

**Mam Chand Vs. State**

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**Court :** Delhi

**Decided On :** Sep-23-1971

**Reported in :** ILR1971Delhi689

**Judge :** Hardayal Hardy and; Prithvi Raj, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 32(1); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 342

**Appeal No. :** Criminal Appeal No. 10 of 1970

**Appellant :** Mam Chand

**Respondent :** State

**Advocate for Pet/Ap. :** B.P. Maurya,; E.C. Aggarwal,; A.T.M. Sampat and;

**Judgement :**

**Prithvi Raj, J.**

(1) This appeal is directed against the judgment dated 5th November, 1969, passed by Shri D. R. Khanna, Additional Sessions Judge, Delhi where by he convicted the appellant Mam Chand under section 302, 1. P. C. and sentenced him to imprisonment for life. The appellant was further convicted under section 307, Indian Penal Code . for attempt to commit the murder of Babu Lal and was sentenced to five years rigorous imprisonment. Both the sentences are to run

concurrently. However, Sri Chand co-accused, the father of the present appellant, was acquitted of all the charges against him on the ground that it was not possible to hold that he had any common intention with the appellant in committing the murder of Jai Ram or in assaulting Babu Lal. The State has not filed any appeal against the acquittal of Sri Chand.

(2) With a view to appreciate the contentions raised on behalf of the appellant, who will sometime be referred to as the accused, it would be proper to record briefly the facts of the case. The prosecution story as revealed by P. W. 1, Chattar, is that Shrimati Roshni the daughter of his deceased brother, Suraj Mal, had been residing with him and on October 3, 1968 she had gone to bring water from a well in village Narela when the appellant went after her and misbehaved with her. This fact was apprised to him when he returned to his house. On this he asked Sri Chand, the father of the appellant that the appellant should not have misbehaved with Roshani. On October 4, 1968, at about 7 P. M. when he returned to his house from his duty as Beldar in Delhi Transport Undertaking he saw that a quarrel was going on between his wife. Ram Kali and Bohti, wife of Sri Chand. Bohti enquired from his wife as to who had thrown rubbish in the Gali towards the side of her house. Ram Kali replied that she had not placed the rubbish on which Bohti began to abuse her. On this Roshani intervened and asked as to why unnecessarily the quarrel was being prolonged when already Ram Kali had told Bohti that she had not thrown the rubbish. At that time the appellant started abusing Roshani telling her that she was a girl of loose character. Babu Lal, sister's son of the witness, who was present at the scene of occurrence, told the appellant that it was not proper for him to abuse the girl. On this the appellant took out a knife from his underwear and was about to attack Babu Lal with the same when Ram Chander and Jai Ram deceased happened to come there. Jai Ram, deceased, asked Mam Chand appellant to desist from attacking and raised his hands by telling him to stop from so doing, on which the appellant told Jai Ram that he would first see to him. The appellant then thrust that knife with both hands in the body of the deceased on the region in between the chest and the stomach as a result of which the deceased fell down on the ground. Babu Lal on seeing the incident, out of fear, ran towards the house of his maternal grand-father, Parma, but the appellant followed him with the knife into the house of Parma on which Babu Lal shouted

