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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., SANJAY KAROL; J.
CRIMINAL APPEAL NO. 866 OF 2011; 6 November, 2023
MANJUNATH & ORS. *versus* **STATE OF KARNATAKA**

Indian Evidence Act, 1872; Section 27 - The recovery of a weapon from an open place accessible to all is not reliable. *(Para 25 & 26)*

Indian Evidence Act, 1872; Section 32 - Principles in regard to Dying Declarations – The basic premise is "*nemo moriturus praesumitur mentire*" i.e. man will not meet his maker with a lie in his mouth. For a statement to be termed a "dying declaration", and thereby be admissible under Section 32 of IEA, the circumstances discussed / disclosed therein "must have some proximate relation to the actual occurrence". A dying declaration inspires confidence of the court it can, even sans corroboration, form the sole basis of conviction. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence. The Court must be satisfied that at the time of making such a statement, the deceased was in a "fit state of mind". In case of a plurality of such statements, it is not the plurality but the reliability of such declaration determines its evidentiary value. The presence of a Magistrate in recording of a dying declaration, is not a necessity but only a rule of Prudence. Dying Declaration is not to be discarded by reason of its brevity. Examination of the person who reduced into writing, the dying declaration, is essential. It is required that such statement be free from tutoring, prompting, or not be a product of imagination. *(Para 11 & 20)*

Indian Evidence Act, 1872; Section 32 - Dying Declaration - If the scribe, for reasons beyond control, such as incapacitation or death, would be unavailable, it would be open for the prosecution to take necessary aid of secondary evidence. That not being the case however, such unexplained nonexamination would, render the case to be doubtful if not, land a fatal blow to the prosecution case. *(Para 19)*

Indian Evidence Act, 1872 - Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is "wholly reliable", then the court can base conviction thereupon. This applies even in cases where there is a sole eyewitness. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value. *(Para 12 & 22)*

Code of Criminal Procedure, 1973; Section 378 - An acquittal will only be overturned in the presence of very compelling reasons. The presumption of innocence in favour of the accused is bolstered if the trial court hands down an acquittal. *(Para 32)*

For Appellant(s) M/S. Lawyer S Knit & Co, AOR

For Respondent(s) Mr. V. N. Raghupathy, AOR

J U D G M E N T

SANJAY KAROL J.,

1. Appellants[1] (six in number) have filed this appeal against the judgment and order dated 21st September 2010 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No.1795 of 2004 whereby the appeal filed by the State against the verdict of acquittal in favour of all 29 accused, vide judgment and order dated 25th September, 2004 in S.C. No.162 of 1999, passed by the Additional Sessions Judge - Presiding Officer, Fast Track Court-II, Kolar, was partly allowed. Overturning the same in respect of A-1 to A-5 and A-7, the Court while convicting them for having committed an offence punishable under Sections 143, 144, 146, 147, 148, 447, 324, 326, 504 and 506 r/w Section 149 of Indian Penal Code, 1860 sentenced each one of them to undergo rigorous imprisonment for a period of 4 years and pay a fine of ₹ 5000 each.

FACTUAL PRISM

2. The facts, as set out by the Courts below, shorn of unnecessary details are: -

2.1 On 6th August 1997, the deceased namely Byregowda[2] and his brothers, T.V. Narayanaswamy (PW4), T.V. Gopalreddy (PW5), T.V. Rajanna (PW10) and Marappa (PW2) had gone to the fields to work when, allegedly, all the accused armed with weapons such as clubs, iron rods and choppers came and threatened them. PW2, PW4, PW5 and PW10 managed to escape but while the deceased, was attempting to do so, he was greviously assaulted by A1, A2 and A3 by means of iron rod and a steel-edged weapon (chopper). Immediate medical treatment was administered to the deceased at the Sidlaghatta General Hospital by Dr. Loganayaki (PW1) who also informed the police. V.M. Sonnappa (PW19), the then Sub-Inspector of Police took his statement (Ex. P1) and as a consequence therefore, registered FIR being Crime No. 249/1997 dated 08.08.1997 under several penal provisions.

2.2 After due investigation, the challan came to be filed and the case was committed to the Court of Additional Sessions Judge-Presiding Officer, Fast Track Court-II, Kolar. All the accused denied the charges under section 120B, 143, 447, 302 read with Section 149 IPC and claimed trial. Accused Nos.6 and 8 are recorded to have died and therefore, the proceedings against them stood abated at this stage.

FINDINGS OF THE TRIAL COURT

3. The prosecution in order to prove the charges levied, examined 28 witnesses; exhibited 24 documents and three material objects. The accused did not lead any evidence save and except producing five witnesses to contradict the version of PW 4, Gopala Reddy (PW5), Chandrappa (PW15), T.V Krishnappa (PW17) and T.S Ramakrishna (PW13) respectively.

4. The evidence led was categorized into five heads – (a) ocular; (b) Dying declaration; (c) circumstantial evidence; (d) recovery of incriminating material; and (e) motive.

4.1 PW2, PW3 and PW15 are eyewitnesses and PW2 and PW15 have not supported the case of the prosecution. PW2 has deposed that he had heard from the family members of the deceased that he had sustained various injuries and upon reaching there found the latter to be lying a little away from his own lands and later find out that he had died. PW3

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[1] Manjunath (s/o Bachanna) A-1; Ramegowda (s/o Bachanna) A-2; Ramappa (s/o Narayanappa) A-3; Ramesh (s/o Chikka Venkatarayappa) A-4; Manjunath (s/o Ramappa) A-5; Dyavappa (s/o Narayanappa) A-7.
[2] Hereinafter, the deceased

has deposed that he had seen the accused persons assaulting the deceased, and it is they who had laid the deceased, post such assault, on the eucalyptus leaves on the fields of PW11. PW15 stated that he saw the deceased lying on southern side of the eucalyptus plantation where PW2, PW4 and PW5 were also present. PW15 has deposed that he saw the accused persons armed with weapons and proceeding towards the garden. He followed them and found that the accused had chased and assaulted the deceased. It is a point of conflict whether the accused had, as per the statement of PW3, laid the deceased down on the eucalyptus fields of PW11 - Raghava or was it PW15 who had done so. No other witnesses have deposed to that effect.

