

**CRIMINAL APPEAL NO.1078 OF 2010**

**SURENDRA BANGALI @ SURENDRA SINGH ROUTELE APPELLANT(S)**

**VERSUS**

**STATE OF JHARKHAND**

**RESPONDENT(S)**

**O R D E R**

Heard Shri Pramod Dayal, learned counsel appearing for the appellant and Shri Anuj Kumar, learned counsel appearing for the State of Jharkhand.

This appeal has been filed against the Division Bench judgment of the High Court dated 30.06.2009 by which the appeal filed by the appellant challenging his conviction under Section 302/34 IPC and Section 27 of the Arms Act has been dismissed. The appellant aggrieved by the judgment has come up in this appeal.

The prosecution case, in brief, is that on 23.07.1988 at 9.15 pm informant Prem Kumar lodged a first information report before Police Station Kotwali, Ranchi to the effect that while the informant and his maternal

uncle Mahesh Pandey were at their residence when their neighbour Sudhir Ganjhu came on a scooter and called the deceased. The deceased went to a culvert near the said Cinema and gossiped. Informant also came out of the house and went near Betal Gumti. Meanwhile, appellant arrived at the site on Hero Honda motorcycle driven by Deepak Deb. Stopping the motorcycle the appellant fired two shots at the Mahesh Pandey due to which Mahesh Pandey fell down and assailant fled towards Court on motorcycle. Mahesh Pandey was taken to R.M.C.H. Ranchi for treatment and at 11 p.m. the Judicial Magistrate, Ranchi recorded his dying declaration in the presence of doctor. Mahesh Pandey died and postmortem was conducted by PW.3-Dr. Ajit Kumar Choudhary on 25.07.1988. The appellant faced the trial. The prosecution examined six witnesses whereas no witness was examined on behalf of the defence. The 7th Additional Judicial Commissioner, Ranchi by judgment dated 28.05.1999 convicted and sentenced the appellant under Section 302 IPC and Section 27 of the Arms Act.

Shri Pramod Dayal, learned counsel appearing for the appellant submits that the conviction is solely based on the dying declaration of the deceased which finds no corroboration. He further submits that the doctor's certificate was not there at the time of recording the dying declaration hence without there being certificate of doctor the dying declaration could not have been

relied. He further submits that PW.1, the mother of the deceased as well as PW.2, the sister of the deceased have not supported the prosecution case due to which the Court ought to have been very careful in considering the dying declaration. He further submits that PW.6-10 has stated that injured was not in a position to give any statement hence the dying declaration was not to be relied by Court for convicting the appellant.

Learned counsel appearing for the State refuting the submissions of learned counsel for the appellant contends that even the statement of mother has proved the incident of firing. She has also signed the dying declaration which proves her presence in the hospital. Learned counsel further submits that Courts did not commit any error in relying on the dying declaration for convicting the appellant. It is submitted that it is well settled that doctor's certificate is not mandatory for relying on the dying declaration and Court can consider and rely on a dying declaration even if there is no doctor's certificate.

We have considered the submissions of learned counsel for the parties and have perused the record.

The incident took place at about 9 p.m. and the first information report was immediately lodged at 9.15

pm. The injured-Mahesh Pandey was immediately taken to R.M.C.H., Ranchi where the Judicial Magistrate was requisitioned for recording the dying declaration. The dying declaration of the deceased was recorded at 11 pm on the same day. In the dying declaration the deceased had categorically stated that appellant has fired on him at 9 pm. He also stated that his mother was present. Further he stated that appellant had fired four shots. The dying declaration also contains the L.T.I. of Rampati, the mother of deceased as well as signature of Dr. D.P. Bhandari. The Judicial Magistrate who recorded the statement was examined by the prosecution as PW.5. In his statement, he stated that dying declaration was recorded by him in presence of Dr. D.P. Bhandari of R.M.C.H., Ranchi and Most. Rampati. He further stated that Dr. D.P. Bhandari has also put his signatures in his presence as well as Most. Rampati. In his cross-examination although he stated that no such certificate was given by doctor that Mahesh Pandey was in a fit state of mind to give statement but he stated that doctor had orally told him that Mahesh Pandey would be able to give statement.

As far as the receiving gun shots by the deceased, the same was also stated by PW.1, the mother of the deceased. The postmortem report clearly mentioned the firearm injuries. The manner of incident, as stated by

deceased in his dying declaration, is fully corroborated by the medical report.

