IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 741 OF 2021
ALONGWITH
INTERIM APPLICATION NO. 3585 OF 2025
IN
CRIMINAL APPEAL NO. 741 OF 2021

Doli Ledha Ravidas
Age : 35 Years, Occ.: Nil.
R/o. Utsav Hotel, Ashok Nagar,
Kalyan Road, Bhiwandi,
Dist. : Thane. …Appellant

Versus

The State Of Maharashtra
Through Shanti Nagar Police
Station, Dist. : Thane …Respondent

Dr. Uday P. Warunjikar a/w Ms. Sonali R. Chavan for the Appellant.
Dr. Dhanlakshmi S. Krishnaiyer APP for the Respondent/State.

CORAM: MANISH PITALE &
SHREERAM V. SHIRSAT, JJ.

RESERVED ON: 8th JANUARY 2026.
PRONOUNCED ON : 27th JANUARY 2026.

JUDGMENT *(Per : SHREERAM V. SHIRSAT, J.)*

1. The present Appeal has been filed challenging the impugned Judgment and Order dated 31/3/2021, passed by the District Judge and Sessions Court, at Thane in Sessions Case No 277/2017, whereby the Appellant has been convicted for the offence punishable under Section 302 IPC and he has been sentenced to undergo

imprisonment for life and to pay fine of Rs.1000/- and in default to suffer S.I. for one month.

2. Brief facts of the prosecution's case are as under:

a. It is the case of the prosecution that informant is working as waiter at Bhiwandi and his elder brother Vasudev worked in a Textile factory, at Sonale. It is further the case of the prosecution that the deceased Vasudev was unmarried and was staying alone. It is further the case that prior to 10 years Accused Doli Ravidas, a person from the village of informant came to Sonale with his wife and children. Deceased Vasudev was staying with family of Accused. It is the case of the prosecution that the Accused went to his native place at Jharkhand by leaving his wife and children at Bhadwad. It is the case that there were illicit relations between Deceased Vasudev and wife of the Accused. It is further the case that since Doli came to know about the said relation there used to occur quarrel between the Accused and Deceased Vasudev and therefore deceased Vasudev started staying separately.

b. It is further the case of the prosecution that on 13/01/2017 at about 7.30 p.m. the brother of the deceased went to see deceased Vasudev at Five Textiles as he was aware about the night duty of deceased Vasudev at 8.00 p.m and was waiting for him on the road outside the factory. It is further the case that after about 7.30 p.m, he heard shouts of deceased Vasudev from ground and hence he ran towards him. He found deceased Vasudev had fallen down on the ground and Accused was seen running away towards Adivasi pada. When the brother of the deceased asked deceased Vasudev as to what happened to him Vasudev told him that Accused Doli assaulted him in stomach with knife. It is the case that deceased Vasudev had sustained bleeding injuries. Thereafter, other people gathered at the spot and in short time deceased Vasudev became unconscious. It is further the case that police came to the spot and Vasudev was taken to IGM hospital where he was declared dead. The brother of the Accused/Informant lodged complaint against the Accused Doli committing murder of his brother Vasudev. On the basis of said information on

14/1/2017 offence came to be registered vide C.R. No. I-08/2017 with Shantinagar Police Station.

c. Investigation into the said crime was conducted. After concluding investigation chargesheet came to be filed before JMFC, Bhiwandi. Since offence punishable under section 302 IPC is triable by Court of Sessions, case was committed for trial to the said Court.

3. Charge was framed against accused under section 302 of the IPC. The Appellant denied the charge and claimed to be tried.

4. Prosecution examined following witnesses in support of the case.

1. P.W. 1 – Ramesh Tukaram Salvi, Panch witness
2. P.W. 2 - Shamshad Ahmed Ansari, owner of the hotel
3. P.W. 3 – Kiran Nanji Ghavari, Panch witness
4. P.W. 4 – Ranjeet Jageshwar Das, Brother of the deceased
5. P.W. 5 – Umedsingh Khyatsingh Rawat, Manager
6. P.W. 6 – Ashfak Abdul Kayyum Ansari, Panch witness
7. P.W. 7 – Ramrao Tryambak Dikhale, IO
8. P.W. 8 – Dr. Avinashkumar Dhanawade
9. P.W. 9 – Dr. Jayshree Sanjya Mhaske

5. After examining the prosecution witnesses, the statement of the Accused- Appellant came to be recorded. The Appellant did not examine any defence witness. After hearing the arguments and after considering the evidence on record, the trial court was pleased to convict the Appellant for the offence punishable under section 302 of the IPC and sentenced to imprisonment for life and to pay fine of Rs.1000/- and in default to suffer S.I for one month.