The Trial Court, therefore, did not rely on the ocular evidence.

4.2 In respect of the dying declaration, it was observed that the evidence clearly shows PW19 to not have recorded the declaration. It has borne out from cross examination of this witness that it was one of his staff members, namely Nataraj who had recorded the statement who was neither cited nor examined as a witness. Moreover, this deponent has not even endorsed such a statement.

4.3 In respect of the medical evidence furnished, it was observed that PW1 admitted non stating of who furnished history of injuries- whether it was injured himself or another person who had brought him to the hospital. This, read alongside PW1's earlier statement that numerous persons were present with the injured/deceased led the Trial Court to believe that, on account of severe head injury he was not in a position to give a statement and it was other persons present who furnished necessary details to form the same.

4.4 In respect of circumstantial evidence, it was observed that PW2 has not implicated any of the accused in the circumstance relating to a mob approaching the fields in the morning of 6 August 1997. PW15 had deposed, as noted above that the deceased was laid on eucalyptus leaves in an injured state. It was however not his case that the deceased had informed him about who caused his injuries. This, led the Trial Court to observe "falsity" in the evidence of PWs 4,5,6 and 7 who stated the deceased had told that the accused assaulted him.

4.4.1 For PW3 and PW13, it was observed that their conduct did not reflect that of an "ordinary prudent man" as the former did not rush to the village or to the rescue of the deceased but instead, ostensibly, to invite the villagers to a hiding place; and the letter since he claimed to have heard the accused persons conspiring to attempt to take the lives of the deceased and his brothers and further claimed that later he heard the persons state that while one of them was caught, others ran away. Despite hearing this he proceeded to leave to attend the marriage of someone at Vijayapura. This, the Court, found to be a conduct, against of a prudent person who proceeded as normal, despite hearing of a conspiracy to kill a fellow man.

4.4.2 It is in light of above conclusions that the Trial Court held the web of circumstances to be unable to point "unerring, cogently and positively" to the guilt of the accused.

4.5 On recovery of weapons, the Court observed that although the weapons had been recovered at the instance of accused persons - clubs at the instance of A10, A3, A5, A6 and A7; iron rod at the instance of A1 and A2 and chopper at the instance of A4, but doubted the veracity of the seizure on the ground that the clubs were recovered from a place of common access and the chopper as well as the rods were recovered from places where others also resided. Further, it was observed that the clubs seized (M.O. 3) were of 4 ft in length and 3 inches, in diameter which could cause such as abrasion(s), contusion(s), and laceration(s). However, the medical evidence of PW1 did not record any

such injury. The Court, therefore, concluded that the incriminating objects or weapons were not of any assistance in the case against the accused.

4.6 On motive, it was observed that although a dispute had taken place on the night of 4th August, 1997 between PW4 and A1, A2, A4, A7, A8, A9, A11 and A12 regarding the obstruction of a pathway, resulting into criminal prosecution against the persons involved but leading only to their acquittals. Therefore, in view of the Court, motive was absent.

4.7 Two other aspects were also urged on behalf of the prosecution, one; regarding the place of occurrence of offence and two; the delay in recording the statements of the ocular and circumstantial witnesses. On both these grounds as well, the court did not find anything to be pointing towards the guilt of the accused persons.

4.8 In view of such findings, the court acquitted all accused persons.

5. The State, aggrieved by the acquittals *en masse*, appealed to the High Court.

FINDINGS OF THE HIGH COURT

6. It was noted that the deceased had specifically named as certain accused as also attributed specific roles to them. Having appreciated the evidence on record and the submissions of the learned counsel for the accused, who stated that the doctor had not certified the deceased fit to give a statement and in the absence of such a certificate of fitness, his declaration could not be relied upon; and the learned counsel for the state who submitted that the dying declaration categorically indicts A1-A7.

7. The Court found: -

7.1 The dying declaration makes a clear case against A1 to A7;

7.2 The injuries sustained by the deceased correspond to narration of the incident to PW19 (S. Narayanaswamy) and that PW1 (Dr. Loganayagi) certified the deceased to have been in a fit condition to give a statement.

7.3 The dying declaration of the deceased stood corroborated by PW3, PW4, PW5 as well as other witnesses.

7.4 On submission of the learned counsel for the accused that the injuries inflicted upon the deceased were on non-vital parts of the body, no intention could be gathered on part of the accused; hence the Court, in its wisdom, convicted the above specified accused under Section 304 Part II, IPC to undergo a sentence of rigorous imprisonment for a period of four years and pay fine of Rs. 5000/- each. All other accused were acquitted.

