

Keshav Gangaram Navge and Another

Vs

State of Maharashtra

Criminal Appeal No. 100 of 1968

(CJI Sikri, P. Jagmohan Reddy JJ)

02.02.1971

JUDGMENT

REDDY, J. -

1. The High Court of Bombay reversed the order of acquittal of 1st and 2nd Appellant passed by the Additional Sessions Judge for Greater Bombay and convicted and sentenced each of them to life sentence for an offence of murder under Section 302, read with Section 34 of the Indian Penal Code. Against this Judgment the Appellants have come up in an Appeal before us by Special Leave.
2. The prosecution case is that the deceased Shantaram Sakharam Chawan, Dinkar Pednekar, P.W. 1. Sadu Shetty, P.W. 8 and Krishnan Chandan, P.W. 10, as well as the first accused Keshav Gangaram Navge and one Gopal Parab were working in the Digvijay Mills at Bombay. In the Mills there were two workers unions, one was Rastriya Mill Mazdur Sangh (also known as INTUC), hereinafter called Mazdur Sangh and the other was Girni Kamgar Union hereinafter called the Kamgar Union. A large number of workers belonged to the Mazdur Sangh while the Kamgar Union which was stated to have Communist affiliation did not have sufficient following and was generally engaged in trying to get more workers to join it in which attempt it came into conflict with the Mazdur Sangh. The deceased Shantaram and the prosecution witnesses Dinkar, Sadu Shetty and Krishnan Chandan belonged to the Kamgar Union while the accused Keshav and Gopal who is not examined, belonged to the Mazdur Sangh.
3. It appears that the Digvijay Mills had declared bonus for the year 1963 in consultation with the Government and the leaders of the Mazdur Sangh, but the Kamgar Union was of the view that that bonus was very low, and blamed the Mazdur Sangh for not making sufficient efforts to procure a higher rate of bonus. This dispute between the two unions went on for about a year before the incident. On 19th October, 1965, the deceased and the prosecution witnesses referred to above and the accused and Gopal Parab hereinafter referred to as Gopal worked in the 1st shift which started at 7 a.m. and ended at 3 p.m. The prosecution case is that after the first shift was over the workers gathered in the Mill compound in the open space in front of the Manager's office and wanted the Manager to give an explanation as to why the bonus for the year 1963 was low and how it was that the Mazdur Sangh had been a party to the agreement arrived at between the owners and the leaders of that Mazdur Sangh. At that meeting which it is said was not pre-arranged but spontaneous, the deceased and Dinkar spoke on behalf of the Kamgar Union. They said that though the mills have made good profit in the year 1963 the bonus declared by them were very low and wanted to know from the Manager as to why that bonus was so low. The Manager told the workers that the bonus was declared after consultation with the Mazdur Sangh leaders and it was justified. The first accused also spoke at the meeting as representative of the Mazdur Sangh. He told them that the bonus was

