[2025] 4 S.C.R. 204 : 2025 INSC 359

Sita Ram & Anr.
v.
The State of Himachal Pradesh

(Criminal Appeal No. 228 of 2013)

06 March 2025

[J.B. Pardiwala and R. Mahadevan, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court holding the appellant no.1 guilty of offence punishable u/s. 304 IPC and appellant no. 2 for offences punishable u/ss. 323 and 451 IPC and sentencing accordingly, setting aside the order of acquittal by the trial court.

Headnotes†

Penal Code, 1860 – ss.304, 323 and 451 – Culpable homicide not amounting to murder – Asphyxia due to head injury – Deceased had a quarrel with his own brother-co-accused – Co-accused called for his two friends-appellants and appellant no.1 hit a blow with sickle on the forehead of the deceased and other two assaulted with fist and kick blows – Deceased himself went to the police station and lodged the FIR – Later got himself admitted in the hospital, when his health deteriorated – Nine days later, he passed away and as per the post-mortem report, cause of death was asphyxia – Trial court acquitted all three accused – However, the High Court, held the appellant no.1 guilty of offence punishable u/s.304 and appellant no.2 for offences punishable u/ss.323 and 451 and sentenced accordingly – Interference with:

Held: No palpable error or perversity in the reasonings assigned by the High Court while holding both the appellants guilty of the alleged offence – Cause of death appears to be asphyxia – Ordinarily, asphyxia is due to strangulation or throttling, however, such was not the prosecution case – At times, if due to head injury if sufficient oxygen does not reach the brain that may lead to asphyxia – Post-mortem report reveals that the deceased while

undergoing treatment of the skull fracture suffered gastroenteritis, which cut off the supply of oxygen, when the liquid in the stomach entered his lungs leading to his death by asphyxia – Post-mortem report simply says that the cause of death was asphyxia, yet in the medico-legal jurisprudence the cause of death of the deceased would be the wound in the head leading to a fissured fracture in the skull which led to asphyxia and ultimately the death of the deceased by 'hypoxic brain injury' – Furthermore, the submission that although the first information report was lodged by the deceased himself, yet it could not have been treated as a dying declaration as the same was not in expectation of death, cannot be accepted – Interference with the impugned judgment not called for, however, due to mitigating circumstances the sentence reduced – Sentence of appellant no.1 reduced from 6 years to 1 year and of appellant no.2 from 1 year to period already undergone. [Paras 33, 34, 44, 45, 55-60]

Evidence Act, 1872 – s.32 – Dying declaration – Admissibility, if dependent on apprehension of death:

Held: Law in India does not make the admissibility of a dying declaration dependent upon the person's having a consciousness of the approach of death – Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible u/s.32 – Once the dying declaration is held to be believable, the questions that no oath was administered and that the dying declaration was not tested by cross-examination cannot arise – It is incorrect to say that dying declaration cannot be acted upon without corroboration. [Paras 50, 52]

Jurisprudence – Medico-legal jurisprudence – Asphyxia and Hypoxic-Ischemic Brain Injury – Explained. [Paras 34-44]

Case Law Cited

Irfan @ Naka v. State of Uttar Pradesh **[2023] 11 SCR 789 : 2023 INSC 758;** *State of Haryana v. Mange Ram and Others* **[2002] Supp. 5 SCR 35 : (2003) 1 SCC 637;** *Kans Raj v. State of Punjab and Others* **[2000] 3 SCR 662 : (2000) 5 SCC 207 – referred to.**

Books and Periodicals Cited

Schmidt's Attorneys' Dictionary of Medicine, Vol. 1, at page A-313; Braslow, B. M., Stawicki, S. P., & Dickinson, E. T., Male With Torso Injury, 53(1) Annals of Emergency Medicine, 159–167 (2009); Myriam Lacerte, Angela Hays Shapshak, Fassil B. Mesfin, "Hypoxic Brain Injury", National Library of Medicine, January 27, 2023; Zachary Messina; Angela Hays Shapshak; Rebecca Mills. "Anoxic Encephalopathy", National Library of Medicine; Di Muzio B, Mahsoub M, Walizai T, et al. Hypoxic-ischemic encephalopathy (adults and children). Laura L Dugan and Dennis W Choi. "Hypoxia-Ischemia and Brain infarction", National Library of Medicine; M. Michael Wolfe and George Sachs, Acid Suppression: Optimizing Therapy for Gastroduodenal Ulcer Healing, Gastroesophageal Reflux Disease, and Stress-Related Erosive Syndrome, Vol 118(2) Gastroenterology S9-S31 (2000) **– referred to.**

List of Acts

Penal Code, 1860; Evidence Act, 1872.