8. The position of the accused persons as it presently stands is indicated in a tabular form as under: -

Sl no.	Name of Accused	Sentenced by Trial Court	Sentenced by High Court	Punishment awarded
1.	Manjunath S/o Bachanna	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
2.	Ramegowda S/o Bachanna	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
3.	Ramappa S/o Narayanappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
4.	Ramesh S/o Chikka Venkatarayappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-

5.	Manjunatha S/o Ramappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
6.	Ramanjanappa S/o Muniswamappa (Dead)	Expired	-	
7.	Dyavappa S/o Narayanappa	Acquitted	Convicted u/s 304 Part II, IPC	4 years RI and fine of Rs. 5000/-
8.	Dyavappa S/o Chikka Miniswamappa (Abated)	Abated	-	
9.	Venugopala S/o Pillappa	Acquitted	Acquitted	
10.	Chowda Reddy S/o Narayanappa	Acquitted	Acquitted	
11.	Jayachandra S/o Bachappa	Acquitted	Acquitted	
12.	Narayana Swamy @ Beema S/o Munegowda	Acquitted	Acquitted	
13.	Bachegowda, S/o Pillappa	Acquitted	Acquitted	
14.	Narayana Swamy S/o Pillappa	Acquitted	Acquitted	
15.	Krishanappa S/o Guttappa	Acquitted	Acquitted	
16.	Mune Gowda S/o Venkatarayappa	Acquitted	Acquitted	
17.	Aswath S/o Gateppa	Acquitted	Acquitted	
18.	Aswathappa S/o Nanjegowda	Acquitted	Acquitted	
19.	Murthy S/o Venkatappa	Acquitted	Acquitted	
20.	Ramesh S/o Mune Gowda	Acquitted	Acquitted	
21.	Ramesh S/o Byamma	Acquitted	Acquitted	
22.	Nagaraja S/o Narayanappa	Acquitted	Acquitted	
23.	Dayappa S/o Pillappa	Acquitted	Acquitted	
24.	Naryanaswamy S/o Bachappa	Acquitted	Acquitted	
25.	Ramappa S/o Chennarayappa	Acquitted	Acquitted	
26.	Manjunatha S/o Naryanappa	Acquitted	Acquitted	
27.	Sonne Gowda S/o Chennarayappa	Acquitted	Acquitted	
28.	Mahesh S/o Jayachandra	Acquitted	Acquitted	
29.	Lokesh S/o Bachanna	Acquitted	Acquitted	

9. Proceeding further, we notice, that this is a case involving primarily a dying declaration made by the accused in addition to the ocular and circumstantial evidence.

10. In fact, the dying declaration (Ext. P1) proven by PW19, is the main foundation of the prosecution case. It would be beneficial to appreciate the principles that the courts must adhere to when adjudicating a case of this nature.

PRINCIPLES IN REGARD TO DYING DECLARATIONS

11. Section 32 the Indian Evidence Act, 1872[3] relates to statements, written or verbal of relevant fact made by a person who is dead or who cannot be found, in other words, dying declaration. The various principles laid down by pronouncements of this court in respect of dying declarations can be summarised as under: –

[3] For brevity, "IEA"

11.1 The basic premise is "*nemo moriturus praesumitur mentire"* i.e. man will not meet his maker with a lie in his mouth.

11.1.1 In **Laxman v. State of Maharashtra**[4] a constitution bench of this court observed: –

"when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement."

11.2 For a statement to be termed a "dying declaration", and thereby be admissible under Section 32 of IEA, the circumstances discussed/disclosed therein "must have some proximate relation to the actual occurrence".

11.3 The Privy Council in **Pakala Narayana Swamy v. Emperor**[5] explained the phrase "circumstances of the transaction" as under: -

"The circumstances must be circumstances of the transaction: general expressions indicating fear or suspicion whether of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown, or was not the person accused. Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae'. Circumstances must have some proximate relation to the actual occurrence: though, as for instance, in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose. It will be observed that 'the circumstances' are of the transaction which resulted in the death of the declarant. It is not necessary that there should be a known transaction other than that the death of the declarant has ultimately been caused, for the condition of the admissibility of the evidence is that 'the cause of (the declarant's) death comes into question'."

11.3.1 In the well-known case of **Sharad Birdhichand Sarda v. State of Maharashtra,**[6] principles in respect of the application of section 32 have been noted as under: –

Per S. Murtaza Fazal Ali J.,-

"21. …

(1) Section 32 is an exception to the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be

[4] (2002) 6 SCC 710 [5 Judge Bench]
[5] AIR 1939 PC 47 [5 Judge Bench]
[6] (1984) 4 SCC 116 [3 Judge Bench]

admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of crossexamination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant."

11.4 Numerous judgments have held that provided a dying declaration inspires confidence of the court it can, even sans corroboration, form the sole basis of conviction. In this regard, reference may be made to **Khushal Rao v. State of Bombay**[7]**, Suresh Chandra Jana v. State of West Bengal**[8] and **Jayamma v. State of Karnataka**[9]**.**

11.5 In order to rely on such a statement, it must fully satisfy the confidence of the court, since the person who made such a statement is no longer available for crossexamination or clarification or for any such like activity.

11.5.1 In **Madan v. State of Maharashtra**[10], while referring to an earlier decision in **Ram Bihari Yadav v. State of Bihar**[11] it was observed that a Court must rely on dying declaration if it inspires confidence in the mind of the court.

11.5.2 On a similar note, this Court in **Panneerselvam v. State of T. N**[12] has observed: –

"Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such nature as to inspire full confidence of the court in its correctness."

11.5.3 However, a note of caution has also been sounded. If such a declaration does not inspire confidence in the mind of the court, i.e., there exist doubts about the correctness and genuineness thereof, it should not be acted upon, in the absence of corroborative evidence.

11.5.3.1 In **Paniben v. State of Gujarat**[13] it was observed-

"The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination."

