

Satya Narain Vs. the State

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Court : Allahabad

Decided On : Apr-07-1977

Reported in : 1977CriLJ1626

Judge : Prem Prakash and ;S.K. Kaul, JJ.

Appellant : Satya Narain

Respondent : The State

Judgement :

1. This is an appeal by Satya Narain who has been sentenced and convicted to undergo imprisonment for life Under Section 302 IPC by learned Addl. Sessions Judge, Lucknow.

2. It is alleged that a month before this occurrence an altercation took place between Ashok, on one hand, and Satya Narain accused, on the other. Satya Narain had delivered a knife blow on Ashok, An F. I. R. about that incident had been lodged at P. S. Khala Bazar. Chandrika and Babu Singh were helpers of Ashok and this had given a cause to Satya Narain to bear grudge both towards Chandrika and Babu Singh. On 21st October, 1971, at about 6 p. m. Chandrika, accompanied by Babu Lal alias Babu Singh, Pooran, Rama, Ashok, and Janki were going to the house of Rama, situate in Terhi Bazar, When this party reached in front of the house of one Munna Babu, Satya Narain, Rajesh, Shyam Narain and Gopal surrounded them. Gopal and Shyam Narain are said to have instigated

Satya Narain and Rajesh upon which Rajesh and Satya Narain, both of whom had pistols in their hands, shot in this way that while Rajesh shot at Chandrika, Satya Narain shot twice at Babu Singh. Both these persons fell down injured and thereafter the accused are said to have made good their escape. After some time, some police people arrived on the spot and they are said to have taken Chandrika and Babu Singh to the Medical College. Babu Lal alias Babu Singh was examined in the Medical College at 6. 40 p. m. He was found to have the following injuries :

1. Fire-arm injury oval shaped 1/2' x 1/4' margins inverted. Bleeding plus with surgical emphysema left side chest 2nd intercostal space left side 1/2' medial to midclavicular line.

2. Firearm injury 3/4' in length vertical and 1/10' in width. Bleeding plus margins inverted. Supraclavicular fossa left side 2 1/4' above the mid-clavicular point.

3. No signing or tattooing was present in both the injuries. The injuries, according to the doctor, were grievous. General condition of the patient was low. Pulse was thready, feeble and faint. Blood pressure was not recorded. Pupils were semi-dilated. The patient was semi-conscious. Duration of injuries was about half a day. The patient was admitted as an indoor patient. He was administered medicines. It appears that the patient had revived as a result of injections administered to him. According to Dr. Mehrotra, at about 7. 30 p. m. since the patient was mentally alert and conscious, he recorded the following dying declaration which is Ex. C-1 :

Satya Narain mere bhatije ko mar raha tha. Maine Kaha ki ise mat maro. Is par usne revolver se mere Ko goli mari jo meri gardan men lagi. Maine Kaha Ki aba ek mar chuke ho aur mat maro. Lekin usne phir our goli man.

We may note here that an English Version Ex. C-3, was also prepared by the same doctor which reads as follows :--

The patient along with Chandrika was sitting in the mohalla, when Satya Narain started beating patient's nephew. When the pt. asked him not to beat the boy, Satya Narain fired on him with the revolver. The first shot was on neck and the second on left side of chest.

4. Dr. Charan, Head of the Department of Surgery, examined Babu Lal alias Babu Singh, who had been admitted in the Emergency Ward at 6.45 P.M., on the same date at about 8.45 p. m, According to Dr. Charan, there was one firearm wound of entry on the left side of neck, while the other firearm wound of entry was on the left chest in between 2nd and 3rd ribs. Since on account of these injuries air was going inside, multiple incisions were made on the person of Babu Lal. The condition of Babu Lal was noted after short intervals in the bed-head ticket Ext. Ka-4.

5. Chandrika was medically examined by Dr. S. C. Jain in the Medical College at 6.25 p. m. The following injuries were found upon Chandrika :

1. Firearm injury oval shaped 1/2' X 1/4' with area of charring in 3/4' of an inch with margins inverted. This injury was on medial aspect of right thigh.

