

Jorubha Juzer Singh

Vs

State of Gujarat

Criminal Appeal No. 338 of 1975

(Syed M. Fazal Ali, P.S. Kailasam, A.D. Koshal JJ)

19.11.1979

JUDGMENT

FAZAL ALI, J. –

1. This appeal by special leave is directed against the judgment of the High Court of Gujarat by which the conviction and sentence of the appeal under Section 302 were confirmed. The appellant was sentenced to imprisonment for life.
2. The facts of the case have been detailed in the judgment of the High Court and it is not necessary to repeat the same. It appears that on March 31, 1973, the deceased was going from a hotel and passing through Suvai Bazar when the appellant and two others accosted him and the appellant assaulted him with a dharia on the head as a result of which the deceased died.
3. The central evidence in the case consisted of two eyewitnesses PW 22 and PW 23 and three dying declarations made by the deceased-one before the constable Parveen Singh, PW 24 another before PW 29, the PSI and a third before a Taluka Magistrate PW 12, Jagjivan. Both the courts below have accepted the three dying declarations made by the deceased before the witnesses concerned. The High Court has also believed PW 22 and the finding of the High Court was criticised on the ground that PW 22 was examined by the police five days after the occurrence and he did not volunteer to go to the police so as to give the version of the occurrence which he saw. We feel that apart from the eyewitnesses if the dying declarations made by the three witnesses are believed that will be sufficient to warrant the conviction of the appellant. We have perused the evidence of PW 24, Parveen Singh who reached the spot and had taken the deceased on a camel cart to the nearest dispensary Rahpar. During the way the deceased revealed to him that he was assaulted by the appellant on the head with a dharia. This dying declaration is followed by a dying declaration made by the deceased before PW 12, Taluka Magistrate, Jagjivan which was recorded in the form of questions and answers. This dying declaration is a very important document because it amounts to a statement of the deceased varba-dicta. Apart from the finding of the courts below that the dying declaration made by the deceased before the Magistrate was true, we have ourselves also perused the dying declaration and find that it is a very natural and straightforward statement and contains a ring of truth. There was absolutely no reasons for the deceased to have falsely implicated the appellant. It was suggested by the learned counsel for the appellant that the possibility of the deceased having been tutored cannot be ruled out in this case because the doctor who examined the deceased had stated that the relatives of the deceased may have been in the adjoining room. There is however no evidence at all to show that at the time when the deceased was carried to the dispensary and taken to the doctor, the relations of the deceased had accompanied him. The fact that the relatives may have come afterwards does not appear to be of any significant. Moreover we find no

reason why the deceased should implicate the appellant falsely at the instance of his relatives. The oral statement made by the deceased before Parveen Singh which was first in point of time is also consistent and straightforward and has been deposed to by Parveen Singh who is an independent witness and bears no animus against the accused. The third statement of the deceased was made to PW 29 which has been reduced into writing and which fully corroborates the version given by the deceased in the other two dying declarations. Furthermore the dying declaration by the deceased to the Magistrate Ex. 32 contains a certificate of the doctor that the deceased was conscious from the beginning to the end at the time when the statement was recorded by PW 12. Similarly PW 24, Parveen Singh had also said that deceased was conscious when he made the statement before him. In these circumstances we are of the opinion that the courts below were fully justified in acting on the dying declarations of the deceased. Short of minor contradictions and embellishments in the statement of the witnesses nothing of importance in the cross-examination has been elicited to demolish the case of the prosecution. There is no merit in this appeal which is accordingly dismissed.

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