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[7] AIR 1958 SC 22 [3 Judge Bench]
[8] (2017) 16 SCC 466 [2 Judge Bench]
[9] (2021) 6 SCC 213 [3 Judge Bench]
[10] (2019) 13 SCC 464 [2 Judge Bench]
[11] (1998) 4 SCC 517 [2 Judge Bench]
[12] (2008) 17 SCC 190 [3 Judge Bench]
[13] (1992) 2 SCC 474 [2 Judge Bench]

A reference may also be made to **K. Ramachandra Reddy v. Public Prosecutor**[14]

11.6 The Court must be satisfied that at the time of making such a statement, the deceased was in a "fit state of mind". In **Shama v. State of Haryana,**[15] a fit state of mind has been held to be a prerequisite, alongside the ability to recollect the situation and the state of affairs at that point in time in relation to the incident, to the satisfaction of the court.

11.6.1 In **Uttam v. State of Maharashtra**[16], it was discussed that it is for the court to determine, from the evidence available on record, the state of mind being fit or not.

11.6.2 In order to make a determination of the state of mind of the person making the dying declaration, the court ordinarily relies on medical evidence.[17] However, equally, it has been held that if witnesses present, while the statement is being made, state that the deceased while making the statement was in a fit state of mind, such statement would prevail over the medical evidence.[18] The statement of witnesses present prevailing over the opinion of the doctor has been reiterated in **Uttam** (supra).

11.6.3 It has also, however, been held in **Laxman (supra)** that the mere absence of a doctor's certificate in regard to the "fit state of mind" of the dying declarant, will not *ipso facto* render such declaration unacceptable. This position had been once again recognised in **Surendra Bangali @ Surendra Singh Routele v. State of Jharkhand**[19].

11.7 In case of a plurality of such statements, it has been observed that it is not the plurality but the reliability of such declaration determines its evidentiary value. The principle as held in **Amol Singh v. State of M.P**[20] was:-

"*13*. … it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration [but] the statement should be consistent throughout. … However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not [and] while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances."

11.7.1 Faced with multiple dying declarations, this Court in **Lakhan v. State of M.P**[21] observed**-**

"21. …. In such an eventuality no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, generally, the dying declaration recorded by the higher officer like a Magistrate can be relied upon, provided that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration had been made, not voluntarily and even otherwise, it is not supported by the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance."

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[14] (1976) 3 SCC 618 [2 Judge Bench]
[15] (2017) 11 SCC 535 [2 Judge Bench]
[16] (2022) 8 SCC 576 [2 Judge Bench]
[17] (2008) 4 SCC 265 [2 Judge Bench]
[18] (2002) 6 SCC 710 [5 Judge Bench]
[19] Criminal Appeal No. 1078 of 2010 [2 Judge Bench]
[20] (2008) 5 SCC 468 [2 Judge Bench]
[21] (2010) 8 SCC 514[2 Judge Bench]

11.7.2 This Court, in **Jagbir Singh v. State (NCT of Delhi)**[22], in this respect, concluded as under: –

"32. We would think that on a conspectus of the law as laid down by this Court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case. The court will not be relieved of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered."

11.8 The presence of a Magistrate in recording of a dying declaration, is not a necessity but only a rule of Prudence. To this effect in **Jayamma** (supra), this Court observed :

"…law does not compulsorily require the presence of a judicial or executive Magistrate to record a dying declaration or that a dying declaration cannot be relied upon as the solitary piece of evidence unless recorded by judicial or executive Magistrate. It is only a rule of prudence, and if so permitted by the facts and circumstances, the dying declaration may preferably be recorded by a judicial or executive Magistrate so as to muster additional strength to the prosecution case."

Referring to the Constitution bench in **Laxman** (supra) the principle of a dying declaration not necessarily to be recorded by a Magistrate stands reiterated in **Rajaram v. State of Madhya Pradesh**[23]

11.9 Dying Declaration is not to be discarded by reason of its brevity is what is held in **Surajdeo Ojha v. State of Bihar**[24]**.**

11.9.1 It was observed in the **State of Maharashtra v. Krishnamurti Laxmipati Naidu**[25] that if the dying declaration, while being brief, contains essential information, the courts would not be justified in ignoring the same.

11.9.2 In fact, the Constitution bench in **Laxman** reiterated this principle, stating: –

"Marely because a dying declaration does not contain the details of the occurrence, it cannot be rejected and in case there is merely a brief statement, it is more reliable for the reason that the shortness of the statement is itself a guarantee of its veracity."

11.10 Examination of the person who reduced into writing, the dying declaration, is essential. Particularly, in the absence of any explanation forthcoming for the production of evidence is what stands observed in **Govind Narain v. State of Rajasthan**[26].

11.10.1 In fact, in **Kans Raj v. State of Punjab**[27] it was held: –

"11. …To make such statement as substantive evidence, the person or the agency relying upon it is under a legal obligation to prove the making of such statement as a fact. If it is in writing, the scribe must be produced in the Court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement." and;

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[22] (2019) 8 SCC 779 [2 Judge Bench]
[23] 2022 SCC OnLine SC 1733 [2 Judge Bench]
[24] 1980 Supp SCC 769 [2 Judge Bench]
[25] 1980 Supp SCC 455 [2 Judge Bench]
[26] Supp (3) SCC 343 [2 Judge Bench]
[27] (2000) 5 SCC 207 [3 Judge Bench]

In **Sudhakar v. State of Maharashtra**[28], this Court categorically observed: -

"5. If it is in writing, the scribe must be produced in the court and if it is verbal, it should be proved by examining the person who heard the deceased making the statement. However, in cases where the original recorded dying declaration is proved to have been lost and not available, the prosecution is entitled to give secondary evidence thereof."