2. Firearm injury 3/4' vertical and 1/4' in width. Bleeding + margins were inverted.

6. These injuries were kept under observation. These were caused by a firearm. According to Dr. Jain, general condition of the patient was fair. He was fully conscious. Duration of the injuries was about half an hour. The injuries are mentioned in Ext. Ka-2.

7. Badri Prasad, father of Chandrika, lodged an F. I. R. in this case at P. S. Chowk on the same date at 8.20 p. m, This F. I. R. was lodged on the basis of the facts, said to have been disclosed by Chandrika and Babu Singh. The FIR reads thus :--

Shriman Inspector Saheb Chowk Kotwali Lucknow, Sewa men nivedan hai Ki main Badri Prasad putra Than Singh, Niwasi Mashak Ganj thana Wazirganj Lucknow ka hun. Aaj sham ko qurib 6 baje mera larka Chandrika jo Rakabganj men rahta hai apne sathi Babu Lal urf Babu Singh, Puran, Rama, Ashok tatha Janki ke sath Rama ke ghar ja rahe the jo Terhi Bazar men hai. Munna Babu ke makan ke samne jab yah log pahunche to Satya Narain, Rajesh, Shyam Narain tatha Gopal ne un logon ko gher liya aur Gopal, Shyam Narain ne (un logon ko gher liya), Satya Narain aur Rajesh ko lalkara ki mar do goli salon ko. Is par Rajesh wa Satya Narain ne un logon par pistol se goliyan chaladi jis se mera larka

(Chandrika) aur Babu Singh ghayal hokar gir gaye aur wah log bhag gaye. Wahan mohalle ke aur bahut se log jama ho gaye the. Kuchh hi der bad Police wale aa gaye aur mere larke (Chandrika) wa Babu Singh ko le ja kar Medical College bharti karaya hai, Khabar pakar main Medical College pahuncha jahan mujhe mere larke (Chandrika) wa Babu Singh ne sab baten batai. Chandrika ke dehini jangh me goli lagi ham aur Babu Singh ke sine tatha gardan men goli lagi hai. Dono Medical College men dakhil hain. karib ek mahina hua Ashok aur Satya Narain se jhagra hua tha jis men Satya Narain ne Ashok ko Chaku mar diya jiski report Khala Bazar thane men darj-hai. Chandrika wa Babu Singh waghaira Ashok ke sathi aur madadgar hain. Isi ranjish se Satya Narain wa unke sathi Rajesh, Shyam Narain aur Gopal ne milkar in dono ko golimar di hai. Meri report darj kar ke uchit karyawahi ki jaye. Prarthi Badri Prasad lekhak Lakshmi Shanker Misra 3 Bagh Sher Jang Lucknow. Dated 21-10-1971.

8. The case was registered Under Section 307 I. P. C. initially. Abdul Sameed Khan, A. S. I., Kotwali Chowk, took up investigation and reached the spot on the same date at about 10 p. m. He interrogated Laxmi Shanker Misra and other witnesses, and thereafter prepared a site-plan. He did not find any blood on the spot. Previous to this he had gone to the Medical College, but he could not interrogate Babu Singh and Chandrika as the doctors did not permit him in this behalf. In between the night of 21st and 22nd October, 1971. at about 12. 30, he found blood in front of the house of Gaya Prasad at Yahiaganj Road, He took possession over blood-stained earth and nearby plain earth and sealed them in separate containers. Sri S. M. Abbas, Magistrate first class, Lucknow, went to Medical College on 22nd October, 1971, and recorded a dying-declaration Ext, Ka-21 of Babu Lal which was attested by a doctor. We are reproducing the aforesaid dying declaration in extenso :

Babu Lal wald Fikku sakin Mashakganj ne bay an kiya ki main Bakab Ganj kal ja raha tha to Satya Narain ne ek larke ko Jiska nam Ashok tha chaku manie ka irada kiya. Ham logon ne mana kiya. Satya Narain bhag Gaya, Ham logon ne pichha kiya. Rajesh ke ghar wah chala gaya. Jab ham log wahan pahunche to Satya Narain wa Rajesh revolver le kar nikle. Paliila fire Satya Narain ne Chandrika par kiya, Phir rnaie Chandrika ko bachane ke liye usko pakra to Satya

Narain wa Chandrika bhag gaye. Phir laut kar Satya Narain ne do fire mujh par kiya. Ek bayen sine ke pas goli lagi wa dusari bayen gardan par lagi. Iske bad main tarapne laga, Main ek ghante tak para raha. Police ne akar mujhe uthaya. Sunkar tasdiq kiya.