List of Keywords

Culpable homicide; Hurt; Asphyxia; Head injury; Blow with 'Darat'; Asphyxia due to gastroenteritis; Brain swelling; Damage to breathing centres; Impaired blood flow; Hypoxia; Anoxia; Skull fracture; Hypoxic-ischemic brain injury; Dying declaration; FIR; Apprehension of death.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 228 of 2013

From the Judgment and Order dated 13.09.2012 and 17.10.2012 of the High Court of H.P. at Shimla in CRLA No. 415 of 2005

Appearances for Parties

Advs. for the Appellants:
Rajesh Kandari, Abhinav Parihar, Vikrant Singh Bais, Ms. Sangeeta Kumar, Mrs. Vithika Garg, Ms. Vidushi Garg, Hemant Kumar Tripathi

Advs. for the Respondent:
Karan Kapur, Abhishek Gautam

Judgment / Order of the Supreme Court

Order

1. This appeal arises from the judgment and order passed by the High Court of Himachal Pradesh dated 13-9-2012 in Criminal Appeal No. 415/2005 by which the Criminal Appeal filed by the State of Himachal Pradesh came to be allowed thereby setting aside the Judgment and Order of acquittal passed by the Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh dated 28-5-2005 in Sessions Trial No.11/7 of 2004/2002.

2. The two appellants – herein along with a third co-accused namely Pyare Lal were put to trial in the Court of the Additional Sessions Judge, Ghumarwin, District Bilaspur, Himachal Pradesh in Sessions Trial No.11/7 of 2004/2002 for the offences under Sections 451, 324, 504, 506 and 304 read with Section 34 of the Indian Penal Code (for short, "IPC").

3. The Sessions trial culminated from the chargesheet filed in connection with the First Information Report No.205/2000 lodged by the deceased himself.

4. The First Information Report lodged by the deceased himself reads as under: -

"*FIRST INFORMATION REPORT*
(Under Section 154 Cr.P.C.)

1. District Bilaspur; P.S. Ghumarwin; Year 2000; FIR No. 205/2K Dated 17.11.2000

2. Acts: Under Sections 451, 324, 504, 506 & 34 IPC.

3. [a]. Occurrence of offence: Thursday 16.11.2000 from 10.30 p.m. to 11.00 p.m.

[b]. Information received at P.S. 17.11.2000 at 10.15 a.m.

[c]. General diary reference – DD No. 7 time 10.15 a.m.

4. Type of information: Written/Oral.

5. Place of occurrence:

[a]. Direction and distance from P.S. – 8 Km. Palthin.

[b]. Address: Palthin, P.S. Ghumarwin, District Bilaspur, Himachal Pradesh.

[c]. In case, outside the limit of the Police station:

6. Complainant/informant: Shri Prem Lal, S/o Shri Ram Dittu, Occupation Farmer, R/o Palthin, Tehsil Ghumarwin, District Bilaspur (Himachal Pradesh).

7. Details of known/suspect/unknown accused with full particulars (attach separate sheet if necessary):

8. Reason for delay in reporting by the complainant/ informant:

9. Particulars of the properties stolen/involved (attach separate sheet if necessary).

10. Total value of the property stolen:

11. Inquest Report/UD Case number, if any:

12. FIR Contents (attach separate sheet, if required).

Today on 17.11.2000, Shri Prem Lal, Complainant mentioned in Col. 6 above came to Police station and filed his complaint which is lodged as Report no.7 in DD dated 17.11.2000. Name of the Informant: Prem Lal, S/o Ram Dittu, Caste Harijan, R/o Village Palthin, P.S. Ghumarwin, District Bilaspur, aged about 42 years. Report lodged on 17.11.2000 at 10.15 a.m. Complainant Prem Lal, S/o Ram Dittu, mentioned in Col.2 came to Police station and reported that – I am living in Village Palthin; on 16.11.2000 at around 10.30 p.m., I was sitting in the angan of my house and was arguing with my brother Pyare Singh over the issue of pile of cow-dung; during these arguments, my brother Pyare Singh called Sita Ram and Onkar and both of them reached there immediately and after that all three of them started beating me in the angan of my house; Sita Ram who was holding a darat in his hands attacked me on my forehead with said darat and after that all three of them beat me with kicks and punches; in the meanwhile my wife came and save me from