6. The Appellant has preferred the present appeal challenging the impugned judgment and order dated 31/3/2021.

7. We have heard Ld. Counsel Shri Uday Warunjikar for the Appellant and APP Dr. Dhanalaxmi Krishna Iyer for the State.

8. The Ld. Counsel for the Appellant has submitted that the evidence that has been brought on record is not sufficient to convict the accused/ appellant and the trial court has erred in convicting the appellant. The Ld. Counsel has submitted that the trial court has disbelieved the recovery of knife as it was sent to the CA in an open condition and therefore there is nothing to connect the Appellant to the crime in question. The Ld. Counsel has submitted that PW 2 has stated that he had seen the quarrel between two persons at 8 to 8:30 at a place behind the company and that the timing did not match

with the timing as stated by PW 4 who has stated that it was around 7:30 that PW 4 heard about the quarrel and that too from the place which was at the side of the company. He has further submitted that PW 4, mentions about the enmity between the deceased and the Appellant regarding illicit relationship with the wife of the Appellant, however, the wife of the Appellant has not been examined and therefore the motive also cannot be said to be conclusively established. He has further submitted that there was no street light and therefore it is difficult to believe that the PW4 or for that matter even PW 2 could have seen the Appellant or anyone at that time. The Ld. Counsel has further submitted that the Appellant has given a probable explanation with respect to the injuries which were found on his person and submitted that the Accused has not to prove his defence beyond reasonable doubt but on preponderance of probability. He has further submitted that as far as the result of the chemical analysis is concerned, the same is not of any avail to prove the prosecution case as no blood was detected on the shirt of the accused and the blood stains found on the pant of the Accused/Appellant is inconclusive. He has further argued that the Doctor who examined the appellant has deposed that the injuries caused to the Appellant are possible by more than one person and it

is possible by other reason than assault. The Ld. Counsel therefore, submitted that the only material connecting the Appellant is the dying declaration which is suspicious and should not be acted without corroborative evidence and therefore has urged that the Appellant deserves to be acquitted.

9. Per contra, the public prosecutor has submitted that the prosecution has proved the case beyond reasonable doubt. She has submitted that the evidence of PW 4 with respect to dying declaration and identification is crucial and that itself is sufficient to prove the case of the prosecution. She has submitted that nothing has been brought up by the defence in cross examination to disregard the testimony regarding the dying declaration. The Ld. APP has further submitted that the dying declaration appears to be true and free from any embellishment, and therefore, such a dying declaration by itself is sufficient for recording conviction, even without looking for corroboration. She has further submitted that the testimony of PW4 falls into the category of wholly reliable witness and therefore the trial court has rightly convicted the applicant after taking into consideration the cogent evidence that has surfaced on record and prayed that the conviction be confirmed.

10. Considering the arguments raised, it will therefore, be necessary to suitably analyze the deposition of the material witnesses and to see whether on re-appreciation of evidence led before the Sessions Court, the judgement recording conviction of the Appellant for offence and the section 302 of the IPC is proper and maintainable.

Analysis of the Evidence:

11. PW 1, Ramesh Tukaram Salvi is the Panch witness and he has stated that in 2017, he was working as a Mukadam at Bhiwandi Mahanagar Palika. He has stated that on 14 January 2017, his superior Subhash Zhalke informed him to attend the police station and accordingly at 11:45 am he attended the police station. He has further submitted that he along with another panch witness, Kiran Gowri were taken to the spot of incident at Village Sonale Bhavdhad Siddhivinayak compound and in their presence, the blood mixed with earth was taken and sealed, and Panchama was prepared. The spot Panchnama was exhibited as exhibit 21.