11.11 The questions that a court must ask when dealing with a case concerning a dying declaration, as listed out by this Court in **Irfan@Naka v. State of U.P.**[29] along with the principles culled out hereinabove form the complete gamut of consideration required on part of a court when deciding the weightage to be awarded to a dying declaration.

12. Ocular evidence undoubtedly fares better than other kinds of evidence and is considered evidence of a strong nature. The principle is that if the eyewitness testimony is "wholly reliable", then the court can base conviction thereupon. This applies even in cases where there is a sole eyewitness.[30]

13. The facts at hand, the trial court has disbelieved such evidence. The discarding of eye-witness testimony is a factspecific inquiry, and therefore the correction of such an action by the trial court shall be discussed later.

14. The law on circumstantial evidence, is well settled. The *locus classicus* on the issue is **Sharad Birdhichand Sarda**, (supra) which stands consistently followed up until very recently in **Kamal v. State (NCT of Delhi)**[31].

14.1 Illustratively, in **Gargi v. State of Haryana**[32] this court has, referring to various earlier judgments, summarised the principles relating to circumstantial evidence. The principle, is that the sum total of circumstances, when examined should point to the guilt of the accused, while ruling out all other possible hypotheses including his innocence and absence of second party guilt. Further reference may be made to **Indrajit Das v. State of Tripura**[33] and **Prakash Nishad v. State of Maharashtra**[34].

CONSIDERATION BY THIS COURT

15. The dying declaration, which forms the primary basis for prosecution of the above-named accused, reads as follows-

"T.V. Byregowda S/o Venkatappa, 41 years, Vokkaliga, Agriculture, R/o Thotliganahalli, Shidlaghatta Taluk.

I am residing at the above mentioned address and eking out livelihood from agriculture. This day i.e., on 6/8/97 at about 8 AM, myself and my brothers, Nrayanaswamy, Rajanna and Gopalreddy and our workers Marappa went to our land for work. When we were doing our work in our land, at about 9.30 AM, the sons of bacchanna of our village namely (1) Manjunath, (2) Ramegowda (3) Rayappa S/o Narayanappa sons of Bacchanna (4) Ramesh s/o Chikkavenkatarayappa (5) Manjunatha (6) Ramanjanappa (7) Dyavappa S/o Narayanappa (8) Dyavappa S/o Chikka Munishamappa and others formed unlawful assembly and holding deadly weapons in their hands, came to our land and abused myself and my brothers in filthy language and assaulted with weapons. On seeing the Accused persons, my workers and my brothers ran away to escape from the accused persons. I also tried to escape from the Accused, at that time Manjunath forcibly assaulted with iron rod at my head, I fell down and immediately Ramesh assaulted me with sickle

[28] (2000) 6 SCC 671[3 Judge Bench]
[29] 2023 SCC Online SC 1060 [3-Judge Bench]
[30] (1993) 3 SCC 282 [2 Judge Bench]
[31] 2023 SCC OnLine SC 933 [2 Judge Bench]
[32] (2019) 9 SCC 738 [2 Judge Bench]
[33] 2023 SCC OnLine SC 201 [2 Judge Bench]
[34] 2023 SCC OnLine SC 666 [3 Judge Bench]

at my legs, Ramegowda assaulted me with sickle at right leg. Rayappa and others assaulted me with clubs holding in their hands and all over my body. My both hands and legs got dislocated resulting in blood injuries. I also sustained blood injuries. Thereafter, Marappa S/o Anjanappa, B.K. Ramesh Gowda, S/o Krishnappa and Chandrappa S/o Venkate gowda, residents of our village released me from the hands of the Accused and admitted me to Government Hospital, Shidlaghatta for treatment. I request to take legal action against the accused persons who have assaulted me causing grievous injuries and provide protection to us.

Read over and found correct

LTM of T.V. Byregowda"

(Emphasis supplied)

16. It emanates from the testimony of the PW1(The Doctor) and PW19 (The Police Officer) that the dying declaration of the deceased was made in their presence. PW1 stated "When police recorded the statement of the injured. I was present and also endorsed that statement in Ex.P.1 statement now marked, Ex.P.1 (a) is my endorsement and Ex.P.1 (b) is my signature" and PW19 stated "I rushed to the hospital and enquired the injured Byregowda in presence of the doctor and recorded the statement. The statement is marked as Ex. P.1 and my signature is marked Ex. P.1 (b). The Doctor has also signed on the said statement"

17. It further emanates from the record, i.e., the testimony of PW19 that although he signed on the dying declaration made by the deceased, but the cross-examination reveals that he had not himself written the same. It was stated: -

"The contents in Ex. P.1 are not in my handwriting. The said document does not contain the endorsement as who has written the said document."

Further, in his re-examination, he states that-

"The contents in Ex. P1 are in the hand writing of Nataraj, staff of our station. The said statement was taken as stated by the deceased and as told by me. Since the deceased had sustained injury on his right hand also, he was not in a position to sign the same…"

And PW1 stated in regards of the person who recorded the dying declaration as under :-

"I cannot say by name designation of the police person who recorded the statement of the injured. Again our records also do not disclose as to the time of recording of alleged statement of the injured. It is true that, before recording of the alleged statement of injured, neither the police had requested me to writing nor I had permitted them in writing for recording the statement of the injured. It is true when alleged statement of injured was recorded there were many persons around him. It is not true to suggest that on that day the injured was not in a position to give any statement and police did not record his statement at that point of time as stated in Ex. P.1."

