

Bhola Turha

Vs

State of Bihar

(G.T. Nanavati, B.N. Kirpal, JJ.)

26.11.1997

JUDGMENT

NANAVATI, J.

1. The appellant was convicted by the trial court for the offence punishable under Section 302 IPC. On an appeal, the High Court altered his conviction from under Section 302 to Section 304 Part I IPC and sentenced him to suffer rigorous imprisonment for ten years. The appellant is challenging in this appeal his conviction and the sentence imposed upon him.

2. The conviction of the appellant is based solely upon the dying declaration. It has been found to be reliable. It was made by the deceased within about two hours from the incident and a few hours before his death. In this dying declaration, he has clearly explained how he came to be injured by the appellant. After carefully scrutinising the dying declaration, both the courts have come to the conclusion that it contains a truthful version as regards the manner in which he injuries were caused to him.

3. Learned counsel for the appellant, however, submitted that in view of the inconsistency between the version of the deceased and the version of the eye-witnesses, the courts ought not to have relied upon the dying declaration without any independent corroboration. The eye-witnesses did not support the prosecution and were declared hostile. As they did not state anything about the spear blow given by the appellant, really there is no inconsistency between their evidence and the dying declaration. It was submitted by learned counsel that in the dying declaration, it is stated that the appellant after giving a spear blow had taken out the spear from the body of deceased and had taken it away with him. PW 14 - another Chowkidar on the other hand has stated in his evidence that he had produced the spear of the appellant before the Investigation Officer. That does not necessarily mean that he had recovered that spear from the place of offence.

4. We, therefore, do not find any inconsistency between the dying declaration and the other evidence on record. No other infirmity in the dying declaration could be pointed out by the learned counsel.

5. We are of the view that the courts below were fully justified in relying upon the dying declaration and convicting the appellant. 6. The appeal is, therefore, dismissed. 7. The appellant is ordered to surrender to custody to serve out the remaining part of sentence