12. PW 2, Shamshd Ahmed Shaikh, is the owner of the hotel by name Shrikant Hotel, which is situated at Bhadwad near Adivasi Pada for last 4 to 5 years. He has deposed that he knows the deceased Vasudev as he was his regular customer, and he was working in the

company. He has deposed that on 13/1/ 2017, he opened the hotel at regular time and at 6 pm he had been to market and came back at about 8 to 8:30 PM. He further deposed that he noticed at the place behind the company, there was a quarrel between two persons and thereafter he saw Vasudev fell on the ground and other person ran away. He has further deposed that when he went near the deceased Vasudev, he saw that he had sustained injury to his stomach by knife and other people also gathered there at the same time. In the cross-examination, this witness has stated that it was not dark at the spot at the time of incident but has stated that there were no street lights. He has further deposed that the company duty hours are from 7 AM to 7 PM. Further in the cross he has said that it is correct to say that he did not see anybody running away from the spot.

13. PW No 3, Kiran Nanaji Gari, is the Panch witness for recovery of knife at the instance of the Appellant. He has deposed that on 14/1/2017, he was called by Shanti Nagar police station along with PW 1 Ramesh Salvi and had requested to act as a panch. He has further deposed that the applicant had made a statement that the accused wants to show the place where he had hidden the knife which he had used in the commission of the offence. He has further deposed that the accused led the police along with them i.e the

Panchas to Village Sonale and from beneath a stone he removed a knife which was having handle of blue colour and that the said knife was taken charge of under a Panchnama and the panchas had signed on it. He identified the knife in the court and also identified the Accused.

14. PW4, Ranjeet Jageshwar Das, is the younger brother of the deceased. He has deposed that he was working as a waiter in Hotel Utsav since last nine years and that the deceased was his real brother, who was residing at Village Sonale and was working in a textile company. He has deposed that accused was residing in the same village and he knows the Accused. He has further deposed that his brother Vasudev was residing with the family of the Accused. He has deposed that the Accused had been to his native place, and when he returned, he realized that the accused was having an affair with his wife and therefore the deceased had started residing separately. He has further deposed that on 13/1/2017, the deceased had his night duty and at around 7 PM and he was waiting for him near the company. He has deposed that after 7:30 pm he heard shouts of quarrel from the side of a company, and therefore he rushed to the spot. He saw that his brother was lying on the ground and when he asked him as to what had happened, the deceased replied that the

accused had assaulted him by means of knife. He has further deposed that he raised alarm and the people around there gathered and he saw the Accused fleeing away from the said spot, from a distance of around 10 feet. Thereafter, police arrived and took the deceased to the hospital who was declared dead before he could be admitted to the hospital. He has deposed that he lodged a complaint with the police. He has further deposed that his statement before the magistrate was also recorded.

15. PW5, Umesh Singh Khaat Singh Rawat is the manager where the deceased was working. He has deposed that the workers used to work from 8 AM to 8 PM and four workers were working from 8 PM to 8 AM. He has further deposed that 13/1/2017 at 8 PM, one Pradeep bhai called him on phone and informed that deceased was assaulted at the backside of the factory, and therefore instructed Mukadam Dutta Beedkar to take Vasudev to Hospital.

16. PW 6, Ashfaq Abdul Qayyum Ansari is the Panch witness to the recovery of clothes of the Accused. He has deposed that on 14/1/2017, he was called to Shanti Nagar Police Station at about 5 to 5:30 PM. He has deposed that one accused was there in the police station and his name was Ravi Das. He has further deposed that the clothes i.e shirt and pant of the accused were seized in his presence

and that there were blood stains on the pant of the accused. He has deposed that the clothes of the accused were sealed and signature was obtained. He has also deposed that the accused had injury to his right hand finger.

17. PW7, Ramrao Dekhle is the investigating officer who has collected the Earth samples mixed with blood, drawn the sketch of the spot, arrested the appellant. He has further deposed that he noticed that there were injuries on the person of the accused. He has taken charge of the clothes of the accused and noticed that there were blood stains on the pant of the accused. He has further deposed that he had called the Panchas after the accused had made a voluntary statement to show the place where he had hidden the knife which was used in the commission of the offence.