'Nana, save me'. One Randhir who was present at the place where the deceased was attacked ran after Mam Chand to catch him as also to save Babu Lal, The witness, Chattar, also ran to save Babu Lal. Sri Chand, the father of the appellant, the co-accused in the case, is stated to have given a lathi blow on the shoulder of the witness as a result of which he fell down. Sri Chand's wife followed them. Ram Kali, wife of the witness, gave a blow of Phoonkni to Bohti with a view to save the witness. The witness further stated that he went towards the side to which Babu Lal had run, i.e., towards the house of Parma and saw the appellant giving three knife blows to Babu Lal. In the meantime Randhir snatched the knife from Mam Chand and handed over the same to Parma. Babu Lal in his attempt to snatch the knife from Mam Chand received some injuries on his hand. The appellant thereafter fled away by jumping over the boundary wall of Parma's house. Randhir attempted to apprehend the appellant but could not succeed in doing so. Babu Lal who had fallen on the ground was lifted by the witness whose shirt was stained with blood coming out of the wounds of Babu Lal. Thereafter, the witness proceeded to Police Station which is at a distance of less than a furlong from the place of occurrence and lodged a report, copy whereof is Exhibit P.A. The blood-stained knife Exhibit P/1, was produced at the police station by Parma, which was taken into possession vide recovery memo. Exhibit Public Witness 1/A, attested by the witness who also attested sketch plan Exhibit P.W. 1 /B. The witness in the company of the police went to the Hospital where Jai Ram had been brought but by the time the police and the witness reached the Hospital Jai Ram had died. Shirt, Exhibit P/2, belonging to the witness which was blood stained was taken into possession by the police vide recovery memo. Exhibit Public Witness I /C. Sri Chand who happened to come to the Hospital, was arrested by the police at the pointing out of the witness. The wife of Sri Chand had also come to the Hospital and her clothes. Exhibits P/3 and P/4, which were blood stained, were taken into possession by the police vide memo. Exhibit P.W. I/D, and clothes of Sri Chand, Exhibits P/5 and P/7, were taken into possession by memo. Exhibit Public Witness I /E. Sri Chand made a disclosure statement Exhibit Public Witness 1/F to the police and got recovered Danda Exhibit P/8 from the court yard of his house. The Danda was taken into possession by the police vide memo. Exhibit Public Witness 1/G.

(3) In cross-examination the witness stated that Jai Ram deceased was not related to him and that Jai Ram and Ram Chander and some other persons also were smoking Huqqa at a distance of about 40 yards from the place of incident in the Gali. He refuted a suggestion that the deceased had tried to attack the appellant. The witness also refuted a suggestion that Babu Lal injured the deceased with knife and also injured the appellant with that knife. The witness also negated the suggestion that Bohti was being beaten by his wife and other womenfolk and the appellant wanted to rescue her.

(4) The above prosecution version is supported by Public Witness 2, Randhir, P.W. 3, Babu Lal, Public Witness 4, Lilu, Public Witness 6, Ram Chander, P.W. 7, Ram Kali and Public Witness 8, Roshni, who are eye-witnesses to the occurrence.

(5) P.W. 2, Randhir, saw the appellant running after Babu Lal. The appellant had knife. Exhibit P/I, in his hands which was snatched by him at the time when the appellant was going to give the fourth blow to Babu Lal and handed over the same to Parma. Randhir also stated that he saw Babu Lal falling on the ground in Parma's house. Babu Lal had three injuries which were bleeding. He ran after the appellant but could not apprehend him as the appellant had jumped over the boundary wall and had run away. He and Parma went to the police station where the knife. Exhibit P/I, was handed over to the police by Parma. He denied a suggestion in cross-examination that knife. Exhibit P/I, was snatched by him from Babu Lal and that Babu Lal was trying to attack the appellant when he fled away.

(6) Babu Lal, Public Witness 3, while supporting the prosecution version as revealed by Public Witness 1, Chattar, stated that he told the appellant that he should not use abusive language against Roshni at which the appellant got infuriated and took out a knife from his under-wear by which time Jai Ram and Ram Chander had come to the spot and Jai Ram tried to take away the knife from the appellant and also tried to stop him. On that the appellant said that he would first see to Jai Ram and thrust the knife in his chest. Jai Ram fell down and the witness ran towards the house of his maternal grandfather followed by the appellant with the knife in his hand. He entered the house of Parma shouting 'Nana, save me' while in the meantime the appellant came there and give three

knife blows on his waist and the witness began bleeding. He tried to catch the knife from the appellant but could not succeed. In the meanwhile Randhir Public Witness 2 snatched the knife from the appellant and handed it over to Parma. The appellant jumped over the boundary wall and ran away. He further stated that when the appellant was giving him knife blows Sri Chand, coaccused, was shouting, 'Mar de'. His blood-stained clothes Exhibits P/9 and P/10 were taken into possession by the police. He repelled a suggestion that knife. Exhibit P/1, was with him and he had tried to attack the deceased Jai Ram with that knife. and that he attacked the appellant with the knife who after snatching the same from him. gave blows with it and that the appellant ran away in order to save his life.

