

Heikrujam Chaoba Singh

Vs

State of Manipur

Criminal Appeal No. 125 of 1997

(G. B. Pattanaik, S. N. Phukan JJ)

12.10.1999

JUDGMENT

PATTANAİK, J.

1. The appellant has been convicted under Sections 302/34 IPC along with the absconding accused, Yamlemba Paka Singh and has been sentenced to imprisonment for life for having committed the murder of one Kangujam Hera Singh by the learned Additional Sessions Judge and that said conviction and sentence has been upheld in appeal by the Imphal Bench of the Gauhati High Court in Criminal Appeal by the Imphal Bench of the Gauhati High Court in Criminal Appeal No. 62 of 1987. The prosecution case in a nutshell is that the deceased was a Lecturer in Standard College, Kongba. On 11-4-1984, the students did not turn up and the deceased, therefore, spent some time in the College with one of his colleagues, PW 8 and at 9.00 a.m. both of them left the College on a bicycle and reached the crossing between Imphal-Yairipok Road leading to Unchekon. At that point of time, three persons suddenly emerged who were armed with hockey sticks and "thang" and started assaulting the deceased. The deceased was then removed to the nearby house of a doctor, one Toijam Ibotomba Singh who has been examined as a court witness. CW 1 who gave first aid and the doctor then left for District Hospital, Imphal telling the injured that he would send the ambulance van very soon. CW 1 arranged for an ambulance and sent it to his house for bringing the injured. PW 8 and then seeing the injured left for his house. On the way, PW 8 had come to the injured while he was getting first aid in the house of CW 1 and then seeing the injured left for his house. On the way, PW 8 met another Lecturer, L. Chandra Singh and narrated the incident to him. The said L. Chandra Singh reached the house of the deceased at 11.00 a.m. and told the wife of the deceased about the occurrence whereafter the wife of the deceased proceeded to the house of PW 2 who is the elder brother of the deceased. PW 2 then came in a jeep to the place of occurrence and on the way saw the ambulance which was meant for carrying the injured to the hospital. The ambulance van was then stopped and PW 2 seeing his brother went with him to the hospital. The further prosecution case is that on the way to the hospital in the ambulance, PW 2 made a query and the deceased told him that the present appellant and one accused, Yamlemba Paka Singh and another person assaulted him with lathis. When the injured reached District Hospital, Imphal, there was no bed available in the hospital and therefore, he was taken to Regional Medial College Hospital wherein the injured was admitted. After getting the initial treatment from PW 11, the Medical Officer attached to the Casualty Department, he was removed to his had and was treated as an indoor patient. In the hospital, the other brother of the deceased, PW 5 enquired from the deceased and came to know from him that he had been assaulted by the appellant, the absconding accused, Y. Paka Singh and another person. PW 5 went to the police station and lodged a complaint which was treated as an FIR, Exh. P-5. On the basis of the said FIR, the police registered the case and started investigation. On completion of investigation,

charge-sheet was filed for the offence as already stated and on being committed the accused stood his trial. The deceased, Hera Singh died in the hospital at 10.20 p.m. on 12-4-1986. On the basis of the evidence of the doctor, PW 11 who had examined the deceased in the Casualty Department, the evidence of the doctor, PW 6 who conducted the postmortem examination on the dead body of the deceased as well as the evidence of Court Witness 1, the doctor who examined the deceased in his house and gave first aid, the learned Sessions Judge came to the conclusion that the deceased met a homicidal death and the injuries on his person were ante-mortem in nature. The said conclusion has been upheld in appeal and has not been assailed before us. The sole eyewitness, PW 8 could not identify the accused persons including the appellant to be the assailant of the deceased and as such his evidence could not be pressed into service by the prosecution. The learned Sessions Judge, however, relied upon the evidence of PWs 2 and 5 who are the two brothers of the deceased and to whom the deceased had made a dying declaration to PW 2 in the ambulance van and PW 5 in the hospital and came to the conclusion that the charge against the appellant had been proved beyond reasonable doubt and accordingly convicted him. The High Court, in appeal, also relied upon their evidence and confirmed the conviction and sentence.

2. Mr. I.G. Shah, learned Senior Counsel appearing for the appellant contended that the two dying declarations alleged to have been made by the deceased to PW 5 do not satisfy the test of reliability and truthfulness and, therefore, the courts below have committed serious error in convicting the appellant relying upon such declaration. It may be stated that along with the appellant, one moirangtham Thoiba Singh also stood his trial but the learned Sessions Judge acquitted him of the charges and the said order of acquittal has become final as the State did not prefer any appeal against the same to the High Court.

3. An oral dying declaration no doubt can form the basis of conviction, though the courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability. We are, therefore, called upon to examine the evidence of PWs 2 and 5 to find out whether the courts below were justified in relying upon their testimony and in believing the statements alleged to have been made by the deceased while being carried to the hospital in ambulance and thereafter while he was an indoor patient in the hospital itself. So far as the statement in the ambulance is concerned, it was made to PW 2 who is the brother of the deceased. PW 2 while he was coming in a jeep towards the scene of occurrence saw the ambulance van and, therefore, though that his younger brother Hera Singh was possibly being taken in the same ambulance van and coming to know that his guess was correct boarded the ambulance van. He states in his evidence that on enquiry about the injuries sustained by his brother, Hera Singh, the injured told him that he had been given blows by Keikrujam Chaoba Singh with a dao, Yamlemba Paka Singh with a hockey stick and another person with a lathi. In his cross-examination, he candidly admitted that there were three or four persons inside the ambulance when his brother told him the names of his assailants but none of those disinterested persons have been examined by the prosecution to corroborate the said PW 2. He also admitted in his cross-examination that those persons who were in the ambulance were present near him when his brother stated the words and yet the prosecution had not offered any explanation as to why none of those persons were examined who could have been disinterested persons deposing about the dying declaration said to have been made by the deceased inside the ambulance while he was being carried to the hospital. While according to the evidence of PW 2 the deceased told him that the appellant

Chaoba Singh gave him a dao-blow but according to PW 5 to whom the deceased made a declaration in the hospital, the deceased told him that Chaoba Singh, the appellant held a thang and Paka Singh had a hockey stick. Intrinsically, therefore the so-called dying declaration made by the deceased to PW 2 is different from the declaration made by the deceased premise, who do not think it safe to hold the evidence of PW 2 to be reliable and, therefore, the oral dying declaration as deposed to him by his cannot be pressed into service for bringing home the charges leveled against the accused appellant.

4. Coming now to the other dying declaration deposed to by PW 5, it is seen that though PW 5 lodged the FIR he categorically state therein that the injured was not in a position to speak. The FIR also did not reveal bout the injured making a declaration tot he said PW 5. PW 5 was examined by the police after several days of the occurrence. Even according to him when the deceased in the hospital made a declaration to him, there were several other persons present, yet it is not known as to why none of those people had been examined who could have been relied upon to corroborate the testimony of PW 5. PW 5 also is the brother of the deceased. The prosecution, therefore, had not examined several other disinterested persons though present when the deceased was making a declaration and chose only to examine the two interested persons. In the aforesaid premises, the conclusion in inescapable that no reliance can be placed on the testimony of PW 5. If the two dying declarations made to PWs 2 and 5 are excluded from consideration then there is no evidence on which the prosecution can be said to have established the charge beyond reasonable doubt as against the appellant, We, therefore, set aside the conviction and sentence passed against the appellant. We, therefore, set aside the conviction and sentence passed against the appellant and acquit him of the charges levelled against him. He may be set at liberty forthwith unless required in any other case.

5. The appeal is allowed accordingly.