them; thereafter all of them went away after threatening to kill me and exhorted today you were lucky – but next time we will kill you. Sir, I want my medical checkup. I have come to you for reporting above incident. Please take suitable action. Sd/- Prem Lal. Police proceedings: Contents of above report prima facie reveal case of beating and accordingly report has been registered and said report has been read over to the complainant who has admitted the same to be correct and he has put his signatures in Hindi below his statement. After completing necessary formalities, complainant has been sent for his medical check up along with Constable Daulat Ram no. 411. After some time, Constable Daulat Ram came back to Police station after check up of Complainant Prem Lal, S/o Ram Dittu by CHC, Ghumarwin and submitted MLC of the Complainant in which M.O. Sahib has made following endorsement – 'Duration of injury weapon used sharp'. Case no. 205/2K dated 17.11.2000 under Sections 451, 324, 504, 506 and 34 IPC has been registered at Police Station. Investigation of this case has been marked to ASI Jamer Singh.

13. Action taken (since the above information reveals commission of offence(s) under Section as mentioned at Item no.2 above. Registered the case and took up investigation. Directed ASI Jamer Singh to take up investigation. FIR read over to the complainant/informant, admitted to be correctly recorded and a copy given to the complainant/ informant, free of cost.

RO & AC."

5. Thus, it appears that on 16-11-2000 at around 10.30 pm, the deceased had a quarrel with his own brother Pyare Lal (co-accused) in respect of setting a heap of cow dung on fire. Pyare Lal getting annoyed called for his two friends i.e. the appellants before us. All the three accused are alleged to have laid an assault on the deceased.

6. It is the case of the prosecution that the Appellant No.1 – herein (Sita Ram) had in his hand a weapon called `Darat'. He is alleged to have hit a blow with `Darat' on the forehead of the deceased. Darat is in the form of a sickle and is used as an agricultural tool.

7. The other two co-accused are alleged to have assaulted the deceased with fist and kick blows.

8. The wife of the deceased (Roshani Devi) (PW-3) came to the rescue of the deceased.

9. It appears that after taking preliminary medical treatment, the deceased himself went to the Police Station and lodged the First Information Report.

10. Later in point of time, as his health deteriorated, he got himself admitted in the Civil Hospital.

11. After about 9 days from the date of the incident i.e. on 25-11-2000, he passed away.

12. The original FIR lodged by the deceased was for the offences punishable under Sections 451, 324, 504, 506 read with 34 of IPC. As the deceased passed away, the police added Section 304 IPC.

13. The post-mortem report reveals that there was a fissured fracture in the skull of the deceased. While undergoing treatment, he suffered gastroenteritis and that further deteriorated his health. Ultimately, as per the opinion of the medical expert, he died due to asphyxia.

14. The trial court framed charge against the accused persons vide order dated 20-4-2004

15. Charge in respect of Sita Ram & Pyare Lal respectively reads thus:

> "*That on 16.11.2000, at about 10.30 P.M. at Village Palthi you and the co-accused in furtherance of common intention of all committed house trespass by entering into the house of Prem Lal used as a human dwelling in order to attack said Prem Lal and also to criminally intimidate him and thereby committed an offence punishable u/S. 451 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.*
>
> *Secondly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all voluntarily caused hurt to said complainant Prem Lal by giving blows with a 'Darat' an instrument meant for cutting and that you thereby committed an offence punishable u/S.324 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.*

Thirdly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all intentionally insulted Prem Lal by abusing him and thereby gave provocation to said Prem Lal intending or knowing it to be likely that such provocation will cause said Prem Lal to break public peace and that you thereby committed an offence punishable u/S. 504 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.

Fourthly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all criminally intimidated said Prem Lal to do away with his life and you thereby committed an offence punishable under Section 505 IPC read with Section 34 IPC and within the cognizance of this Court.