9. We may note here that no time of recording the statement is mentioned by the Magistrate, nor is there certificate given by the doctor that the patient was in a fit condition to give the statement. The investigating officer went to Medical College on 22nd October, 1971, at about 11. 45 a. m. and is said to have interrogated Babu Singh. That statement is Ext. Ka-12, and since it has been used as a dying-declaration, it is also set out in extenso :--

Sri Babu Lai urf Babu Singh s/o Fikku Yadav niwasi Mashak Ganj thana Wazirganj Lucknow mulzim muquadma No. 970 Under Sections 452/323 I. P. C. ne badaryaft bahaisiat mulzim inkar jurm karte hue muquadma No. 970 A dhara 307/324 I. P. C. men bahaisiat gawah bayan kiya ki qarib do dhai sal se Satya Narain aur Rajesh ek party wa Misri Lal wa Ashok se Vaidya Behari Lal ke qatal ke bad se kaphi ranjish chali aa rahi hai. Abhi ek mah pahale Satya Narain ne Ashok ko Chakuon se kai war kiya jiski report thana Bazar khala main hui. Is Muqadame men Chandrika Ashok ki taraph se gawah hai, Kal sam ka samay tha. Suraj dubane wala tha ki mere sathi Rama Diwali ke mauqe par mujhe wa Chandrika, Puran Ashok Khana peena karane apne ghar liye ja raha tha. Sath men Janki Bhi tha. Terhi Bazar men Munnu Babu ke makan ke pas pahunche the main wa Chandrika age tha. Baqi mere sathi age pichhe ham sab ke pichhe aa rahe the ki samne 6-7 qadam ke phasle par Satya Narain, Rajesh, Shyam Narain wa Gopal mile. Shyam Narain wa Gopal ne lalkara ki maro salon ko. Aaj bach ke na jane pawen, Halla gohar hua. Bahut se admi aa gaye ki Satya Narain ne ham sab par pistol ka fire kiya jo ki khali gaya, Main ekdam chonk kar beth gaya aur kaha hay Ram jan na maro. Phir utha. Chahta tha pura uth nahin paya tha ki do fire lagatar Satya Narain ne mujh par kiya. Ek mere Sine par, dusra gardan par donon mere bain taraph lage aur Rajesh ne Chandrika par fire kiya Uske pair men goli lagi. Ham dono chot khakar gir pare. Tab we charon admi gali se hokar purab taraph.bhag gaye. Mere sathi mujhe wa Chandrika ke Mashak Ganj le ja rahe the ki Yahiya Ganj Road ki mor par police aa gai jo mujhe yahan tak lakar dakhil

karaye, Main Munnu Babu ke makan ki taraf tha. Satya Narain Deo Raj Avaslhi ke makan ki taraf daba tha yani tirchha khara tha jahan se usne fire kiya. Mujhe bolne men taklif ho rahi hai. Isliye zyada batchit nahin kar sakunga. Meri Kamiz men khoon laga tha wah aaj subah meri man ai thi le gai hai. Police men wah dakhil karegi. Use na dhone ki hidayat meni ki hai.

10. It appears that Babu Singh died in the Medical College on 23rd October, 1971, at about 8.05 p. m. Inquest report relating to the dead body was prepared by the City Magistrate, Sri P. N. Misra. He sealed the dead body and sent it for autopsy. In the meantime on receipt of information of the death of Babu Singh the case was amended as falling Under Section 302 I. P. C. in the general diary maintained by the Police Statioo, Chowk.

