deceased to inform his family members about the incident. PW5 was an independent witness. Despite the fact that he did not go to the hospital but independently C the injured in his statement Exhibit PQ stated about the presence of PW5 at the time of occurrence and his efforts to save the deceased. We are of the view that PW5 is a natural, truthful and creditable witness and his testimony was rightly relied upon by the Sessions Judge in convicting the respondents. On irrelevant considerations, his testimony was discarded by the High Court.

D The next question is the nature of offence the respondents had committed. As already noticed, the Sessions Court acquitted them of charge under Section 302/34 IPC. The High Court did not go into the nature of offence in view of acquittal of the respondents. The Sessions Judge, for coming to the conclusion that the respondents could not be convicted for E offence under Section 302, had relied upon the medical evidence of PW4. PW4 was the first doctor who had examined the deceased in Bahadurgarh Hospital. He had deposed in cross-examination that none of the injuries, either individually or collectively, appeared to be dangerous to life. The injured was last attended by Dr. A.N. Gupta (PW7) in the Medical College and Hospital, Rohtak. According to him, the injured was initially given blood F of 'A' group but subsequently blood of that group went out of stock and, therefore, he was given blood of 'O+' group. The witness further deposed that he could not say if the patient died because of blood reaction or because of injuries suffered by him but he did depose that there was fear in his mind about blood reaction and, therefore, he gave medicines to prevent it. Under these circumstances, the Sessions Judge concluded that the possibility of the G injured having died because of blood reaction cannot be ruled out though doctor conducting post mortem had deposed the cause of death as rupture of liver on account of injuries. The view taken by the Sessions Judge is a plausible view and, therefore, we are unable to accept the contention of the learned counsel for the State that the respondents deserved to be convicted H for offence under Section 302/34IPC. In our view, they were rightly convicted

for offence under Sections 325 and 326 read with Section 34 IPC by the Sessions Judge, Rohtak. A

The impugned judgment of the High Court is set aside and the conviction, as directed by the Sessions Judge, Rohtak is restored.

The sentences awarded by the Sessions Judge on the respondents have been noticed in the earlier part of the judgment. Having regard to the facts of the case, in our view, the ends of justice would be met if each of the respondents sentenced for rigorous imprisonment for a period of four years instead of seven years and five years as directed by the Sessions Court. We order accordingly. B C

The appeal is accordingly allowed in above terms. The respondents shall be taken into custody forthwith to undergo remaining part of the sentence.

N.J. Appeal allowed.