Lastly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all committed culpable homicide of Prem Lal not amounting to murder and thereby committed an offence punishable u/s. 304 I.P.C. read with Section 34 I.P.C. and within the cognizance of this court.

I hereby direct that you be tried on the aforesaid charge by this court."

certified that the contents of the aforesaid charge have been read over and explained to accused in vernacular.

Statement of accused Sita Ram S/o Sh. Panju, Distt. / Dittu R/o village Palthi, Police Station Ghumarwin, Distt. Bilaspur, H.P. aged 42 years."

Charge in respect of Onkar:-

"That on 16.11.2000, at about 10.30 P.M. at Village Palthi you and the co-accused in furtherance of common intention of all committed house trespass by entering into the house of Prem Lal used as a human dwelling in order to attack said Prem Lal and also to criminally intimidate him and thereby committed an offence punishable u/S. 451 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.

Secondly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all voluntarily caused hurt to said complainant Prem Lal by giving blows with a 'Darat' an instrument meant for cutting and that you thereby committed an offence punishable u/S.324 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.

Thirdly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all intentionally insulted Prem Lal by abusing him and thereby gave provocation to said Prem Lal intending or knowing it to be likely that such provocation will cause said Prem Lal to break public peace and that you thereby committed an offence punishable u/S. 504 I.P.C. read with section 34 I.P.C. and within the cognizance of this court.

Fourthly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all criminally intimidated said Prem Lal to do away with his life and you thereby committed an offence punishable under Section 506 IPC read with Section 34 IPC and within the cognizance of this Court.

Lastly, on the aforesaid date, time and place you and the co-accused in furtherance of common intention of all committed culpable homicide of Prem Lal not amounting to murder and thereby committed an offence punishable u/s. 304 I.P.C. read with Section 34 I.P.C. and within the cognizance of this court.

I hereby direct that you be tried on the aforesaid charge by this court."

certified that the contents of the aforesaid charge have been read over and explained to accused in vernacular statement of accused Onkar S/o Sh. Panju Ram R/o Village Palthi, Police Station Ghumarwin, Distt. Bilaspur, H.P."

16. The accused persons denied the charge and claimed to be tried.

17. In the course of the trial, the prosecution examined as many as 11 witnesses. The prosecution also relied on few pieces of documentary evidence.

18. The trial court upon appreciation of the oral as well as documentary evidence on record acquitted all the three accused of the charges, referred to above.

19. The State, being dissatisfied with the Judgment and order of acquittal passed by the trial court, challenged the same before the High Court by way of Criminal Appeal No.415/2005.

20. The High Court upon re-appreciation and re-evaluation of the entire evidence on record reached the conclusion that the trial court committed an error in acquitting the accused persons.

21. The High Court ultimately held the appellant No.1 – herein Sita Ram guilty of the offence of culpable homicide not amounting to murder punishable under Section 304 IPC and sentenced him to undergo 6 years of rigorous imprisonment with fine of Rs.5000/-.

22. So far as the appellant No.2 – Onkar Singh is concerned, the High Court held him guilty of the offence punishable under Section 323 and 451 IPC respectively and sentenced him to undergo one year of rigorous imprisonment with fine.

23. The third accused does not seem to have preferred any appeal.

24. In such circumstances, referred to above, the appellants are here before this Court with the present appeal.

25. Mr. Vikrant Singh, the learned counsel appearing for the appellant No.1 vehemently submitted that the High Court committed an error in disturbing a very well-reasoned judgment of acquittal passed by the trial court. He submitted that the trial court looked into the entire evidence threadbare and rightly held that the prosecution had failed to establish its case beyond reasonable doubt.

26. He would submit that even if a second view was possible on the same set of evidence, the High Court in an acquittal appeal should not have disturbed the findings recorded by the trial court so easily unless found to be perverse.

27. He would submit that the incident had occurred sometime in 2000. Almost 25 years have elapsed. His client is a rustic villager and is about 63 years of age as on date.

28. Ms. Sangeeta Kumar, the learned counsel appearing for the appellant No.2 adopted the submissions canvassed by the learned counsel

appearing for the appellant No.1. However, she put forward two more submissions, which we must look into and deal with.