18. Well then, who recorded the same?, What was his name?, What was his designation if he was a police personnel? remains unstated by her. Significantly, this witness also does not testify to the correctness or otherwise of the contents thereof. It was testified that at the time of recording of such statement "there were many persons around". Who these persons were, is another aspect that remains unclear. Whether these persons were examined is unknown. The dying declaration was signed by thumb impression by the deceased but, it is not the case of the prosecution that the deceased was illiterate. The Doctor also does not state that the injured was in a condition to sign. Then why the thumb impression, remains a mystery casting a serious doubt about its authenticity or correctness of such declaration.

19. The reason for the non-examination of the scribe, however, does not bear itself. Nowhere has it been stated, either by the trial court or the High Court that scribe could not

be examined for which or what particular reason. In **Sudhakar** (supra) this Court has held that if the original dying declaration is lost and therefore not available, the prosecution could adduce secondary evidence in support thereof. The logical extension of such holding would be that, if the scribe, for reasons beyond control, such as incapacitation or death, would be unavailable, it would be open for the prosecution to take necessary aid of secondary evidence. That not being the case however, such unexplained nonexamination would, as a consequence of the holdings in **Govind Narain** (supra), **Kans Raj** (supra) and **Sudhakar**(supra), render the case to be doubtful if not, land a fatal blow to the prosecution case.

20. It is trite in law that given the nature of a dying declaration, it is required that such statement be free from tutoring, prompting, or not be a product of imagination. But it has emanated from the statement of the Doctor, PW1, that at the time of the dying declaration being made, there were numerous people present near him. In such a case, can it be categorically ruled out that the statement made by the deceased, is free from tutoring or prompting?

21. For finding an answer, we have independently evaluated the testimonies, relevant to adjudication of the present appeal, forming part of record.

21.1 Prosecution has endeavoured to establish the guilt of the accused by way of ocular evidence through the testimonies of numerous independent witnesses.

21.2 PW-2 has not supported the prosecution and despite being declared hostile and cross examined extensively, nothing fruitful, benefitting the prosecution case could be elicited from his testimony. All that he states is that “a group of 50 to 60 persons from the direction of the village approached towards the land. Seeing the same, I went towards the village.” The ladies of the house of the deceased came and informed that the deceased had to be treated in the hospital for he has sustained injuries. He has denied having affixed his thumb impression on the documents prepared by the police and significantly the same has not been proved through any scientific evidence.

21.3 On this issue we also take note of the testimony of PW-9 (mother of the deceased) who only states that in the hospital, the deceased informed her that the “accused persons before the Court” had beaten and wounded him but then this does not in any manner help the prosecution for the same is in the nature of not only hearsay but also not to have been taken note by the police during the course of the investigation and as such appears to be a mere improvement and exaggeration. To similar effect, is the testimony of PW-10 (wife of the deceased). Testimony of PW-11 and PW-12 is of no consequence for they are not witnesses to the occurrence of the incident.

21.4 PW3 stated that a group of 25 to 30 people were proceeding towards the deceased and others, i.e., PW5, PW6, PW7, and PW2, who were working in lands near the village. It is he who had taken the deceased to the hospital. However, in the cross-examination part of his questioning, it comes forth that his recollection of events on the fateful day was vague. He had been examined thrice. It also is revealed that numerous aspects, this witness had not deposed before the investigating authorities. He does state the presence of eucalyptus trees at the place where the deceased was laid. It however does not appear in his testimony as to who laid the accused at that particular spot.

21.5 According to PW4, the brother of the deceased, prior to the date of the incident, on 4th August, 1997 another quarrel had taken place, in regards to the use of a pathway, between PW4 and one Shankarappa. On the fateful day, he has testified that a group of 25 to 30 persons holding weapons such as iron chains, sticks, and sickles came to the

lands where he along with others, were working. He stated that when they returned, after 10 or 15 minutes, having run away out of fear, upon approach by this armed group of persons, others including PW6 were present near the deceased person. He has also testified to the fact of enmity between the accused persons and the family of the deceased. He has stated it to be false that after assaulting his brother, certain persons had dumped him in the land of PW11.

21.6 PW15, in his testimony has stated that upon returning from the eucalyptus plantation he found the accused in an injured state lying towards the southern side of the Plantation Garden. PWs 4 and 5 were present there. With the deceased having been taken to the hospital, this witness returned to the village. He testified that, approximately a week after the incident several recoveries were made and he, being present there signed on various mahazars. In respect of the enmity between the accused and the deceased, he submitted that the same had ended in a compromise.

21.7 Having noted that no other witness has deposed the manner in which they saw the deceased laid on the eucalyptus leaves, similar to the manner as deposed by PW15, the trial court concluded that not much was to be gained from the ocular evidence on record.

21.8 We find that none of these witnesses, eye-witnesses as they may be, to have established beyond reasonable doubt, the guilt of the accused persons. There is a contradiction in testimonies in regard to the number of persons who formed part of the unlawful assembly- one witness testified the presence of 50-60 persons while others testified to the group being of 25-30 persons; there is no clarity as to how the deceased ended up in the lands of PW11 - a material contradiction between two supposed eye-witnesses, PW3 and PW15. PW3 in his Examination in Chief stated that he had signed the mahazar, but, in his cross-examination, it was stated that he was not able to read/write. No reasons stand supplied for his presence at the scene of the incident- neither is he a resident of the village, nor does he have lands in said village. Further, the reasons for him being examined thrice, are left to imagination. Similarities, differences in such statements, if any, have not been brought forth**.** After all, it is also well-settled that a testimony cannot be given value, in isolation. It does not apply to logic that a person who is not a resident of the village would visit the spot only to see as to what is happening, whereas the other close relative(s) have attempted to flee from the scene. We notice that the police had thrice made enquiries from him and recorded his statements. Why is it so? Is left to the imagination. His version that the accused had said “this fellow has come to end now and come let us go” is not recorded in his previous statement in which he was confronted. It has to be read as a whole. It is evident from a bare perusal of the testimony of PW15 that the deceased was seen by him in an already injured state, meaning thereby that he has not actually witnessed the accused persons assaulting the deceased. Therefore, his status as an ocular witness is rendered questionable. PW2 has deposed that he had seen a large group of people approaching from the direction of the village towards the lands where they were and seeing the same, he had proceeded towards the village, i.e., in the opposite direction. PW-4 is the brother of the deceased, but his conduct at best can be described as unusual, or it other words, one that defies logic. Despite being a relative, his act, is that of a stranger, i.e., running away from the dispute; leaving the deceased defenceless; he did not accompany the deceased who was in an injured state to the hospital. After all, immediately preceding the instant occurrence was the altercation involving him, and therefore, if the assailants had any motive- the same would be against him, and none else. Having noticed such conduct, we do not find his testimony worthy of credence.