18. PW8, Dr. Avinash Dhande, is the doctor, who has examined the accused for the injuries sustained by him. He has deposed that he examined the accused and found 10 injuries on his persons which are as follows

i) Abrasion over right chest region below clavicle 3 X 1 cm.

ii) Abrasion over right arm medial aspect 3 x 1 cm.

iii) Contusion over right arm posturer aspect 2 and ½ x 1 cm. (redness of skin).

iv) Contusion over right intra scapular region 3 and ½ cm. X 2 cm. (redness of skin.).
v) Contusion over super scapular region 6 cm. X 1 cm (redness of skin).

vi) Abrasion over left side of neck 1 x 1 cm.

vii) Abrasion over right wrist joint ½ x ½ cm.

viii) Incised wound over right index finger 2 x 1/4 cm. x muscle deed

ix) Incised wound over right middle finger 1 cm x 1/4 cm x muscle deep.

x) Abrasion over right forearm 5 x 1 cm.

19. This witness has deposed that all these injuries were simple in nature and the age of injuries was within 12 hours. He has further deposed that injury number 1 to 7 and 10 were due to hard and blunt object and injuries number 8 and 9 were due to hard and sharp weapon. He has further deposed that abrasions are possible by fall and injury numbers 8 and 9 are possible with laying off hand on sharp and hard object. He has further deposed that injuries at serial numbers 8 and 9 are also possible during the course of assault by sharp object. He has also placed on record the injury certificate which has been marked as exhibit 60.

20. PW9 Jayashree Sanjay Maske is the medical officer attached to Indira Gandhi Memorial Hospital Bhiwandi. She has deposed that she received a letter from Shanti Nagar Police Station, along with knife seeking opinion about possibility of causing of injuries to the

deceased with the said weapon. She has deposed that after verifying the weapon and post-mortem notes, she has opined that injuries mentioned in column 17 are possible with weapon sent by the police for opinion. In the cross-examination she has deposed that that it is possible that injuries mentioned in column 17 could be caused by more than one person and injury number 4 and 5 from column number 17 are grievous. She also produced on record the post-mortem report which was marked as exhibit 65. The cause of death was due to hemorrhage shocked due to injury to vital organs by hard and sharp object. In the cross examination the witness has admitted that she had received the weapon for obtaining opinion and it was in open condition.

21. The Ld. Counsel for the Appellant has relied upon the following judgment in support of her submissions:

Arvind Singh vs. State of Bihar, 2001 SCC OnLine SC 697

> *"20 Dying declarations shall have to be dealt with care and caution and corroboration thereof though not essential as such, but is otherwise expedient to have the same in order to strengthen the evidentiary value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of such a statement as trustworthy evidence…"*

22. The Ld. APP has relied upon the following judgments in support

of her contentions

(i) ***Uttam vs. The State of Maharashtra***[1]

(ii) ***The State of Madhya Pradesh vs. Ramjan Khan & Ors.***[2]

(iii) ***Manjunath & Ors. Vs. State of Karnataka***[3]**.**

In Uttam vs. The State of Maharashtra, the Hon'ble Apex Court has observed as under **:**

> *11. Dying declaration is the last statement that is made by a person as to the cause of his imminent death or the circumstances that had resulted in that situation, at a stage when the declarant is conscious of the fact that there are virtually nil chances of his survival. On an assumption that at such a critical stage, a person would be expected to speak the truth, courts have attached great value to the veracity of such a statement. Section 32 of the Indian Evidence Act, 187213 states that when a statement is made by a person as to the cause of death, or as to any of the circumstances which resulted in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing made by the deceased victim to the witness, is a relevant fact and is admissible in evidence. It is noteworthy that the said provision is an exception to the general rule contained in* ***Section 60*** *the* ***Evidence Act*** *that 'hearsay evidence is inadmissible' and only when such an evidence is direct and is validated through cross-examination, is it considered to be trustworthy.*
>
> *"12. In* ***Kundula Bala Subrahmanyam and Another v. State of Andhra Pradesh*** *, this Court had highlighted the significance of a dying declaration in the following words :*
>
> *"18. Section 32(1) of the Evidence Act is an exception to the general rule that hearsay evidence is not admissible evidence and unless evidence is tested by cross-examination, it is not creditworthy. Under Section 32, when a statement is made by a person, as to the cause of death or as to any of the circumstances which result in his death, in cases in which the cause of that person's death comes into question, such a statement, oral or in writing, made by the deceased to the witness is a relevant fact and is admissible in evidence. The statement made by the deceased, called the dying declaration, falls in that category provided it has*