29. Her first submission is that the deceased died of asphyxia and that too after a period of nine days from the date of the incident. According to her, the First Information Report lodged by the deceased could not have been treated as a dying declaration under Section 32 of the Evidence Act, as the same does not relate to the cause of death of the deceased. In other words, the submission is that the cause of death being asphyxia, the same had no nexus with the injury suffered by the deceased on his head.

30. Her second submission is that when the FIR was lodged by the deceased at the Police Station, there was no expectancy of death. In other words, whatever the deceased stated in his FIR was not said in expectancy of death and therefore, would not be admissible under Section 32 of the Evidence Act.

31. On the other hand, Mr. Abhishek Gautam, the learned counsel appearing for the State of Himachal Pradesh submitted that no error not to speak of any error of law could be said to have been committed by the High Court in holding the appellants guilty of the offence charged with.

ANALYSIS

32. Having heard the learned counsel appearing for the parties and having gone through the materials on record, we are of the view that we should not undertake any further exercise of re-appreciating the evidence as the same has been looked into by the High Court thoroughly.

33. We do not find any palpable error or perversity in the reasonings assigned by the High Court while holding both the appellants guilty of the alleged offence.

34. As noted aforesaid, the cause of death appears to be asphyxia. Ordinarily, asphyxia is due to strangulation or throttling. However, such is not the case of prosecution. One would wonder if a person has sustained or suffered injuries on his head, how could he die of asphyxia. However, the medical science says that at times due to head injury if sufficient oxygen does not reach the brain that may lead to asphyxia. Lack of adequate supply of oxygen to brain may

lead to various complications such as brain swelling, damage to breathing centers, or impaired blood flow to the brain. The head injury can cause the brain to swell, increasing pressure within the skull. This pressure can compress vital brain areas, including those responsible for breathing, leading to difficulty breathing or even complete cessation of breathing.

Damage to Breathing Centers:

35. The brainstem, located at the base of the brain, contains the centers that control breathing, heart rate, and other vital functions. A head injury can cause damage to these areas, disrupting their ability to regulate breathing, leading to asphyxia.

Impaired Blood Flow

36. Head injuries can damage blood vessels in the brain, leading to reduced blow flow and oxygen delivery to brain tissue. This can lead to a condition called hypoxia, or a lack of oxygen, which can cause brain damage and even death.

Other Complications:

37. In some cases, head injuries may also lead to other complications that can cause asphyxia, such as seizures, vomiting, or aspiration (inhaling foreign materials).

Hypoxic-Ischemic Brain Injury:

38. This type of brain injury occurs when the brain doesn't receive enough oxygen and blood, leading to damage and potentially long-term disabilities.

39. Ms. Sangeeta Kumar vehemently submitted that the deceased died of asphyxia and that too after a period of nine days. She would submit that since the cause of death has no proximate connection with the *actus reus* of the accused, the statement of the deceased in the form of an FIR cannot be considered to be a dying declaration in terms of Section 32 of the Evidence Act. In other words, the crux of her submission is that the FIR cannot be treated as a dying declaration because the statement of the deceased therein imputing the *actus reus* on the part of the accused neither reveals the actual cause of his death as per the post-mortem report, nor does the death of

the deceased itself bear any proximate relation with the *actus reus*. To put it simply, since the statement of the deceased in the FIR alleged only infliction of head wounds by the accused whereas the post-mortem report suggested the cause of death to be asphyxia, it could be said that there is nothing in his statement which reveals his actual cause of death i.e., asphyxia, and hence the same cannot be considered to be a dying declaration.

40. In this regard, we may refer to and rely upon the definition of Asphyxia in Schmidt's Attorneys' Dictionary of Medicine, Vol. 1, at page A-313, which states as:

> "*Asphyxia*: *The state of suffocation, marked by a deficiency in oxygen and an oversupply or excess of carbon dioxide in the blood and the tissues. If unrelieved, the condition proceeds from a sense of suffocation to coma, and finally to death. Asphyxia may be brought about in many ways, by blocking the entrance of air to the lungs, by inhaling carbon monoxide which devitalizes the oxygen-carrying capacity of the blood, by electric shock, by drowning, etc. Local asphyxia involves a region or part of the body, as the fingers. It is caused by an inadequate blood supply.*"

41. A paper titled *Male With Torso Injury* purports that *"it is not unusual for patients with traumatic asphyxia to have associated significant head (67%), thoracic (58% to 79%), or abdominal (50%) injuries".* Asphyxia in such patients is often found to stem from bodily injuries sustained at an earlier occasion. [See: Braslow, B. M., Stawicki, S. P., & Dickinson, E. T., Male With Torso Injury, 53(1) Annals of Emergency Medicine, 159–167 (2009).]