11. Autopsy upon the dead body of Babu Singh was conducted by Dr. R. N. Kotiyal, Assistant to Civil Surgeon. Lucknow. The following ante-mortem injuries were noted by the doctor :

1. Firearm wound on the left root of neck, 7 cm., above mid point left clavicle. Inverted margins with clotted blood at the margins, 3/4' X 3/4' X lowered inside a lacerated track going in the neck muscles lacerating posterior pleura at the neck of 1st left rib, lodged in 2nd thoracic body of left side bullet Ex. No. (1).

2. Firearm wound 3/4' X 3/4' X inverted margins, lacerated with blood clots present at the margins, on left side chest 8 cm above the left nipple at 11 O' clock position, explored inside, perforating chest wall and pleura piercing the ant. wall of left ventricle at the upper portion and coming out at the base of left ventricle perforating the left dome of diaphragm and perforating the fundus of stomach coming out through the post wall of the stomach lacerating the left kidney and the bullet lodged on the left side of 1st lumbar vertebrae body.

3. 9 incised wounds varying from (2nd c. m. to 1/2 c. m. 1.5 c. m. to 1/2 c. m.) skin deep, on left side of chest around the left nipple in an area of 10 c. m. x 10 c. m. No. (2).

12. According to the doctor, death was caused due to shock and haemorrhage as a result of firearm injuries which, in his view, were sufficient in the ordinary course to cause death.

13. It may be noted here that the doctor examined in the Court stated that he could not say how injury No. 3 noted by him in the autopsy report was caused, but it could be caused by the doctor in connection with treatment. We have also mentioned how this injury No. 3 was made in the Medical College for purposes of easing the breathing difficulty of the deceased. The investigating officer made a search for the present accused-appellant and when he could not be traced, he took proceedings Under Sections 87/88 old Cr. P. C. and obtained necessary papers in that connection on the basis of which not only property of the accused was attached, but a warrant was also issued against the present appellant. After completing Investigation, a charge-sheet was submitted against the present appellant as well as accused Shyam Narain, Rajesh and Gopal, and on that basis, while Satya Narain was asked to stand his trial Under Section 302 simpliciter as well as Under Section 307/34, I. P. C, the remaining accused stood trial Under Section 302/34, I. P. C. as well as Under Section 307/34 I. P. C.

14. We are not concerned with the defence of accused Shyam Narain, Rajesh and Gopal who were acquitted by the learned Addl, Sessions Judge and no appeal against the order of acquittal was preferred.

15. The defence of the present appellant was complete denial and false implication on account of enmity as well as on account of enmity with the police. According to the appellant, on 21st October, 1971, at about 5.45 p. m. or 6 p. m., he was going to his house, From the opposite direction Babu Singh, Chandrika, Pooran and Ashok were coming. Babu Singh and Chandrika had dandas. Babu Singh challenged and instigated the rest of his companions to beat him. He then rushed towards the house of Rajesh raising an alarm. Babu Singh and Pooran took out their pistols. He wanted to go inside the house of Rajesh when Chandrika came in front and gave him a blow with the help of his danda. He then rushed towards the lane. He was shot at by Pooran. But fortunately, it did not hit him and that very shot injured Chandrika. He then ran for his life and when he was running,

he heard 2 or 3 shots, He, however, could not see who had fired those shots and who was hit by those shots. He also examined Dr. Pant D. W. 1, Dr. M. L. Agarwal D. W. 2 and Staya Deo D. W. 3 in his defence, apart from relying on several documents filed in defence.

16. The learned Addl. Sessions Judge, on an appraisal of evidence, found that charge was fully brought home to present appellant beyond reasonable doubt and, as such, he sentenced and convicted him as above.

17. Apart from dying declarations noted above, the prosecution also banked upon the statements of P. W. 1 Chandrika, Ashok Kumar P. W. 3 and Rama P. W. 5.

