

Kake Singh Alias Surendra Singh

Vs

State of Madhya Pradesh

Criminal Appeal No. 79 of 1976

(Syed M. Fazal Ali, A. Varadarajan JJ)

02.04.1981

### JUDGMENT

1. This appeal by certificate is directed against a judgment of the Madhya Pradesh High Court by which the appellant Kake Singh alias Surendra Singh was convicted under Section 304 Part II, Indian Penal Code and sentenced to 10 years' rigorous imprisonment. The trial Court had convicted the appellant under Section 302, Indian Penal Code and sentenced him to death.
2. The solitary evidence against the appellant consists of the dying declaration alleged to have been made by the deceased Tulsi Baba before Head Constable D. N. Verma (PW 8). We have gone through the dying declaration and we find that the dying declaration presents suspicious features. In the first place, Tulsi Baba had himself lodged a complaint before the police against the accused that there was some dispute about the house which Kake wanted Tulsi Baba to vacate and had given threats that he would come to serious harm if he does not vacate the house. Despite this threat, according to the dying declaration, the deceased readily agreed to take a round in the jeep along with Kake and two others. Indeed, in view of the enmity it is hard to believe that the deceased would trust the accused and go with him at a late part of the night and invite trouble for himself. Another important circumstance that throws doubt on the dying declaration is that Tulsi Baba was alleged to have been missing from January 30, 1975, as would appear from the report made before the police station by PW 3. The doctor who held the autopsy of the deceased in his statement has not categorically stated that at the time when the deceased was burnt he was conscious or could give any coherent statement. The deceased was burnt and a good part of the brain was also burnt and therefore the possibility is that he must have become unconscious. This is intrinsically supported by another important factor. The doctor found not only burns on the body of the deceased but also other injuries which could have been inflicted on him by lathis which had caused lacerations and haematoma. In his statement the deceased makes no mention at all of any such injuries although one of the injuries caused to him resulted in fracture of sternum. There is no reference at all to the manner in which the deceased could have got the fracture of the sternum. The cumulative effect of these circumstances therefore leads to the irresistible conclusion that the deceased was unconscious and never made any such statement. Once the dying declaration is disbelieved, then there remains no legal evidence on the basis of which the appellant could be convicted.
3. The High Court had given the certificate mainly on the ground that having regard to the statement of the deceased, the only offence that could have been made out would be one under Section 326 and not that under Section 304 Part II, Indian Penal Code if the charge under Section 302 failed. It is not necessary for us to go into this question because in view of the fact that the dying declaration cannot be accepted, the appellant is entitled to an acquittal.

4. The appeal is accordingly allowed, the judgment of the High Court is set aside and the appellant is acquitted of the charges framed against him. The appellant is discharged from his bail bonds and need not surrender.

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