(7) P.W. 4, Lilu, has fully corroborated the version of Chattar P.W. 1. In cross-examination he admitted that he was sentenced to six months in a case of theft and that he had filed three complaints against different persons, two of which complaints were dismissed in default.

(8) P.W. 6, Ram Chander, stated that the deceased Jai Ram was with him and that they were smoking Huqqa when they heard some noise and both of them ran towards the side from which the noise was heard. On reaching the place they found Sri Chand's wife and Chattar's wife exchanging abuses and that Sri Chand, Mam Chand, Chattar and Babu Lal were there. Mam Chand had knife. Exhibit P /1, in his hand. Jai Ram deceased attempted to stop them on which the appellant said that he would first see to Jai Ram for having interfered. On this the appellant thrust the knife in the chest of Jai Ram who started bleeding. Babu Lal ran towards the house of Parma but was followed by the appellant. Sri Chand who had a small danda with him hit Chattar with that when Chattar tried to save Babu Lal. Chattar as also Sri Chand fell down and their wives ran to save them. Chattar's wife hit Sri Chand's wife with a Phoonkni who began bleeding. He further stated that the appellant ran after Babu Lal and Randhir ran after the appellant to snatch the knife from him. Randhir succeeded in snatching the knife from the appellant and gave the same to Parma. The appellant ran away jumping over a wall. The witness along with Ram Phal and some other persons took Jai Ram to the Hospital at Narela on a cot where Jai Ram died in the night at about 9 P.M. He also stated that Sri Chand made a disclosure statement Exhibit Public Witness 1 /F in

pursuance of which he got lathi, Exhibit P/8, recovered. The underwear and Banyan Exhibits P/12 and P/13 belonging to the appellant were taken into possession by the police in the presence of the witness vide recovery memo. Exhibit Public Witness 6/A. In cross-examination he repelled a suggestion that the deceased had attacked the appellant and that the knife Exhibit P/l, was with Babu Lal who hit Jai Ram with the said knife.

(9) P.W. 7, Shrimati Ram Kali, corroborated the statement of P.W. 1, Chattar, in material details and also stated that finding her husband being beaten, she gave a blow to Bohti with a Phoonkni. She negated a suggestion in cross-examination that before the arrival of Jai Ram there was a beating between her and Bohti.

(10) P.W. 8, Smt. Roshni, had also materially corroborated the statement of Chattar Public Witness 1 and of Randhir, Public Witness 2. She also stated that a day earlier to the incident she had gone to bring water from a tap when the appellant placed his hands on her shoulders and told her to love him. In cross-examination she stated that from the place where she was standing she could see the inside of the house of Parma and saw Mam Chand, appellant, giving knife blows to Babu Lal inside the house of Parma.

(11) The statement of P. Ws. 1 to 4 and 6 to 8 have a ring of truth in them. All of them have consistently deposed that as a result of the noise created by the quarrel between Bohti, the wife of Sri Chand and Ram Kali, wife of Chattar. P. W. 1, on the incident of rubbish having been thrown in the Gali, Jai Ram and Ramchander Public Witness 6, came to that place and Jai Ram dissuaded the appellant, Mam Chand, from inflicting blows with the knife on Babu Lal on the latter's protesting to Mam Chand that he should not abuse Roshni. On this the appellant is stated to have taken an offence and said that he would first see to Jai Ram and while saying so, he thrust the knife. Exhibit P/l, with his both hands on the body of Jai Ram in the region in between chest and abdomen. The occurrence is stated to have taken place at about 7.30 P. M. The deceased, Jai Ram, was removed to the Hospital by Ram Chander, Ram Phal and others where the deceased made a dying declaration. Exhibit P. W. 19/A, to Dr. S. K. Bagla, P. W. 20, in which he named the appellant to be his assailant. The dying declaration has been proved by