decided in consultation with the Mill owners and the leaders of the Mazdur Sangh, that he as ordinary worker of the Mazdur Sangh could not give any explanation as to why the bonus for 1963 was low. The workers, however, insisted that the Manager should send for the Mazdur Sangh leaders and should be asked to give their explanation. The Manager accordingly phoned the Mazdur Sangh office and asked them to send their representative to address the meeting but the Mazdur Sangh told the Manager that they were not in a position to send anybody from the office and if any worker wanted to know the real position they should be directed to the Mazdur Sangh office. This message the Manager conveyed to the workers but the workers were in no mood to go to the Mazdur Sangh office. After some discussion amongst the workers the meeting came to an end at about 5.30 p.m. After the meeting deceased Shantaram, Dinkar, Sadu Shetty left the Mills to go to the bus-stop which is some distance away from the Mills as Sadu Shetty wanted to go by bus to Chembur where he lived. They reached the bus-stop and as they were waiting for a bus Accused 1, Accused 2 Bhagwan who was not working in the Mills and Gopal who also worked in the Mills came from the direction of Digvijay Mills to the bus-stop and on seeing the deceased Shantaram, Dinkar and Sadu Shetty, Accused Bhagwan rushed at Dinkar, caught hold of his shirt and gave a fast blow in his stomach. Keshav Accused took out a knife and gave a stab blow in the abdomen of Shantaram. On receiving the stab blow Shantaram pressed his injury with one hand and bent down. Gopal tried to intervene but Accused 2 took out a hammer from under his shirt and hit the deceased on his head. Thereafter both the accused and Gopal ran away. Dinkar took Shantaram across the Lalbaug Road which is on the other side of the Road, hailed a taxi and took him in that taxi to Kala Chowki Police Station. At the Police Station Dinkar reported about the incident to S. I. Jayawantrao Suryavanshi P.W. 17. Suryavanshi immediately directed P. C. Kadam, P.W. 4, to take Shantaram to the K.E.M. Hospital in that taxi which he did. After sending the deceased to the Hospital, Suryavanshi recorded the statement of Dinkar and issued the F.I.R. at about 6 p.m. after which he went to the K.E.M. Hospital and recorded Shantaram's statement at about 6.45 or 7 p.m. It is also the prosecution case that on the way to the Hospital Kadam asked the deceased about the incident and the deceased is said to have made a statement to him which he recorded in his note-book at the hospital before he left for the Police Station at 7 p.m. It is after this, that the S. I. Suryavanshi came and recorded the statement of Shantaram. Sita Ram, P.W. 15, brother of Shantaram, who is said to have learnt from his wife that Shantaram was stabbed by some one went to the K.E.M. Hospital after first making enquiries at the Police Station. On seeing the deceased when Sita Ram enquired from him as to what had happened, the deceased told him that Keshav Navege had stabbed him in the stomach and Bhagwan hit him on his head with the hammer. After recording the statement of the deceased Suryavanshi alongwith Dinkar went to Lalbaug bus-stop where the assault on Shantaram is said to have taken place and made a Panchnama. He made enquiries from the persons living near the bus-stop where there were shops and returned to the Police Station. It may be stated that the deceased died at 2 a.m. on the 20th. Accused 2 was arrested on the morning of 21st while Accused 1 came to the Kala Chowki Police Station and surrendered himself.

4. The case of the accused in the statement under Section 342, Criminal Procedure Code, is that he has been working for the INTUC for the past 16 years and before the incident he was working for the Digvijay Mills and that the incident did not take place as alleged by the prosecution nor did it take place at the bus-stop. According to him there has always been rivalry between him and the deceased because of the activities of the rival Trade Unions. In the afternoon of the day of the incident a meeting had taken place of the workers of the mill in the Mill compound immediately after the end of the 1st shift at 3 p.m. and that in the meeting the bonus issue was discussed and he spoke at that meeting. He narrated all that took place at that meeting and how Shantaram and Dinkar attacked him while speaking in that meeting, etc., and how he had to defend himself and had to give

an explanation. According to him the workers insisted that he should go to the INTUC office and get INTUC leaders to the Mill, but he said this was beyond his powers. Bhagwan Accused 2 who was once employed in the Mills but had lost his job and wanted him to help, did come to see him that afternoon as he had asked him to do so. After leaving the Mills Bhagwan, Gopal and he went to a tea shop which is near the Mill and after spending 10/15 minutes there all of them started for the INTUC office. Accused 1 further stated that as generally there are gangs of communists on the way to the INTUC office he avoided going through the lane, but all of them walked along the Ambedkar Road and went to the cross-roads and when they were near the Lamp-post on that road he heard Shantaram accosting him by name and began to abuse him. The deceased said "you are a pimp of the Mill owners, you take money from the Mill owners and do harm to the workers". When the accused protested Shantaram took out a knife on seeing which the accused got frightened and caught his hand in which he was holding the knife. Gopal intervened. Dinkar, Sadu Shetty and Krishnan Chandan came to Shantaram's help. He and Shantaram struggled with each other but Accused 1 says he caught hold of Shantaram's hand tightly. Dinkar took out a hammer from below his shirt and wanted to rush at him and hit him on the head but when he moved aside and evaded the blow, the hammer blow accidentally landed on Shantaram's head. On receiving this blow on his head the deceased started falling down and while falling down the knife which the deceased was holding in his hand struck against his stomach and he fell down. He further states that he was warned and as he apprehended being assaulted he did not go to his house or the Mills. Accused Bhagwan also made a similar statement and denied that he had assaulted Dinkar or that he had assaulted the deceased Shantaram.