18. Before we take up the evidentiary value of the dying declarations, we would like to mention that there is not much serious dispute about the time, date and place of incident, nor was it disputed that Babu Singh alias Babu Lal succumbed to fire-arm injuries. We may note here that the prosecution story about the time of incident was about 6 p. m. on 21st October, 1971. The accused-appellant also in his statement recorded Under Section 342 makes some such incident happen at about 5.45 to 6 p. m. on 21st October, 1971. Moreover, to fix the time of incident we have also the statement of the doctor of the Medical College who examined Babu Singh at about 6.40 p. m. on that very date. Head Constable Jagannath Ram examined in this case as P. W. 8 stated that about 6 or 6.15 p. m, when he reached Tiraha of Terhi Bazar on Yahiganj Road, he found Chandrika and Babu Singh injured. He despatched them along with Fauzi Lal and Constable Chiteshwar to the Medical College. The only suggestion made to this Head Constable in cross-examination was that Babu Singh was lying injured near the house of Rajesh, No attempt was made to challenge the tune. As regards the place of incident, the prosecution story is that the incident took place in front of the house of Munna Babu. In the site-plan, the house of Kali Prasad alias Munna Babu is shown. The house of Shyam Narain and Rajesh stands after two houses in the same line as that of Munna Babu. The Sub-Inspector, no doubt did not find blood on the spot but it would not be very much material in this case because the defence suggestion was that the incident took place near the house of Rajesh and the accused-appellant also in his statement recorded Under Section 342 stated

that when he was about to enter the house of Rajesh, he was shot by Pooran, and then when he ran away, he heard 2 or 3 shots, meaning thereby that the place of incident set up by the prosecution also is, more or less, fixed. The medical evidence, coupled with the statement of the doctor of the Medical College leaves no room for doubt that Babu Singh alias Babu Lal received two firearm wounds of entry which go to show that two shots were fired upon the deceased by a fire-arm. With these observations, we would now take up the so-called dying-declarations.

19. We would, first of all, take up the evidentiary value of the dying-declarations said to have been given by the deceased at the time he was admitted in the medical College as well as examined by the Magistrate, apart from being interrogated by the investigating officer.

20. The law relating to the dying-declaration is, more or less, well settled. The Supreme Court had made several observations in this connection in *Khushal Rao v. State of Bombay* 1958 SCR 552 : 1958 Cri LJ 106, *Harbans Singh v. State of Punjab* 1962 Supp (1) SCR 104 : 1962 (1) Cri LJ 479, *Tapinder Singh v. State of Punjab* 1971 1 SCR 599 : 1970 Cri LJ 1415, *Lallubhai Devchand Shah v. State of Gujarat* 1971 3 SCC 767 : 1972 Cri LJ 828 and *K. Ramachandra Reddy v. Public Prosecutor* 1976 SC Cr R 366 : 1976 Cri LJ 1548 and ultimately, the crystallised position regarding evidentiary value of dying-declaration is that the Court has to be satisfied that the deceased was in a fit state of mind to make a statement after the deceased had a clear opportunity to observe and identify his assailant/ assailants and that he was making the statement without any influence or rancour. Once the Court is satisfied that dying declaration is true and voluntary, it can be sufficient to found the conviction even without any further corroboration. Now, in this case, the first dying declaration was recorded by Dr. Mehrotra in the Medical College on 21st October, 1971, at about 7.30 p. m. It is Ext. CI reproduced above. Dr. Mehrotra was examined in this case as a court witness. He clearly stated that at the time when this statement was given by the deceased, he was mentally alert and conscious. According to Dr. Mehrotra, Dr. Nawin Dhar was also present at that time and had signed this declaration. In cross-examination, no doubt, Dr. Mehrotra, on seeing the bed-head ticket, stated that there was cardiac collapse of Babu Lal at 7 p. m. on that very date, but when Intra-Cardiac Adrenaline injection