the doctor, P. W. 20, as also by P. W. 19, Shri Balkishan Municipal Councillor in whose presence the dying declaration, Exhibit P. W. 19/A, was recorded and who has attested the same as a witness. The deceased according to the doctor died in the Hospital at about 8.25 P. M. It is also amply proved from the statements of the above-said witnesses that the appellant gave three knife blows to Babu Lal and while the appellant was going to give the fourth, blow, the knife was snatched from his hand by Randhir P. W. who gave the same to Parma and Parma handed over the knife to the police at the police station.

(12) Nothing has been brought out in the cross examination of these witnesses to demolish their testimony, except that a bald suggestion was made in the cross-examination to the witnesses that it was Babu Lal who carried the knife and inflicted the blows on the deceased and that Babu Lal also wanted to inflict knife blows on the appellant on which the appellant snatched the knife from Babu Lal and inflicted blows on him. Except this suggestion which has been repelled by the witnesses, no cogent material has been brought on the record to show as to why Babu Lal should inflict knife blows on Jai Ram. Motive for inflicting knife injuries on the deceased was provided by the intervention of Jai Ram deceased when he asked the appellant to desist from inflicting injuries on Babu Lal. Equally the motive for inflicting injuries on Babu Lal is established from the fact that Babu Lal protested to the appellant that he should not hurl abuses on Roshni.

(13) We have no manner of doubt that the prosecution version as revealed by the above-said witnesses is truthful. There is hardly any reason to disbelieve the statement of P. W. 6, who is an independent witness. The occurrence is stated to have taken place at 7.00 P. M. and the F. I. R. was lodged at the police station without any loss of time at about 7.30 P. M. It is relevant here to note that the police station is at a distance of about three furlongs from the place of occurrence and there was, therefore, no time for the witnesses to consult each other and implicate the appellant. The statements of these witnesses have an impress of truth on them. From the evidence of Chattar, P. W. 1, Babu Lal, P. W. 3, Ram Kali P. W. 7 and Roshni, P. W. 8, it is abundantly borne out that the appellant who is a young man of 18 years was attracted towards Roshni and followed her a day before the occurrence when she had gone to fetch water from the tap where he

asked her to make love to him. His seniority was injured when a complaint was made to his father about this incident who was asked to restrain the appellant from following Roshni. Next day when the quarrel started over throwing of rubbish between Bohti, mother of the appellant, and Ram Kali P. W. it provided an excuse to the appellant to abuse Roshni by saying that she was a girl of loose character and Babu Lal, the cousin brother of Roshni, protested to the appellant and asked him to desist from abusing Roshni. The appellant in a spirit of bravado took out a knife. Exhibit P/l, from his underwear and wanted to avenge his insult by inflicting blows on Babu Lal when at that time Jai Ram deceased and Ram Chander P. W. happened to come to the spot and unfortunately for him, Jai Ram asked the appellant not to inflict knife blows which provoked the appellant who diverted his attention towards the deceased and wanted to first settle the matters with him.

(14) We are fully convinced about the truthfulness of the prosecution version as revealed by the above-said witnesses and find no reason to accept the version of the accused as suggested in the cross-examination that it was Babu Lal who carried the knife, Exhibit P/l, in his hand and inflicted blows on the deceased. As already discussed above there was no reason and occasion for Babu Lal to inflict knife injuries on Jai Ram deceased. The bald suggestion of the defense has to be discarded, more especially when the accused had not led any evidence in defense to substantiate the suggestion.