5. The learned Sessions Judge disbelieved the evidence of the 3 eye-witnesses Dinkar, Sadu Shetty and Krishnan Chandan and held that these three, the deceased and all other Union workers of the Mill were in a fighting mood, that the deceased, spoke contemptuously about Accused No. 1 and he and the aforesaid persons were on the war-path on the day of the incident. He disbelieved the version of the eye-witnesses that the incident took place at Lalbaug bus-stop and gave four reasons for this conclusion which are : (1) no blood was found on the Lalbaug bus-stop; (2) no persons from the locality were examined by the prosecution to support this version; (3) the eye-witnesses were admittedly members of the Kamgar Union which is on inimical terms with the INTUC to which Accused No. 1 belongs and (4) all the three eye-witnesses have personal enmity with Accused No. 1 and that they had insulted him in the open meeting.

6. The evidence of the eye-witnesses was examined in great detail and the discrepancies in each of the witnesses was pointed out. For the reasons stated by him the Additional Sessions Judge disbelieved the evidence of the eye-witnesses who he said had spoken about the incident in a parrot-like manner. He likewise examined the probative value of the 3 dying declarations and rejected them. He placed no reliance on the version of P. C. Kadam that he had made an entry of what the deceased told him in the taxi immediately after he went to the Hospital nor on the statement of Inspector Keshav Kagji P.W. 18, because when he recorded the statement of Kadam who had produced the entry he did not take charge of his Diary. The learned Judge did not therefore attach any credence either to the oral evidence of Kadam or on the entry made in the Diary. The dying declaration spoken to by Sitaram, brother of the deceased, was also disbelieved because not only was there a possibility of Sitaram finding out from the Police Station that the deceased had been assaulted by accused Keshav and Bhagwan but also that he could not be considered to be disinterested. The dying declaration recorded by Suryavanshi was rejected because on his own version the possibility of Suryavanshi putting some leading question to the deceased and recording suitable answers from the deceased could not be ruled out. He also disbelieved the evidence relating to the recovery of the hammer from Accused No. 2. The learned Judge further held that the

evidence given by the witnesses Dinkar, Sadu Shetty and Krishnan Chandan supports and corroborates the version of Accused No. 1 that he was apprehending danger to his life and therefore had gone to the house of a relation in Bombay and consequently his absence from the Mill and his residence would not amount to his having absconded.

7. The High Court relied on the dying declaration made by deceased to Kadam as also on that recorded by Suryavanshi though it rejected the dying declaration spoken to by Sitaram, the brother of the deceased.