42. Another study, Hypoxic Brain Injury, published in the National Library of Medicine of the United States of America, describes 'anoxia' as a complete lack of oxygen delivery to an organ whereas, 'hypoxia' refers to a condition wherein an organ experiences insufficient oxygen delivery to meet the tissue's metabolic needs. The two terms are used interchangeably. The study reveals that anoxic and hypoxic brain injury is a phenomenon that can occur whenever oxygen delivery to the brain is compromised. It can result from interruption of blood flow to the brain, on account of cardiac arrest, strangulation, or systemic derangements that affect the oxygen content of the blood. It further

reports anoxic brain injury can result in prolonged coma to death. Their trials disclose that 27% of patients with post-hypoxic coma regained consciousness within a few days, 9% remained in coma or in vegetative state, and 64% died. [See: Myriam Lacerte, Angela Hays Shapshak, Fassil B. Mesfin, "Hypoxic Brain Injury", National Library of Medicine, January 27, 2023.]

43. Hypoxic brain injury (also known as hypoxic-ischemic encephalopathy) is often caused by vascular injury or insult (internal bodily trauma injury) [See: Zachary Messina; Angela Hays Shapshak; Rebecca Mills. "Anoxic Encephalopathy", National Library of Medicine]. Vascular injury can come in three forms: blunt, penetrating, or combination. Typically, patients who die of hypoxic brain injury or hypoxic-ischemic encephalopathy often show asphyxia as one of the primary symptoms. [See: Di Muzio B, Mahsoub M, Walizai T, et al. Hypoxic-ischemic encephalopathy (adults and children)]. Further, in the United States, hypoxic-ischemic brain injury has been reported to be the third leading cause of death, affecting over half a million new victims of crime each year. [See: Laura L Dugan and Dennis W Choi. "Hypoxia-Ischemia and Brain infarction", National Library of Medicine]

44. Head injuries can possibly lead to formation of ulcers in the stomach known as 'cushings ulcers' because of irritation or impairment of a nerve embedded in the brain known as 'Vagus Nerve' which is directly connected to the stomach and its functioning. When a wound is inflicted such as to irritate or impair the functioning of this nerve, the same leads to gastroenteritis which causes formation of liquid in the stomach known as 'chyme' that has the possibility of entering the lungs if the victim happens to be in a near comatose state, as often happens in head injuries, and this eventually leads to the brain being deprived of oxygen, leading to asphyxia. In the present case also, the post-mortem report reveals that the deceased while undergoing treatment of the skull fracture suffered gastroenteritis, which cut off the supply of oxygen, when the liquid in the stomach entered his lungs leading to his death by asphyxia. [See; M. Michael Wolfe and George Sachs, Acid Suppression: Optimizing Therapy for Gastroduodenal Ulcer Healing, Gastroesophageal Reflux Disease, and Stress-Related Erosive Syndrome, Vol 118(2) Gastroenterology S9-S31 (2000)]

45. Although the post-mortem report simply says that the cause of death was asphyxia, yet in the medico-legal jurisprudence the cause of death of the deceased would be the wound in the head leading to a fissured fracture in the skull which led to asphyxia and ultimately the death of the deceased by this phenomenon; 'hypoxic brain injury'. In light of the above exposition, we do not find any force in the submission canvassed on behalf of the appellants.

Whether Section 32 of the Evidence Act requires an Expectation of Death?

46. Today, we have before us the First Information Report lodged by the deceased himself. The question is whether we should treat it as a dying declaration under Section 32 of the Evidence Act or not?

47. Ms. Sangeeta Kumar, the learned counsel appearing for the Appellant No.2 would submit that although the first information report was lodged by the deceased himself, yet it could not have been treated as a dying declaration as the same was not in expectation of death.