(15) The accused in his examination under section 342, Criminal Procedure Code . has made a denial implicate of the various incriminating circumstances that were put to him by taking a plea of alibi, and stating that he was not present at the spot. This by itself is a circumstance against the accused. A lacerated wound of 1/2' square on the left shoulder, 1/4' square lacerated wound on the right shoulder and four irregular size lacerated wounds of different sizes from 1/2' x 1 1/2' on the back of left elbow and two lacerated wounds on left buttock, one lacerated wound on right index finger and another on right thumb were found on the person of the appellant when he was medically examined on the 7th October, 1968. The above fact was put to the appellant in his examination under section 342 Criminal Procedure Code . and he admitted that the injuries were found on his person but he was not able to explain the circumstances under which the injuries were

caused on his body. This fact is inconsistent with the plea of alibi.

(16) The learned counsel for the appellant laid great stress on the testimony of Parma, P. W. 5 and urged that Parma though related to Babu Lal, had not supported the prosecution version and that he had stated that he did not see any knife with the appellant and that he did not see any injury on Babu Lal and that appellant did not give three knife blows on Babu Lal in his presence.

(17) We are afraid much reliance cannot be placed on the testimony of this witness who was declared hostile and was cross-examined by the prosecution. The witness in cross-examination had admitted that he had made a statement before the police. He was confronted with portion A to A of his statement. Exhibit P. W. 5./A, made to the police where he had stated that the appellant had a knife in his hand and also with portion B to B of his aforesaid statement where he had stated that the appellant gave three blows to Babu Lal in his presence. He was further confronted with portion C to of his above-said statement made to the police where he had stated that Randhir took the knife from the hand of the appellant. He, however, had admitted that the appellant ran away after jumping over the boundary wall and Randhir followed him and returned shortly thereafter and told that he could not apprehend the appellant. He further admitted that he took the knife. Exhibit P/l, which was blood stained, to the police station. It appears that for reasons best known to him this witness has tried to go back on his previous statement made to the police. That being so, much reliance can not be placed on the testimony of this witness so as to turn the scales in favor of the appellant. One thing, however, emerges indisputably from the statement of this witness that he produced the blood-stained knife. Exhibit P /1 at the police station, and attested recovery memos. P. W. 1 /A and P. W. 1/B. This part of the statement is in line with the statements of Chatter, P. W. 1, Randhir, P. W. 2, Babu Lal, P. W. 3, Lillu P. W. 4, Ram Chander, P. W. 6.

(18) A very important link in connecting the appellant with the assault on Jai Ram deceased and Babu Lal is the dying declaration made by the deceased, Jai Ram, to P. W. 20 Dr. S. K. Bagla in the presence of Balkishan Municipal Counciller, P. W. 19. P. W. 19, Shri Balkishan, has stated that he was in Narela Hospital on 4th

October, 1968, when deceased Jai Ram was brought there in an injured condition. Dr. S. K. Bagla attended on him. Jai Ram deceased was semi-conscious when he reached the Hospital and had a stab injury on his chest and Dr. Bagla on examining him stated that his pulse was ebbing out and that his statement be recorded. The doctor enquired from Jai Ram as to who had stabbed him on which Jai Ram mentioned the name of Mam Chand, Harijan of Narela. Jai Ram, however, did not say anything further as he could not speak. The witness also stated that when the deceased mentioned the name of Mam Chand, Harijan of Narela, he was capable of uttering those words and understood their implication and that he had understood the question put to him by Dr. Bagla who recorded his statement Exhibit P. W. 19/A. The statement was recorded in the presence of the witness and was attested by him and signed by Dr. Bagla. In cross-examination the witness admitted that the signatures of the deceased were not obtained on the statement and the same was not read over to the deceased who was declared dead within 10/15 minutes of recording the statement. The witness also stated that he did not know the accused personally before Jai Ram was brought to the Hospital.