8. In so far as the evidence of eye-witnesses was concerned the reasons given by the Additional Sessions Judge, the discrepancies and the improbabilities of the version of those witnesses pointed out by him have not been considered by the learned Judges of the High Court. The general comment of the High Court was that the allegation that Dinkar and the deceased referred to the incident of India United Mills and their speeches in which violence was advocated against Accused 1 and the office bearers of the Mazdur Sangh and the alleged previous enmity between Accused 1 and the deceased due to which there was a likelihood of the deceased, Dinkar and Krishnan Chandan planning an attack against Accused 1 who was going along with Accused 2 was ingeniously built up and depended only on mere suggestions which was denied by witnesses. The criticism that Dinkar did not take deceased to the Police Chowki which was opposite but had taken him to the Kala Chowki Police Station or that the police did not get independent witnesses even though the incident is said to have taken place in front of shops when there would be passers-by, was not considered valid. With respect to the allegation that the police did not try to contact the taxi driver or examine him, the High Court observed that there is another aspect of this matter namely that the police had no inkling about the case which the accused were going to develop till it was made in the Sessions Court and had it been setup earlier probably the Police Officers would not have left this lacuna in their investigation. On this aspect it was observed "When Accused No. 2 was arrested and when Accused No. 1 surrendered himself at the Police Station, the police would have examined the spot now spoken of by these two accused. In every probability the accused may either have admitted their guilt before the police or may have kept their mouth shut which they are, in law, entitled to do any..... Therefore it is impossible to think that the police officer should have inquired of the whole of Bombay city in order to find out whether at any of the place there was blood on the ground in support of the case of the accused. In this connection we must also point out that it was only during the examination of the witnesses that the defence story was suggested". On an appraisal of the evidence the High Court came to a contrary view and convicted the accused.

9. The evidence against the accused depends upon the oral testimony of the eye-witness, the recovery of the hammer alleged to be at the instance of Accused 2 and the dying declaration said to have been made by the deceased to Kadam and to S. I. Suryavanshi. We have gone through this evidence and find that the High Court has not given due weight to the reasons given by the Additional Sessions Judge in rejecting that evidence. In appeals against acquittal while the powers of the High Court are no different from its powers in ordinary appeal against conviction, the High Court has to consider all the matters which weighed with the Trial Court and the reasons given by it for disbelieving the witnesses whose demeanour it had opportunity of observing. This Court had in *Laxman Kalu v. State of Maharashtra* (AIR 1968 SC 1390.) observed at page 1392 :

"We may say here that it is now the settled law that the powers of the High Court in an appeal against the acquittal are not different from the powers of the same Court in hearing an appeal against a conviction. The High Court in dealing with such an appeal can go into all questions of fact and law and reach its own conclusions on

evidence provided it pays due regard to the fact that the matter had been before the Court of Session and the Sessions Judge had the chance and opportunity of seeing the witnesses depose to the facts. Further the High Court in reversing the Judgment of the Sessions Judge must pay due regard to all the reasons given by the Sessions Judge for disbelieving a particular witness and must attempt to dispel those reasons effectively before taking a contrary view of the matter. It may also be pointed out that an accused starts with a presumption of innocence when he is put up for trial and his acquittal in no sense weakens that presumption, and this presumption must also receive adequate consideration from the High Court."

10. The Additional Sessions Judge had pointed out in respect of each eye-witness a large number of contradictions and given detailed reasons for disbelieving them. He had also given cogent grounds for not disbelieving the evidence relating to the recovery of the hammer. No doubt the defence version of the accused admits the prosecution story that a meeting was held immediately after the 1st shift and that after the meeting the deceased, Dinkar Sadu Shetty and the 2 accused and Gopal had left the mill though at different times and that an incident took place at about 5.30 p.m. in which all these persons were involved but with respect to the place of the incident and the manner in which it took place the story of the prosecution has not been admitted by the accused. The prosecution case is that the incident took place at the bus-stop while the defence case is that it took place at cross-roads where the Hospital Road and Shirodkar Road meet. While the prosecution alleges that the accused were the aggressors and had attacked the deceased, the defence version is that the deceased and the eye-witnesses were the aggressors and had attacked the accused but in the scuffle in which they tried to defend themselves, the deceased who had a knife in his hands injured himself when falling down after a hammer blow which was aimed by Dinkar at Accused 1, missed and hit the deceased. Whether the defence story is probable or not is not immediately relevant as what we have to see is whether the prosecution has established beyond doubt that the incident took place at the bus-stop and as alleged by the prosecution the accused had attacked the deceased and caused his death. That there was Trade Union rivalry between the accused and the deceased who are members of the rival Unions is clearly established on the evidence. The two eye-witnesses Dinkar and Shetty and the deceased took leading part in the affairs of their Union while Accused 1 was an active worker in the Kamgar Union. The meeting at which the question of bonus was discussed on the day of the incident was accremonious is also established by the evidence. The only question is whether the accused had any immediate motive to cause injuries. It is stated that the deceased and the eye-witnesses had called Accused 1 and hurled abuses against him and that according to the deceased and Dinkar the only way that the Mazdur Sangh will settle the bonus question is when they are given a good beating, like in the case of India United Mills where the bonus was less but subsequently when the INTUC group was flogged the bonus was increased. The case of the defence was put to all the 3 eye-witnesses.