21.9 We cannot, in our considered view, say that this witness, has deposed the truth. Not only that, when we perused the cross-examination part of the testimony, we found his version to be uninspiring in confidence. He does not remember as to whether the police have carried out an investigation on the spot where his brother was lying. He does not remember the police having visited the village. Does such an unexplained denial render the witness unreliable and unworthy of credit? It appears that the witness was not present on the spot and was introduced by the prosecution with suggestions, in fact, as put to him by the accused.

21.10 We notice that the testimony of PW-5 is on similar lines as that of PW-4. He added that the accused persons came armed and started shouting "catch hold them, and we shall kill them". He also states that seeing the accused all the members of the victim party fled away from the spot, while the deceased was fleeing, and the assailants attacked him with rod, stick and sickle. Significantly, in his cross-examination, he admits several improvements made by him; he does not remember having informed the police of the accused moving towards the village holding the weapons they had brought. In fact, not only is his version self-contradictory but also in contradiction to that of other witnesses. He states that persons other than the assailants were also present and were part of their group. The whereabouts of such persons are undisclosed and, significantly, this witness does not state as to which one of the accused was carrying which weapon and which one of them had actually assaulted or inflicted injuries on the body of the deceased. He admits to having run to a distance of about a furlong and hidden under/behind the trees for about 10 minutes and returned to the spot only after the accused had left the spot and since long.

21.11 PW-19 admits that "on 06.08.1997, the AW2 to 10, 12 to 17 did not inform me as to who assaulted the deceased, where and how. All the said persons were not available for giving statement".

21.12 Having noted the above aspects of the testimonies of the prosecution witnesses we find them to be unreliable, unworthy of credence. The testimonies differ on essential material facts, such as the number of persons, how the accused came to lay where he did, when discovered etc.

22. For an eye-witness to be believed, his evidence, it has been held, should be of sterling quality. It should be capable of being taken at face value. The principle has been discussed in **Rai Sandeep @ Deepu alias Deepu v. State (NCT of Delhi**)[35] as follows-

"22. In our considered opinion, the "sterling witness" should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have corelation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should

[35] (2012) 8 SCC 21 [2 Judge Bench]

consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

(emphasis supplied)

This was quoted with profit by this Court in **Ganesan v State**[36]. Recently, this principle was further reiterated in **Naresh @ Nehru v State of Haryana**[37].

23. As the above discussion would show vis-à-vis the delineation on the qualities of a sterling witness, none of the witnesses of the prosecution would qualify per this standard. Numerous contradictions and inconsistencies have borne from record, rendering such witnesses to be unreliable and undependable so as to place reliance on the same to hold the accused persons guilty of having committed an offence.

24. On circumstantial evidence, the trial court has examined the testimonies of PWs 1-5, 10, 13 and 15. We have, above, discussed PWs 1, 2, 3, and 4 along with 15. We now proceed to discuss PWs 10, and 13, independently. PW5, although classified as a circumstantial witness, a reading of the same suggests the witness to be an eyewitness**.**

24.1 PW10 stated that upon seeing the group of persons, I ran in different directions with him running towards Thadhooru. While there, he heard of his brother (deceased) having sustained various injuries. Pursuant to such information he went to the hospital where he stated that the deceased himself stated that "Manjunath and his henchmen of our village assaulted him" he stated, he never went to the place where the deceased was lying nor could he say who informed him of his brother's injuries. Hence, his statement is the nature of hearsay.

24.2 The circumstances, which are mentioned within the testimonies relied on by the trial court, we find, that they do not, conclusively point to the guilt of all the accused. The following conclusions from the circumstantial evidence on record, support our conclusion- apart from PW15 none of the witnesses relied on, name all accused persons; a group of 25 to 30 people is generally referred to- a general description does not indicate guilt. Secondly, the factum of enmity although repeatedly testified to by numerous witnesses, upon itself cannot thrust upon the accused, the guilt for having killed the deceased person. This view is supported by the fact that the criminal case lodged as a result of the altercation between a brother of the deceased and certain accused persons resulted in their acquittal, as has been noted by the trial court.

24.3 It is true that certain witnesses such as PW4 categorically mentioned certain accused persons holding particular weapons. As a solitary aspect, it can be seen as indicating a particular act done by the accused, aiding the death of the deceased person. However, the medical evidence of PW1 negates that possibility as well. The relevant extract of the testimony is reproduced: –

[36] (2020) 10 SCC 573 [3 Judge Bench]
[37] Criminal Appeal No.1786 Of 2023 [2 Judge Bench]

"I see the clubs at M.O. 3. they are of about 4 feet length and 3 inches in diameter. If a person is assaulted repeatedly by such clubs, he would sustain several abrasions, contusions and lacerations.