(19) Dr. S. K. Bagla Public Witness 20 stated that on October 4, 1968, at about 7.40 P.M. he was posted in Narela Hospital where deceased, Jai Ram, was brought in an injured condition. Jai Ram had a stab wound on his chest and was not fully conscious when brought to the Hospital. The witness stated that he put a question to the deceased as to who had stabbed him on which the deceased replied that Mam Chand Harijan of Narela had stabbed him with a knife at his chest. The witness recorded that statement which is Exhibit Public Witness 19/A, which bears the signatures of the witness and was correctly recorded by him and that Public Witness 19, Shri Balkishan. Municipal Councillor was present at that time who attested the same. The witness further stated that he recorded the statement of the deceased after ensuring that the deceased understood the question put to him and that he was capable of answering the same. He stated that Jai Ram deceased died at 8.25 P.M. at the Hospital. The witness, however, admitted that he did not make any note that the deceased was in a fit condition to make that statement. He further stated that he put the question in Hindi and the deceased also replied in Hindi but he had noted the answer as recorded in Exhibit

Public Witness 19/A in English and that he did not read over the statement to the deceased nor obtained his thumb impression or signatures thereon as the witness did not know about it. The witness denied the suggestion that the deceased did not make any such statement and that the same was prepared later on.

(20) It is no doubt true that the dying declaration has not been recorded by the Doctor in the language in which it was deposed by the deceased and neither the same has been got thumb marked or signed by the deceased. But the question to be seen is as to what is the value of the dying declaration under the circumstances in question. Their Lordships of the Supreme Court in *Khushal Rao v. State of Bombay* : 1958 CriLJ106 , while examining the provisions of section 32(1) of the Evidence Act observed that a statement whether written or verbal made by a person who is dead as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death was a relevant fact in cases where the cause of that person's death came into question. In this respect their Lordships observed as follows at page 27 :

'THIS provision has been made by the Legislature, advisedly, as a matter of sheer necessity by way of an exception to the general rule that hearsay is no evidence and that evidence which has not been tested by cross-examination, is not admissible. The purpose of cross-examination is to test the veracity of the statements made by a witness. In the view of the Legislature, that test is supplied by the solemn occasion when it was made, namely, at a time when the person making the statement was in danger of losing his life. At such a serious and solemn moment, that person is not expected to tell lies; and secondly, the test of cross-examination would not be available. In such a case, the necessity of oath also has been dispensed with for the same reasons. Thus, a statement made by a dying person as to the cause of death, has been accorded by the Legislature, a special sanctity which should, on first principles, be respected unless there are clear circumstances brought out in the evidence to show that the person making the statement was not in expectation of death, not that that circumstance would affect the admissibility of the statement, but only its weight.'

Further it was held in the above-cited case that there was no absolute rule of law, or even a rule of prudence which has ripened into a rule of law, that a dying declaration unless corroborated by other independent evidence, was not fit to be acted upon, and made the basis of conviction. It was also held that a dying declaration which had been recorded by a competent Magistrate in the proper manner, i.e, in the form of questions and answers and as far as practicable in the words of the maker of the declaration stood on much higher footing than a dying declaration which depends upon oral testimony.

(21) The principle of law set out above was affirmed by their Lordships of the Supreme Court in Harbans Singh and another v. The State of Punjab : AIR 1962 SC439 and it was also observed by their Lordships that a dying declaration which was recorded by a competent Magistrate in the proper manner in the form of questions and answers and in the words of the maker of the declaration stands on a much higher footing than a dying declaration which depends upon oral testimony. Further, their Lordships came to the conclusion that if the dying declaration was a truthful version as to the circumstances of the death and the assailants of the victim, there was no question of further corroboration.

(22) As already stated above there is no escape from the fact that the dying declaration in the instant case has not been recorded in the form of questions and answers and in the words of the maker of the declaration. However, the dying declaration made by the deceased to the doctor can be treated as oral testimony by the deceased as to the cause of his death and the circumstances of the transaction which resulted in his death. That being so, the statement made by the deceased is a relevant fact when the cause of the death of the deceased is in question.