11. In so far as the evidence of the three eye-witnesses are concerned the learned Advocate for the appellants contends that at least the presence of Krishnan Chandan has nowhere been mentioned either in the F.I.R. or in any of the alleged dying declarations but that he has been subsequently got up. Similarly he submits that Bhagwan Accused 2 was not an employee of the Mill nor did he have any enmity with the deceased but it is said that he was the first one to attack which is not credible. Dinkar is a partisan and is inimical to Accused 1. There is no doubt that neither in the F.I.R. which is recorded at about 6 p.m. nor in the dying declaration Ex. 10 recorded by Kadam, nor in that recorded by the P.S.I. Suryavanshi Ex. 19, is the name of Krishnan Chandan mentioned as the person who was with the deceased. Dinkar in the F.I.R. merely states that he along with Shantaram and Sadu Shetty went walking to Lalbaug Naka. Similarly in Ex. 10 and Ex. 18 there is only a

mention of presence of Dinkar and Sadu Shetty alongwith the deceased.

12. According to Krishnan Chandan he came to the bus-stop later, witnessed the incident, did not shout or go to the assistance of the deceased, nor help Dinkar take the deceased across the Road but went home, had his dinner and slept. The next morning he went to the Mills, took leave for the day and went to the Police Station to give his statement. The explanation given by him for going to the Police is that a Police constable had come to his house but when informed that he was asleep went away. This story is difficult to believe because there was no indication either in the statement of Dinkar or in the dying declarations that he was present; if so there was no way in which police could have known of his presence that night. The Additional Sessions Judge was justified in his comment that the witness had invented the story to explain the delay that was made in recording his statement. It may also be noticed that Dinkar one of the eye-witnesses denies that Krishnan Chandan was present. Apart from this defect, the witness all through refers to Gopal as Bable and in spite of persistent cross-examination tried to pretend that he did not know who Gopal Parab was but in the end when he was confronted with his Police statement admitted that he referred to this person as Gopal Parab. When asked why he pretended he attributed it to the failure of his memory. There is no doubt on a perusal of his evidence which is contrary to the evidence of other witnesses he was got up to buttress the evidence of the other two eye-witnesses who incidentally were partisan witnesses. Though Krishnan pretends to be an independent witness, Dinkar admitted this witness and Sadu Shetty were workers of the Communist Party.

13. Dinkar and Sadu Shetty's evidence is full of contradictions, improbabilities and on relevant matters unreliable. A reading of their evidence shows that they have little regard for truth and are constantly prevaricating.

14. The reason for the deceased, Dinkar and Sadu Shetty going to the bus-stop was that Sadu Shetty wanted to catch a bus to Chembur, when it is admitted Sadu Shetty has a Railway pass, which is cheaper than by going in bus. It is also not probable that he would go in a bus when the Railway Station Chinchpokli from which he catches the train is in the lane opposite to the mills. His explanation that because he had to change trains and wait for the connecting train to Chembur he sometimes goes in a bus particularly when it is late, has been found to be not free from doubt by the Trial Court. Further when he was having a pass it was not considered possible that he would spend money to go in a bus, and also when the houses of Dinkar and the deceased are in the lane opposite to the Digvijay Mills there was no reason for these persons to go to the bus-stop which is somewhat further away from the mills. It may be pointed out that Dinkar when questioned about the residence of deceased Shantaram said that he was having residence at two places but later admitted that he was living in a Chawl situated in a lane opposite to the mill. This was indeed an attempt to meet the objections that there was no reason for them to go to the bus-stop. Similarly in order not to disclose that any provoking speeches were made at the meeting by reference to what happened about the bonus dispute of India Mills he disclaimed all knowledge. Later, however, he not only admitted knowledge of the dispute but admitted that he told his audience that it was only when the workers of INTUC were flogged by the workers of the Kamgar Union that they exerted themselves and got a higher bonus for the workers of those mills. Again he at first denied all knowledge of who called the meeting but later admitted after persistent cross-examination that the deceased, Sadu Shetty and another worker Shanker called the meeting. For fear he will be confronted with the question why he did not take the deceased to the Police Chowki opposite to the bus-stop instead of waiting for a taxi to take him to a Police Station which was far off he said the Police Chowki was closed but it appears from the evidence of Inspector Kogji that the Chowki is open 24 hours and a police constable is present throughout. Another important contradiction which is motivated and is