Learned counsel for the appellant has referred to the Constitution Bench judgment of this Court in Laxman vs. State of Maharashtra (2002) 6 SCC 710. The Constitution Bench clearly held that mere absence of doctor's certification as to the fitness of the declarant's state of mind would not ipso facto render the dying declaration unacceptable. It was further held that evidentiary value of such a declaration would depend on the facts and circumstances of the particular case. In the present case Judicial Magistrate, who has appeared in the witness box, has proved the dying declaration and looking to the facts and circumstances especially the presence of doctor who had signed the dying declaration and who had told the Judicial Magistrate that the injured was in a fit condition to give statement, we see no reason to take any contrary view to one which has been taken by learned Trial Court as well as the High Court. The High Court in paragraph 24 while dealing with the evidence of PW.5 has stated as follows:

"24. P.W.5 - Shri S.C. Prasad, the Judicial Magistrate, stated in his evidence that on 23.07.1988, he recorded the dying declaration of Mahesh Pandey at Rajendra Medical College and Hospital, Ranchi at 11:00 pm. The dying declaration which is in few sentences, are quoted here-in-below:-

In cross examination, the Judicial Magistrate

stated that he did not know Mahesh Pandey from before. The victim was identified by the Doctor. The Doctor stated before him that Mahesh Pandey was in a position to make statement.

The dying declaration not only contains the certificate of the Judicial Magistrate certifying that the statements made by the declarant was voluntary but it also contains the signature of the Doctor D.P. Bhandari and Most. Rampati Devi (P.W.1). However, Dr. D.P. Bhandari in spite of best efforts, could not be examined since he left Ranchi as has been stated by the Investigating Officer P.W.6 Arun Kumar Singh in his evidence."

Learned counsel for the appellant referring to the statement of IO PW.6 contends that IO has stated that injured was not in a fit position to record his statement. In paragraph 7 of the statement of IO on which reliance has been placed by learned counsel for the appellant IO has stated that he proceeded towards the place of occurrence at 11 pm. He further states that when he reached the P.O. he was informed by the informant that injured was taken to R.M.C.H., Ranchi. In paragraph 8 which has also been relied by the counsel for the appellant, IO stated following:

"8. I started for RMCH from P.O. at 24 hrs. in the night. At 00.10 hrs. I reached RMCH. There I met R.P. Singh S.I.. He told me that the dying declaration of the injured has been recorded. I took the statement of Dr. D.P. Bhandari. In his statement he told me that when Judicial Magistrate was recording the dying declaration of injured Mahesh Pandey then he was fully conscious and in a fit condition to give his statement and gave his statement. Doctor told him that they were trying to save the life of the injured. I took the statement of Rampati Devi and

(mother) Tanuja Kumari (sister) in the hospital. Thereafter I returned to the Police Station. Next day in the morning I went to the P.O. at 9 A.M. There I took the statement of witness Dina Ram and Binod Sahu. At 12 P.M. in the afternoon left for court. Reached court at 12.20 P.M. and furnished the relevant records and entered the dying declaration in the diary."

The above statement of IO is categorical that when he reached at 12 pm in the hospital, he met to Dr. R.P. Singh, who told that dying declaration of injured has also been recorded. Thus with regard to state of mind of injured, the statement of IO was wholly irrelevant. Rather the statement of IO was that he took the statement of Dr. D.P. Bhandari, who told that when the Judicial Magistrate was recording the dying declaration of injured, he was fully conscious and was in a fit condition to give his statement. The statement of IO thus in no manner support the submission of learned counsel for the appellant rather the statement of IO was that it was Dr. Bhandari who told that injured was in a fit condition to give statement. We, thus, do not find any error in the judgment of the Trial Court as well as the High Court in convicting the appellant relying on the dying declaration of the deceased which was promptly recorded and has been proved to be genuine.

In view of the above, we do not find any merit in the appeal. The appeal is dismissed.

Learned counsel for the appellant submits that he has already filed a writ petition in the High Court seeking remission. We make it clear that dismissal of this appeal shall have no bearing on the writ petition, which is pending in the High Court.

.....J.  
(ASHOK BHUSHAN)

.....J.  
(AJAY RASTOGI)

New Delhi;  
February 04, 2021



ITEM NO.102

Court 7 (Video Conferencing)

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1078/2010

SURENDRA BANGALI @ SURENDRA SINGH ROUTELE

Appellant(s)

VERSUS

STATE OF JHARKHAND

Respondent(s)

Date : 04-02-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN  
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. Pramod Dayal, AOR  
Mr. S.P. Mehta, Adv.  
Mr. Nikunj Dayal, Adv.  
Mr. Rakesh Kumar, Adv.

For Respondent(s)

Mr. Anuj Kumar, Adv.  
Mr. Abhishek, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)  
COURT MASTER (SH)

(DIPTI KHURANA)  
COURT MASTER (NSH)

(signed order is placed on the file)