(23) From the evidence set out above it is established that the occurrence took place at about 7.00 P.M. and immediately thereafter the deceased was removed to the Hospital where he made the statement. Exhibit Public Witness 19/A, at the earliest opportunity and the statement cannot be said to have been made as a result of any tutoring. It, therefore, cannot be said that the dying declaration made by the deceased was not a truthful version; more so when no doubt had been cast

upon the dying declaration recorded by the doctor within a short span of time of the occurrence. The doctor, Mr. S. K. Bagla, was in no manner interested in the case and it cannot be said that the declaration was put in the mouth of the deceased either by the doctor or by any other person. The deceased died shortly after making the statement. At the time when the deceased made the statement, he was in danger of losing his life and was not expected to tell lies. That being so, it cannot be said that the dying declaration has come from a tainted source and was not a true version of the occurrence. Besides, there is nothing to discredit the testimony of Shri Balkishan, P.W. 19 who is an attesting witness to the dying declaration and that of Dr. S. K. Bagla, Public Witness 20, who recorded the dying declaration. Although the dying declaration is not required to be corroborated yet in the present case if any corroboration is called for, the same stands amply provided in the statement of the eye-witnesses, Public Witness s. 1 to 4 and 6 to 8 whose statements have already been referred to in an earlier part of this judgment.

(24) Dr. Mrs. Pushpa Gupta, Public Witness 9, examined Babu Lal on 5th October, 1968, and found stab wound on right side of back of chest at two places, 1' x 1/2' and second 2' x 1/2'. The doctor also found a stab wound at the back of left lumber region about 1' 1/2' . She stated that the weapon used for causing the injuries was sharp and the injuries could be caused by knife. Exhibit P/1 She proved copy of her report. Exhibit Public Witness 9/A.

(25) Dr. M. A. Babu who conducted the post-mortem examination on the body of the deceased was examined as a witness in the committing Court but could not be examined in the trial Court as he was on long leave and was stated to be in Cochin. Since his presence was likely to cause considerable delay in the progress of the case, the A.P.P. Shri R. L. Bhagat and Shri Kishori Lal the learned counsel for the accused made a statement in the Sessions Court on 8th October 1969, that the statement made by that doctor before the Committing Court be transferred to the file of Sessions Court and be read in evidence and that the parties did not want to examine or cross-examine the doctor any further. The statement of the doctor was accordingly transferred to the Sessions file and was exhibited as Public Witness 27/A.

(26) Dr. Babu in his statement had deposed that he found stab wound 1' x 1/2' situated near the pit of the stomach of the deceased; directed vertically down the wound was 5' from the right nipple and 3' from the left nipple. The wound had clean cut margins with tailing at its upper end. The wound after cutting the skin and sub-coetaneous tissues had cut through the cartilage of 7 and 8 ribs on the left side. The wound had further cut through the diaphragm and cut the left side of the liver through and through, and had penetrated the anterior wall of stomach. The depth of the wound from the skin surface was 4-1/2'. The doctor opined that the above-side injury was sufficient to cause death in the ordinary course of nature and was caused by a sharp edged pointed weapon. Besides, reports of the Chemical Examiner and Serologist to the Government of India, Exhibits Public Witness 25/A and Public Witness 26/A respectively indicate that the knife Exhibit P/I was stained with human blood.

(27) In view of the clear and cogent evidence of the eye-witnesses, the dying declaration made by the deceased and other documentary evidence on the record we are of the opinion that the appellant had been rightly held to be guilty of the murder of Jai Ram deceased and convicted under section 302, Indian Penal Code . The appellant has further been rightly convicted under section 307, Indian Penal Code . for attempt to commit the murder of Babu Lal. On the evidence on record, we do not think it is a case which calls for an exercise of. any leniency in the award of sentence to the appellant.

(28) For the reasons stated above, the appeal fails and the same is dismissed.

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