1 Criminal Appeal No. 485 of 2012

2 Criminal Appeal No. 2129 of 2014.

3 2023 SCC OnLine SC 1421

been made by the deceased while in a fit mental condition. A dying declaration made by person on the verge of his death has a special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. The shadow of impending death is by itself the guarantee of the truth of the statement made by the deceased regarding the causes or circumstances leading to his death. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the deceased victim. Once the statement of the dying person and the evidence of the witnesses testifying to the same passes the test of careful scrutiny of the courts, it becomes a very important and a reliable piece of evidence and if the court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without looking for any corroboration……."

"13. In ***Shudhakar v. State of Madhya Pradesh****, this Court had opined that once a dying declaration is found to be reliable, it can form the basis of conviction and made the following observations : The "dying declaration" is the last statement made by a person at a stage when he is in serious apprehension of his death and expects no chances of his survival. At such time, it is expected that a person will speak the truth and only the truth. Normally in such situations the courts attach the intrinsic value of truthfulness to such statement. Once such statement has been made voluntarily, it is reliable and is not an attempt by the deceased to cover up the truth or falsely implicate a person, then the courts can safely rely on such dying declaration and it can form the basis of conviction. More so, where the version given by the deceased as dying declaration is supported and corroborated by other prosecution evidence, there is no reason for the courts to doubt the truthfulness of such dying declaration."*

"14. In ***Paniben (Smt.) v. State of Gujarat*** *on examining the entire conspectus of the law on the principles governing dying declaration, this Court had concluded thus :*

*"18. …….. (i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (****Munnu Raja v. State of M.P.17*** *)*

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (****State of U.P. v. Ram Sagar Yadav18*** *;* ***Ramawati Devi v. State of Bihar19*** *)…*

….

In ***Lakhan v State of Madhya Pradesh***

"10. This Court has considered time and again the relevance/probative value of dying declarations recorded under different situations and also in cases where more than one dying declaration has been recorded. The law is that if the court is

satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration. It is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. When a dying declaration is suspicious, it should not be relied upon without having corroborative evidence. The court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased must be in a fit state of mind to make the declaration and must identify the assailants. Merely 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. If the dying declaration suffers from some infirmity, it cannot alone form the basis of conviction. Where the prosecution version differs from the version given in the dying declaration, the said declaration cannot be acted upon."

*"24. The principles governing the circumstances where the courts can accept a dying declaration without corroboration, have been dealt with extensively in **Khushal Rao** (supra) and for ready reference, reproduced as under :*

*"16. On a review of the relevant provisions of the **Evidence Act** and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated, had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart*

from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties."

The State of Madhya Pradesh vs. Ramjan Khan & Ors.,

"26. Now, the surviving question is only whether the prosecution had succeeded in establishing conclusively beyond any reasonable doubt that the culprits for the murder of Naseem Khan, are the respondents herein as held by the trial Court or whether they are entitled to the benefit of doubt and consequential acquittal as held by the High Court. In the decision in ***Anil Phukan v. State of Assam****, this Court held that conviction could be based on testimony of a single witness provided his testimony is found reliable and inspires confidence.*

In Manjunath & Ors. Vs. State of Karnataka, 2023

"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****) 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 co- relation 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 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."*

23. A reference can be made to the judgment of the Apex Court in the case of ***Bhajju alias Karan Singh vs. State of Madhya Pradesh, (2012) 4 SCC 327*** wherein it has been observed as under :-

> *"23. The "dying declaration" essentially means the statement made by a person as to the cause of his death or as to the circumstances of the transaction resulting into his death. The admissibility of the dying declaration is based on the principle that the sense of impending death produces in a man's mind, the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon the consideration that the declaration was made in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to file a false suit is silenced in the mind and the person deposing is induced by the most powerful considerations to speak the truth.*

24. There are several contentions which have been raised by the Ld. Counsel for the Appellant in order to make an attempt to establish that the conviction is not sustainable. The thrust and emphasis of the argument is on the ground that the dying declaration, which is an oral dying declaration, made to the first informant PW 4 is suspicious. He has submitted that if the dying declaration is omitted from consideration, then there is no other material to connect the Appellant to the crime in question.