When I examined the deceased Byregowda clinically, I did not found any abrasions lacerations of contusions on his back or chest and so also on the abdomen. I did not find any incised injury on the body of the deceased."

24.4 While it may be true that the deceased had died due to injuries sustained, as the above-extracted testimony of PW1 shows, the said injuries could not have been caused as a result of the weapons that the accused persons were allegedly yielding, and the ones that were supposedly recovered at their instance.

24.5 It is on both these counts, we find the circumstantial evidence on record, not to conclusively point towards guilt of the accused persons. We further find the eyewitness testimony to also be rendered questionable, since the weapons, which the accused were holding, and were subsequently recovered at their instance, do not correspond to the injuries found on the body of the deceased, as borne out from the crossexamination of PW1, reproduced supra.

25. The next aspect is the recovery of the alleged weapons, we have noted the particulars thereof while discussing the findings of the Trial Court. Such recoveries were discarded by the trial court stating that the clubs were recovered from a place accessible to the public and, the chopper and the rods were recovered from a house where other persons were also residing which compromises the sanctity of such recovery and takes away from the veracity thereof.

26. Further discovery made, to be one satisfying the requirements of Section 27, Indian Evidence Act it must be a fact that is discovered as a consequence of information received from a person in custody. The conditions have been discussed by the Privy Council in **Pulukuri Kotayya v. King Emperor**[38] and the position was reiterated by this Court in **Mohd. Inayatullah v. State of Maharashtra**[39], in the following terms:-

"12…It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only "so much of the information" as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word "distinctly" means "directly", "indubitably", "strictly", "unmistakably". The word has been advisedly used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery…"

(Emphasis supplied)

27. Prima facie, in the present facts, the 3 conditions above appear to be met. However, the Trial Court held, given that the discoveries made were either from a public place or from an area where other persons also resided, reliance thereupon, could not be made. We find this approach of the trial court to be correct.

[38] 1946 SCC OnLine PC 47
[39] (1976) 1 SCC 828

27.1 This court has, in various judgments, clarified this position. Illustratively, in **Jaikam Khan v. State of U.P**[40] it was observed: –

"One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places, which were accessible to one and all and as such, no reliance could be placed on such recoveries."

(Emphasis supplied)

27.2 Also, in **Nikhil Chandra Mondal v. State of W.B**.[41] the Court held: -

"20. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement of the accused as required under Section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law. However, this circumstance which, in our view, could not have been used, has been employed by the High Court to seek corroboration to the extrajudicial confession."

(Emphasis supplied)

28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places. An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons.

CONCLUSIONS

29. Our conclusions, therefore, are thus:

29.1 The dying declaration, although undoubtedly a substantive piece of evidence upon which reliance can be placed, in the present facts is rendered nugatory as the person who took down such declaration was not examined, nor did the police officer (PW19) endorse the said document with details of who took down the declaration. It is also not clear as to in front of which of the relatives of deceased was the same taken down.

29.2 The circumstantial evidence present on record does not point to the hypothesis of the guilt of the accused persons, for the reasons discussed above.

29.3 None of the eyewitnesses-PWs 2, 3, 15, as referred to by the trial court have succeeded in attributing a particular role to any of the accused persons and equally so, to A-1 to A-5 and A-7, whose acquittals have been overturned by the High Court.

30. In our considered view, the view taken by the Trial Court was a possible view and there being no error in correct and complete appreciation of evidence as also application of law; the High Court, without assigning any cogent reasons ought not to have interfered with such findings.

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[40] (2021) 13 SCC 716
[41] (2023) 6 SCC 605

31. For the aforesaid reasons, the judgment impugned before us in Criminal Appeal Number 1795 of 2004 dated 21 September 2010, is set aside. The appeal is, accordingly, allowed.

32. Having allowed the appeals as above, we are constrained to observe that the Criminal Appeal u/s 378 Code of Criminal Procedure, 1973 the High Court has not appreciated the severity of the allegations involved to the full extent. That a Court of Appeal should be circumspect in overturning its judgment of acquittal, is not a principle that requires reiteration. It has been held time and again that an acquittal will only be overturned in the presence of very compelling reasons.[42] Further, right from the Privy Council[43] onwards, it is been held that the presumption of innocence in favour of the accused is bolstered if the trial court hands down an acquittal.[44] We find the High Court not to have observed the said principles in deciding the appeals. Quite opposite thereto, perfunctory reasons stand recorded to restore the convictions of the Appellants herein. The observations of the trial court along with the principle of a bolstered principle of innocence, were summarily cast aside. The same cannot be said to be in accordance with the law.

33. As a result, the acquittals handed down by judgment and order dated 25th September 2004 in S.C. No. 162 of 1999, passed by the Additional Sessions Judge-Presiding Officer, Fast Track Court-II, Kolar, are restored. The judgment of conviction and sentence, as awarded by the High Court, stands set aside.

34. Since the sentence awarded by the High Court under Section 304 Part II of the IPC was for 4 years, and the application of exemption from surrender was disallowed by this Court, vide order dated 13th December 2010, the Appellants appear to have already served the sentence awarded to them.

35. It is however directed, that the fine made payable by each of the accused, as a result of the impugned judgment be refunded to them. Consequently, bail bonds, if in effectuation, shall stand discharged. The appeal is accordingly, allowed.

36. In view of the above, interlocutory applications, if any, shall stand disposed of.

[42] Tulsiram Kanu v State AIR 1954 SC 1
[43] Sheo Swarup v King Emperor AIR 1934 PC 227(2)
[44] Ghurey Lal v State of U.P. (2008) 10 SCC 450