was administered, the patient recovered. Nothing substantial in cross-examination has come out from which it could be inferred that Dr. Mehrotra went out of his way to manufacture this statement and that it could not be given by the deceased. Indeed, we find that the doctor had sent an information to the police station Chowk, Lucknow, through C. M. O. on the same date at 6.55 p. m, for sending a Magistrate to record the dying declaration of Babu Lal and this was forwarded to P. S. Chowk for information at 6.57 p. m. on the same date. Ext. C2 would go to show this fact. It is, therefore, obvious that the patient must be mentally fit to give a statement, otherwise the doctor would not have sent this information to the police. The autopsy report and the injury report of the deceased go to show that he received two shots at the hands of the accused and that being so, we think this dying-declaration, by itself, is sufficient to convict this accused when we find that at the time when this dying-declaration was recorded, there was no one by the side of the deceased who could have induced him to name the accused and specially when at the time when the incident took place, the deceased had ample opportunity to identify the accused who was fully well-known to him.

21. As regards the other dying-declaration Ext. C3 recorded by Dr. Mehrotra, although there is not material difference between Exs. C1 and C3, we would not take Ex. C3 into consideration for the simple reason that it is a translation by Dr. Mehrotra and is not in the language of the deceased nor does it bear thumb-impression of the deceased.

22. The third dying-declaration relied upon by the prosecution is the one taken by the Magistrate which is Ext. Ka-21 on the next date, namely, 22nd October, 1971. There are two serious infirmities in this statement although Sri Abbas, who was examined in this case, stated that he had recorded the statement as given to him by the deceased. The first infirmity is that there is no certificate appended to this statement by the doctor that the deponent was in a fit mental condition to give a statement. The second infirmity in this statement is that the time of recording such a statement was not mentioned by Dr. Abbas, We must remark at this stage that it is the duty of the Magistrate to know these rudimentary things, namely that before recording dying-declarations they must get a certificate of the doctor appended regarding mental state of the deponent and, secondly, they should mention the

time when such a statement was taken down. In these circumstances, we do not think it safe to rely upon this statement.

23. The last dying-declaration is said to be one recorded by the investigating officer on 22nd October, 1971, at 11.45 a. m. which is Ext. Ka-12, The investigating officer admitted that he had not given any report that dying declaration of Babu Singh may be recorded. He also admitted that he was not told by Babu Singh that he had already been examined both by the doctor and the Magistrates. Moreover, we are not prepared to hold that the investigating officer without taking permission of the doctor, specially when Babu Singh was admitted as an indoor patient and was in a very bad state, could have been allowed to interrogate Babu Singh with impunity. Such a detailed statement cannot be expected to have been given by Babu Singh to the investigating officer, and this fact throws a lot of doubt on the veracity of the investigating officer regarding such a dying-declaration to have been recorded. We would, therefore, as a rule of abundant precaution, exclude Ext. Ka-12 also from consideration.

24. Coming to the witnesses examined in this case, we find that P. W. 1 Chandrika, P. W. 3 Ashok Kumar and P. W. 5 Rama were examined. We may note here that presence of Ashok and Chandrika was also admitted by the accused vide his statement recorded Under Section 342 Cr. P. C, Chandrika stated that he, Rama, Pooran, Janki and Babu Singh were going to take feast, and when they reached the house of Munnu Babu, situate in Terhi Bazar, the accused, accompanied by Rajesh and Shyam Narain and Gopal, arrived there Satya Narain shot twice towards Babu Singh, while Rajesh shot at him. He also said that Janki, Pooran and Ashok as well as Rama brought him and Babu Singh to Yahiyaganj and from there he was taken to the Medical College. A suggestion was made to him as if he, Babu Singh, Pooran and Asharfi's son Ashok had entered the house of accused at about 6 p. m. on that date and had beaten Smt. Ram Kali, Jograj and Sat Narain about which a report had been lodged and about which a case was pending in the Sessions. We have carefully gone through the statement of this witness. Considering that his presence was admitted to the accused at the time when deceased is said to have been shot, we do not find anything from this statement to show that the accused had not shot at the deceased. He, therefore,

corroborates that part of the dying declaration Ext. CI relied upon by us. It is true that presence of Chandrika was not mentioned in Ex. CI, but then the deceased was being asked about his injuries and, therefore, he gave that statement. It was not necessary for him to have mentioned about injuries having been caused to Chandrika by a different accused.