25. In the judgment relied upon by the Appellant in the case of ***Arvind Singh vs. State of Bihar,*** (supra) there is no doubt about the proposition of law that the dying declaration shall have to be dealt with care and caution and is expedient to have corroboration in order to strengthen the evidentiary value of the declaration, however it may not be possible at all times to have corroboration in cases where the dying declaration is made in a situation where the condition of the victim is such that there is hardly any time to find any corroboration, before he or she succumbs. Therefore, in such situations the courts have to meticulously and cautiously analyse the evidence to whom the dying declaration is made and then come a conclusion whether the witness is believable or not and whether it inspires confidence.

26. It will therefore have to be seen whether the oral dying declaration made to the informant inspires confidence and whether the conviction can be sustained solely on the basis of dying declaration without any corroboration.

27. PW 4 is the first informant to whom the deceased has made the dying declaration, has stated as under. The relevant portion is reproduced here in below…..

> दिनांक १३.०१.२०१७ रोजी वासुदेव हयाची नाईट ड्युटी होती सुमारे ७.०० वाजता मी त्यांच्या कंपनीजवळ गेलो होतो व त्याची

वाट पाहात होतो सुमारे ७.३० नंतर कंपनीच्या बाजुला असलेल्या मोकळ्या जागेतुन आवाज **आला. मी आवाजाच्या दिशेने धावत गेलो. मी माझा भाऊ** वासुदेव **तेथे पडलेला पाहिला. मी** त्याला काय **झाले** असे विचारले त्याने मला **दोलीने** चाकूने मारल्याचे **सांगितले**. त्यानंतर मी आरडाओरडा केला. त्यानंतर आजूबाजूचे लोक तेथे **गोळा झाले. त्यावेळी** मी **दो**लीला पळून जाताना पाहिले मी सुमारे दहा **फुटावरुन** त्याला **पाहिले. गोळा** झालेल्या लोकापैकी काही लोक दोलीच्या मागे त्याला पकडण्यासाठी **पळाले**. फोन केल्यानंतर पोलिस घटनास्थळी आले. पोलिसांसोबत मी वासुदेवला **इंदिरा** गांधी हॉस्पिटलला घेऊन गेलो. हॉस्पीटलमध्ये दाखल करण्यापूर्वीचे त्याचा मृत्यु झाला. घटनेबाबत मी पोलिसांना फिर्याद दिली. आता मला दिनांक १४.१.२०१७ चा जबाब दाखविला. त्यावर माझी सही आहे.

28. Therefore, what evidence has come on record in the nature of deposition of PW4 is very lucid and clear and the first informant/PW4 has stated that when he asked the deceased as to what had happened, he had in no uncertain terms, replied that he was assaulted by Doli. There is no ambiguity of whatsoever nature in the said deposition. It will also be pertinent to note that there is nothing brought on record by way of cross-examination or any other evidence to discredit the said witness on this aspect. PW 4 has also stated that his statement was recorded before the magistrate which is a statement recorded under section 164 of Cr. PC. However, there is no cross-examination even referring to the statement under section 164 Cr.PC. This Court had asked the Court Associate of this Court to open the statement recorded under section 164 Cr.PC, which was in a sealed envelope.

After opening the same, it was placed before the court for perusal. Having perused the same, this court finds that there is complete corroboration to what PW4 has deposed in his deposition before the trial Court. Surprisingly there is no cross-examination. Thus there is nothing to dis-believe the evidence of PW 4 and this witness appears to be of sterling quality.