deliberate falsehood is that he did not see any blood coming after the deceased was injured but later admitted when confronted by his police statement that the deceased was bleeding heavily from his injuries on the stomach and in the head. Even while forced to admit this he nonetheless wants it to be believed that all this blood flowed on the clothes of the deceased but did not fall on the ground. This explanation shows an anxiety to meet the criticism that the site of the incident was not the bus-stop as otherwise blood should have been found at that place.

15. Sadu Shetty's evidence also suffers from similar infirmities and is unreliable. The witness creates a third union of workers namely Kamgar Sangatna which is not spoken to by any other witness. He said he was a member of the Sangatna because he was anxious to avoid admitting that he belongs to the Kamgar Union to which the deceased and Dinkar belong. He is anxious like Krishnan to show that he is an independent witness but in the end he had to admit that there are only two unions. The witness is also anxious to show that he was not at the meeting because he says he went to the office of the Co-operative Society to get some money but when he was made to produce the pass-book which showed that no amount was credited he was forced to invent an explanation that as the clerk was on leave he could not draw any money and no entries were made. Again the witness conduct at the bus-stand when the deceased was being stabbed was unnatural. He says that throughout the attack on the deceased he stood in the queue and did not shout for help nor leave it to go to the help of the deceased nor did he accompany Dinkar to take the deceased across the road or try to help him get a taxi. As pointed out by the Trial Judge the statement of this witness that after the incident he went to the house of the deceased and informed his people is also untrue because he was unable to say where the deceased lived nor was he able to give the location of that house. There are other infirmities in his statement to which it is unnecessary to refer. None of these matters adverted by the Additional Sessions Judge were considered by the High Court nor the reasons given by the Additional Sessions Judge for disbelieving the witnesses noticed or dealt by it. The Additional Sessions Judge said that the evidence of the eye-witnesses is not rejected by him simply because they have shifted the scene of offence but because he has heard their evidence carefully and had perused it in detail. He gave cogent and convincing reasons for rejecting this evidence and we agree that no reliance can be placed on these witnesses without a corroboration in material particulars which is lacking in this case.

16. There is no evidence of blood being found at the bus-stop nor at the place where Dinkar hailed a taxi to take the deceased to the Police Station. Even if the explanation is accepted that because it was a thorough-fare and signs of blood-stains may have been obliterated, there was other evidence which could have been produced. The evidence of Dinkar is that blood was dripping in the taxi but the taxi driver has not been examined though he was present at the Police Station and a constable had accompanied him to the hospital in that taxi. The taxi driver's name could have been taken and the taxi number noted. We, however, cannot assume that neither the name of the taxi driver nor the taxi number was taken. It is no answer for the prosecution to say that since accused had not disclosed his defence till the trial in the Session Court they could not have examined the taxi driver. Even apart from the defence, the taxi driver was an independent witness and could have corroborated the prosecution case as to the place of the incident which the prosecution in any case has to prove. When the oral evidence in respect of this matter is partisan it could have been only proved either from the discovery of the blood-stains on the spot through independent Panch witness by Panchnama of the scene of occurrence or by some independent evidence such as the evidence of the taxi driver. Further the discovery of the hammer alleged to be at the instance of Accused 2 has not been satisfactorily proved. The story of the hammer being brought out from under the shirt also appears to be somewhat incongruous. In any case there is nothing to connect that story of the hammer with the accused.