48. Section 32(1) of the Evidence Act reads as under:

> *"Section 32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant: -*
>
> *Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:*
>
> *(1) When it relates to cause of death.- When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."*

49. Whether a dying declaration should be believed or not would depend upon the circumstances of the case. It is essentially a question of fact to be determined by the Court on the basis of the circumstances of each case. As far as the credibility is concerned, it is just like the evidence given by a witness. It is for the Court to decide whether to believe it or not and no rule can be laid down either that it should be believed or that it should not be believed. Once it is believed, it is irrelevant and illogical to consider that it is not made on oath and that the maker has not been subjected to cross-examination. The oath, is administered simply with the object of making the witness speak the truth so that what he deposes may be believed. The object of cross-examination is to test the veracity of the witness. [See; *Irfan @ Naka v. State of Uttar Pradesh* reported in 2023 INSC 758]

50. But once the dying declaration is held to be believable, the questions that no oath was administered and that the dying declaration was not tested by cross-examination cannot arise. The questions would have to be considered before holding the dying declaration to be believable. When the law has made it a "relevant fact" notwithstanding the absence of oath and cross-examination, it means that it will not be held to be unbelievable merely on account of the absence of these matters. If it is held to be unbelievable, it must be done on the basis of other circumstances. Therefore, it would be incorrect to say that a dying declaration cannot be acted upon without corroboration; if it is believed, it requires no corroboration.

51. English law admits as dying declarations only such statements of material facts concerning the cause and circumstances of homicide, as are made by the victim under the fixed and solemn belief that his death is inevitable and near at hand. The solemnity of the occasion on which the statements are made is deemed to supply the sanction of oath. The approach of death is deemed to produce a state of mind in which the statements of the dying person are to be taken as free from all ordinary motives to misstate.

52. The law in India does not make the admissibility of a dying declaration dependent upon the person's having a consciousness of the approach of death. Even if the person did not apprehend that he would die, a statement made by him about the circumstances of his death would be admissible under Section 32 of the Evidence Act.

53. In the aforesaid context, we may refer to the decision of this court in the case of State of Haryana v. Mange Ram and Others reported in (2003) 1 SCC 637 wherein this Court observed as under: -

> *"11. … 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 the statement, should be under the shadow of death. That is not what Section 32 of the Indian Evidence Act says. That is not the law in India. Under the 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 the shadow of death and should entertain the belief that his death was imminent. The expectation of imminent death is not the requirement of law. …."*
>
> (Emphasis Supplied)

54. In Kans Raj v. State of Punjab and Others reported in (2000) 5 SCC 207, this Court observed as under: -

> "Section 32 does not require that the *statement sought to be admitted in evidence should have been made in imminent expectation of death. The words "as to any of the circumstances of the transaction which resulted in his death" appearing in Section 32 must have some proximate relations to the actual occurrence. In other words the statement of the deceased relating to the cause of death or the circumstances of the transaction which resulted in his death must be sufficiently or closely connected with the actual transaction. To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact."*
>
> (Emphasis supplied)

55. Thus, we find no merit in both the submissions of Ms. Sangita Kumar.

CONCLUSION

56. In the overall view of the matter, we have reached the conclusion that we should not interfere with the impugned Judgment and order of the High Court. However, there are few mitigating circumstances on the basis of which we are persuaded to reduce the sentence imposed by the High Court.

57. So far as the appellant No.1 is concerned i.e. Sita Ram, he has been sentenced to undergo 6 years of RI with fine of Rs.5000/-. It appears that as an under-trial prisoner, he was in jail for about 3 months.

58. We reduce the sentence from 6 years RI to 1 year RI while maintaining the amount of fine of Rs.5000/-. In the event if the fine of Rs.5000/- is not deposited, he shall further undergo 6 months of RI.

59. So far as the appellant No.2 – Onkar Singh is concerned, he has been sentenced to undergo 1 Yr of RI with fine.

60. In the case of Onkar Singh, we reduce the sentence to the period already undergone. However, he shall pay the fine of Rs.10000/- if not yet paid. In the event if the fine of Rs.10000/- is not deposited, then he shall undergo 6 months of RI as imposed by the High Court.

61. The appellant Sita Ram was ordered to be enlarged on bail by this Court pending the present appeal. He shall now surrender before the Trial Court to undergo the remaining part of the sentence within a period of 8-weeks from today.

62. The appeal stands disposed of in the aforesaid terms.

Result of the case: Appeal disposed of.

†*Headnotes prepared by:* Nidhi Jain