29. This court finds that the dying declaration is true and free from any embellishment. There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration and if the court is satisfied, the declaration is true and voluntary, it can base conviction on it without corroboration. In the present case that deceased had an opportunity to identify the Appellant and without any loss of time, voluntarily, had at the first instance what is called as "Rule of First Opportunity", informed PW 4 upon being asked by PW4 as to what had happened. There is nothing on record to come to conclusion or harbor a reasonable suspicion or doubt that the deceased could have been tutored. The suggestion put to PW4 that the deceased was not in condition to make any statement is also denied by PW4.

30. The motive also plays an important role and the evidence on record shows that the Appellant has a motive to commit the murder of the deceased. There is no reason otherwise for the deceased who is on the deathbed in that ephemeral moment to falsely and maliciously accuse the present Appellant unless he is the one who has assaulted him. The basic premise is *nemo moritus praesumitur mentire* i.e man will not meet his maker with a lie in his mouth is the reason in law to accept the veracity of such statement.

31. It was tried to be brought on record in the cross-examination of PW 2 and 5 that there was no street light and therefore, it was submitted that in absence of any street light the Appellant could not have been seen running away. However, if the cross examination of PW 2 is perused, although it is stated that there is no street light, PW2 has categorically answered in the cross-examination that it is not correct to say that it was dark at the spot at the time of incident and therefore that though there was no street light but not dark either, is sufficient material to come to a conclusion that the PW 4 had seen the appellant running away.

32. It has come in the evidence of the investigating officer that he had noticed injuries on the person of the appellant. The explanation which was tried to be given in the statement recorded under Section

313 of Cr. P.C. was that the accused-appellant was working in a loom factory and the accused had caught a running loom, which caused incise wounds to the Appellant, so also the other workers tried to pull him out which caused further abrasions to his body. The said explanation offered by the Appellant does not stand to reason and logic considering the other evidence that has come on record. PW5 has answered in cross examination that on 13/1/1 2016, there was no work in the factory in the day shift and due to power cut on Friday, working was not done. Considering the nature of the injuries which are found on the person of the accused, it is difficult to countenance the version of the accused that such injuries could be caused by the explanation which is tried to be given about handling of running loom and of pulling of the Appellant by other co-workers. Further the PW 8 in the cross examination has categorically deposed that injury at serial numbers 8 and 9 are also possible during the course of assault by sharp object and that the age of injuries was within 12 hours. The irresistible conclusion that can be drawn is that there was a scuffle between the Appellant and the deceased during which the accused has suffered the injuries. The defence taken by the accused- appellant therefore crumbles like a pack of cards. Although it is true that the Accused has not to prove his defence beyond

reasonable doubt but on preponderance of probability, still the explanation offered has to be palatable and not just any unreasonable and incredulous explanation. The defence taken by the Appellant is improbable and therefore cannot be believed.

33. Further, although the recovery of knife is not believed by the trial court due to the reason that when the weapon was sent to the medical officer for opinion on 2/2/2017, was not in a sealed condition. However, fact remains that it was recovered at the instance of the accused-appellant. The issue which was raised by the Ld. Counsel for the Appellant that the recovery otherwise also cannot be relied upon as the same was from an open place accessible to all.

34. Although the recovery here is eclipsed by the fact that it was not sent in a sealed condition, however it will have to be seen whether the recovery perse can be said to be believable, albeit from an open place or whether in such circumstances where the recovery though from an open place and outside the visibility of others can be said to be a recovery in terms of section 27 of the Indian Evidence Act.

35. A profitable reference can be made to the following judgments

State of Himachal Pradesh vs. Jeet Singh (1999) 4 Supreme Court Cases 370

"26. There is nothing in Section 27 of the Evidence Act which renders the

statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others. It would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For Example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows were it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others."

John Pandian vs. State Represented By Inspector of Police (2010) 14 Supreme Court Cases 129

"57. It was then urged by the learned counsel that this was an open place and anybody could have planted veechu aruval. That appears to be a very remote possibility. Nobody can simply produce a veechu aruval planted under the thorny bush. The discovery appears to be credible. It has been accepted by both the Courts below and we find no reason to discard it. This is apart from the fact that this weapon was sent to the Forensic Science Laboratory (FSL) and it has been found stained with human blood. Though the blood group could not be ascertained, as the results were inconclusive, the accused had to give some explanation as to how the human blood came on this weapon. He gave none. This discovery would very positively further the prosecution case."