17. The dying declarations also we have noticed earlier have not been relied upon by the Additional Sessions Judge and cannot therefore corroborate the testimony of the eye-witnesses. A perusal of the Ex. 10 the diary entry of Kadam would negative his statement that he made this entry in his diary on the day of the incident at about 7 p.m. in the hospital. The entry is as follows :

"Attended 'parade' at 4.30 p.m. At 5-5 p.m. relieved the district staff on day duty. At 6 p.m. as per the order of S. I. Suryavanshi, I was taking, the injured person, Shantaram Sakharam Chavan to K.E.M. Hospital in a taxi. I then asked him as to what had happened. He said 'Keshav Navge hit me with a knife in the abdomen and Bhagwan hit me with a hammer on the rear portion of my head'. He further said that alongwith him there were on the Lalbaug bus-stop Dinkar, Sitaram and Sadu Shetty. The injured person Shantaram Sakharam was admitted in Ward No. 20 of the hospital. Just then Suryavanshi Saheb came and I joined him in the investigation of the case. After we arrived at the Police station the Inspector recorded my statement. Thereafter at 10.30 p.m. I went for tea and returned at 11 p.m. Thereafter 9 a.m. on the date the 20-1-1965, I went home'."

A perusal of this entry would show that this is a continuous record and would indicate as if it is made after 9 a.m. on 20-10-1965, before he went home. The High Court said that the fact of this entry being made next day was not put to Kadam in cross-examination but a reference to the evidence of Kadam would show that the diary entry was put to him, suggesting that he had not made an entry in the personal diary of what Shantaram told him but he denied that suggestion as false. It could not be expected that what could be inferred from the contents of the diary have also to be put to him. In this view the Additional Sessions Judge was right in rejecting the evidence in respect of the several matters referred to above. Similarly the dying declarations recorded by Suryavanshi cannot also be relied upon. Suryavanshi says that he first asked the deceased how the incident took place and after he had told him what happened he put him questions in Marathi and got the answers also in Marathi but recorded it in a narrative form in English. It is pointed out by the learned Advocate for the appellant that there is nothing to indicate what questions were put and what answers were given nor is there anything to show that it was correctly recorded. The suggestion is that the Police Inspector may have added his own version of it while recording the dying declaration. To some extent this contention seems to be justified because Suryavanshi in his deposition stated "In the narration made by him the injured person's had given detail but he not state what I wanted regarding his address, profession and other things. It is not that my questions put to the injured person were directed only to his address and profession. I wanted to get other details too from him". This shows that he was not content to record what the deceased wanted to say but wanted him to say what he wanted. That apart, there was sufficient time for him to have called a Magistrate, and although he admits that a Magistrate should be called he did not do so because according to him the injured was in a serious condition. We have already pointed out that the injured died at 2 a.m. There was considerable time, for him to have called a Magistrate. At any rate there is nothing to show that the injured became unconscious immediately or that he made any attempt to call the Magistrate.

18. In view of this we cannot rely on this dying declaration also. Our own conclusion on a re-appraisal of the evidence is that the eye-witnesses account of where the incident took place and how it took place is not reliable nor is there any corroboration of any of their statements in material particulars. In this view it is unnecessary to determine whether the version given by the accused as to what actually took place and where it took place is credible. The probability that it did not take place at the bus-stand but it took place elsewhere and in a manner different to that spoken to by the

eye-witness which does not exclude the possibility of the deceased and the eye-witnesses being the aggressors or the incident taking place as alleged to by the accused cannot be ruled out.

19. The appeal is accordingly allowed, the conviction and sentences are set aside and the accused acquitted. They are directed to be released if not required for any other offence.

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