25. Coming to Ashok Kumar P. W. 3, he also stated on oath that on the relevant date, time and place, Satya Narain had shot twice at Babu Singh in his presence. He gives motive for this occurrence. Considering that his presence was also admitted to the accused and also considering that he was the cause for this incident, we do not think that there is any infirmity appearing in his statement. Indeed, a suggestion was made to him as if he, accompanied by Babu Singh, had chased Satya Narain and had gone inside the house of Satya Narain and had given a beating to Satya Narain's mother, grandmother and grandfather. In fact, a suggestion was thrown out to him as if Satya Narain was tried to be beaten and that is why probably Satya Narain shot in his self-defence. The witness categorically denied that suggestion.

26. Rama's statement also corroborates the prosecution story. Since he also states what Ashok and Chandrika had stated, we do not think in spite of his lengthy cross-examination anything has come out to shake his testimony. However even though we may exclude his testimony as a rule of abundant precaution, the testimony of Ashok and Chandrika sufficiently corroborates the version of the deceased given in the shape of dying-declaration Ext. Clause In this connection, reference was made to F. I. R. said to have been lodged by Chandrika's father. After all, Chandrika's father had not seen the incident himself. He has only narrated this story by Chandrika. In this F. I. R., the only thing that could be argued against the prosecution case is that it was not specifically mentioned as to whose shots had injured Babu Singh, although it was mentioned that both Satya Narain and Rajesh had challenged and both had shot on account of which Chandrika and Babu Singh were injured. This cannot be said to be a material contradiction inasmuch as F. I. R. at best Only corroborates the prosecution story. Full details could be expected from the one who had seen the occurrence, The fact remains that statements of Chandrika and Asholt Kumar

discussed above as well as the dying declaration Ext. CI accepted by us for placing implicit reliance do not come in clash with the F. I. R. Ext. Ka-5 said to have been lodged by Chandrika's father at the police station Kotwali on the same date at about 8.20 p. m. Much was made of the so-called version of the accused in connection of which some witnesses were also examined. Satya Deo D. W. 3 was examined to show that on the relevant date, at about 8 p. m., Babu Singh, Chandnka, Pooran and Ashok came inside the house, enquired about Satya Narain and then beat his mother as well as his grand-father and grand-mother and then went away. Report Ext Kha-2 was also relied upon in this connection. Drs. Pant D. W. 1 and Agarwal D. W. 2 were examined to show and prove injuries upon Jograj and Smt. Ram Kali, wife of Jograj. We are purposely not entering into this question lest it might affect trial by that case. Suffice it to say that it was not the case of the accused that he was present at the time of this alleged incident which culminated in F. I. R. Ext. Kha-2 or that he had shot at Babu Singh in the defence of his relations. In fact, in Ex. Kha-2 presence of Satya Narain was conspicuous by its absence Satya Narain also in bis statement recorded Under Section 342 does not say as if he had shot at Babu Singh in defence of his relations, nor does he say that in his presence, incident mentioned in Ex. Kha-2 had taken place, It is true that to Chandrika a suggestion was thrown as if Satya Narain was also beaten at that very time, but this merely remains a suggestion because Satya Narain himself did not take up that defence. In our view, therefore, the testimony of D. Ws. 1 to 3 as well as Ext. Kha-2 are absolutely unnecessary for purposes of decision of this case for the simple reason that, if at all such an incident took place, of which Ext, Kha-2 was the report, that was a separate incident unconnected with the incident of- this case.

27. As a result of discussion, we hold that charge Under Section 302 I. P. C, has been fully brought home to Satya Narain beyond reasonable doubt and that he was rightly sentenced and convicted Under Section 302 I. P. C. by the trial Court.

28. Altogether, therefore, we see no force in this appeal and it is hereby rejected. Sentence and conviction awarded to Satya Narain by the trial Court is maintained. Satya Narain is on bail. He shall surrender and serve out the sentence awarded to him. Chief Judicial Magistrate will send compliance report within six weeks.

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