Lochan Shrivas Vs. The State Of Chhattisgarh, Criminal Appeal Nos. 499-500 Of 2018

"32. The said recovery on the memorandum of the appellant under Section 27 of the Evidence Act, has been attacked by the defence on the ground that the same is from an open place, accessible to one and all. In this respect, it is apposite to rely on the following observations of this Court in the case of State of Himachal Pradesh v. Jeet Singh :

"26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For example, if the article is buried in the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred, its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses

that fact to any other person. Hence, the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others."
It could thus be seen that this Court has held that what is relevant is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. If the place at which the article hidden is such where only the person hiding it knows until he discloses that fact to any other person, then it will be immaterial whether the concealed place is accessible to others."

36. From the above what can be deduced is that what is relevant is not whether the place was accessible to others or not, but whether it was ordinarily visible to others. In the present case the knife was hidden underneath the stones which was not visible to others though in an open place and which was within the exclusive knowledge of the Appellant till the time he led the team for recovery.

37. Be that as it may, even if the evidence of knife being stained with blood is discounted, the oral dying declaration of the deceased clearly stated that he was assaulted by the knife. Tainted recovery, if it is to be so held, may not be lethal to the case of prosecution as the evidence led by the prosecution, especially the evidence of PW 4 proves beyond reasonable doubt that the death of the deceased was caused by the accused.

38. Another aspect which cannot be lost sight of is that the stand taken by the Appellant is that he has been falsely implicated however there is no explanation given as to why the Appellant has been falsely implicated. Even in cross examination nothing has been brought on

record by the Appellant to substantiate its claim that he has been falsely implicated. The opportunity to explain his stand was available to him while recording statement under Section 313 of Cr.P.C. however, the same has not been availed of. No doubt the Appellant has a right to maintain silence even before the Court during the examination under 313 of Cr.P.C. however, the Court would be entitled to draw an inference including adverse inference as may be permissible. Reference can be made to the judgment of the Hon'ble Supreme Court in the case of ***Vahitha Vs State of Tamil Nadu,*** (supra) wherein in paragraph 45 the Court has been pleased to observe as under:-

> *45. In Ramnaresh [Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382] , this Court has, though recognised the right of the accused to maintain silence during investigation as also before the Court in the examination under Section 313CrPC but, at the same time, has also highlighted the consequences of maintaining silence and not availing opportunity to explain the circumstances appearing against him, including that of the permissibility to draw adverse inference in accordance with law. This Court observed and held as under : (SCC pp. 274-75, paras 49 & 52)*
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> *"49. In terms of Section 313CrPC, the accused has the freedom to maintain silence during the investigation as well as before the court. The accused may choose to maintain silence or complete denial even when his statement under Section 313CrPC is being recorded, of course, the court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law.*
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> ** * **
>
> *52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in*

> *law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law."*
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> *(emphasis supplied)*

38. The other issue raised by the Ld. Counsel for the Appellant with respect to the timing of the incident cannot be said to be such so as to discard the entire prosecution case or raise any doubt about the case of the prosecution. The PW 2, in examination in chief has stated that he came back at about 8 to 8:30 PM and he noticed that at the place behind the company there was a quarrel between two persons. PW 4 has stated that approximately after 7:30 PM, he heard the shouts from an open place behind the company. PW 5 has stated that on 13/1/2016 at about 8 PM, one Pradeep bhai called him on phone and informed that Vasudev was assaulted. If the time line is seen, the difference is not such which should make the court totally disbelieve the prosecution case. PW 2 has given an approximate time of about 8 to 8:30 whereas PW 4 has clearly stated the timing to be after 7:30 PM, thus, the incident has taken place somewhere after 7:30 PM and at about 8 PM. The difference of timing as narrated by PW 2,4 and 5 is not such as to discard the evidence which otherwise is believable.

39. The court therefore comes to the conclusion that the prosecution has proved the case beyond reasonable doubt and the conviction is proper. The Appeal therefore stands dismissed and the conviction of the Appellant is upheld.

40. Appeal stands disposed of accordingly. Pending Application is also disposed of.

(SHREERAM V. SHIRSAT, J.) (MANISH PITALE, J.)

Purti Parab