

Hari Om Vs. State

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SooperKanoon Citation : sooperkanoon.com/690869

Court : Delhi

Decided On : Mar-11-2005

Reported in : 118(2005)DLT608; 2005(81)DRJ422

Judge : Mukundakam Sharma and; R.S. Sodhi, JJ.

Acts : Arms Act; Indian Penal Code (IPC) - Sections 34, 302 and 307; Code of Criminal Procedure (CrPC) - Sections 161 and 173

Appeal No. : CRLA 610/2000 and Criminal Misc. Bail 1664/2004

Appellant : Hari Om

Respondent : State

Advocate for Def. : Anil Soni, Addl. Public Prosecutor

Advocate for Pet/Ap. : G.P. Thareja, Adv

Disposition : Appeal allowed

Judgement :

R.S. Sodhi, J.

1. This appeal seeks to challenge the judgment and order dated 18th July, 2000, in Sessions Case No. 85/99, arising out of FIR No. 478/1997, Police Station Vivek Vihar, under Section 302/34 IPC, whereby the learned Judge has held the appellant-Hari Om guilty for the offence of murder of Premwati, punishable under

Section 302 of the Indian Penal Code. The learned Judge vide order dated 24th July, 2000, has sentenced the appellant to undergo imprisonment for life and to pay a fine of Rs. 3000/- and in default of payment of fine to undergo RI for two years.

2. The brief facts of the case, as has been set out in the judgment of the Additional Sessions Judge, are as under :

'The facts that borne out of report under Section 173 of the Code of Criminal Procedure 1973 (in short the Code), are hat on 12.11.1997, Smt. Premwati was taken to SDN hospital, Shahdara by her daughter's son, namely, Raj Kumar. He got her admitted there in the hospital. There were fire arm entry wound and exit wound on her person. Police was informed. Rajender Kumar SI reached the hospital and recorded statement of Smt. Premwati. She reported that she resides at H. No. 6/64, Mohalla Maharam, Shahda, Delhi. That day at about 10 a.m., she was brooming the compound in front of her house. Hari Om and his younger brother Narender, who are known to her from before reached there. On seeing her both of them uttered that days of life had completed. Narender exhorted Hari Om to fire at her. On that exhortation Hari Om had taken out a pistol like weapon out of his wearing coat and fired at her with an intention to kill her. After firing at her, they ran away from the spot. On hearing a bang of bullet ire, her daughter's son, namely, Raj Kumar reached at the spot and removed her to hospital. There is an old enmity between Hari Om and Narender on one hand and they (witnesses and her family) on the other. They had attacked her with an intention to kill her. On the said report of Smt. Premwati case FIR No. 478 of 1997 was registered at Police Station Vivek Vihar for an offence punishable under Section 307 of the Penal Code. Investigation was taken up Rajender Kumar SI Smt. Premwati succumbed to the injuries during noon hours there in the hospital on the date of her admission itself. Offence punishable under Section 302 of the Penal Code was added to the case. Accused Hari Om was arrested by K.L. Yadav SI on 28.11.97 within the jurisdiction of Police station Badarpur, Delhi. At country made pistol and nine cartridges were recovered from his possession. He was also arrested in the case under reference. His brother Narender absconded. In due course of investigation, accused Hari Om was challenged to face trial.

5. Accused pleaded not guilty to the charge framed against him for an offence punishable under Section 302 read with Section 34 of the Indian Penal Code.'

3. The prosecution in order to establish its case has examined 23 witnesses. PW-1, Constable Jagdish Prasad has deposed that on 12.1.1997 he was posted at Police Post Anaj Mandi, Police Station Vivek Vihar, on which day DD No. 14 was handed over to SI Rajinder Singh, In charge Police Post Anaj Mandi and he Along with SI Rajinder Singh went to the spot 6/64, Maharam, Shahdara, Delhi. On reaching there, it was revealed that injured had been taken to the hospital. At that time, ASI Inder Pal and Constable Murli Singh also reached the spot. SI Rajinder Singh after leaving ASI Inder Pal and Constable Murli Singh at spot went to the SDN Hospital and there collected the MLC of Premwati. This witness further deposed that the investigating officer after receiving the MLC of Premwati has recorded her statement, which became the rukka taken by him to the Police Station for the registration of the case. This witness brought back the FIR to the hospital and handed over a copy of the same to the investigating officer. The investigating officer thereafter went to the spot and on 13.11.1997 he Along with Constable Kirari Lal took the dead body of Premwati from the SDN Hospital to Sabji Mandi mortuary and after post mortem handed over the same to the relatives of Premati.

4. PW-2, Inspector Devinder Singh, Draftsman, Crime Branch has deposed that on the request of investigating officer he visited the place of occurrence, that is, House No. 6/64, Mohalla Maharam, Shahdara and there he took rough notes and measurements. On the basis of the said notes and measurements, he prepared the scaled site plan, Ex.PW2/A.

5. PW-3, Dr. Anju Tulian, has stated that on 12.11.1997 she was posted at SDN Hospital, Shahdara, on which day Premwati, aged 75 years was brought by Raj Kumar with an alleged history of being shot at from close range. This doctor examined the patient and found the patient was conscious and pulse were 60 per minute. On local examination, she found the following injures :

'1. Circular wound 1 c.m. in diameter on left lower chest posterior axillary's line irregular black margins and singing all round the wound about 6 c.m.

2. Circular wound 0.5 c.m. and diameter right side of chest mid axillary line.'

She further deposed that the patient was not fit for making statement when she was brought to the hospital, which fact was noted in the MLC. After examining the patient later on it was found that the patient was fit for making a statement and therefore, the word 'not' was stuck off in the MLC. The cutting was initialed.

6. PW-4, Dr. K.L. Sharma, Senior Chief Medical Officer, Sabji Mandi Mortuary, Delhi has stated that on 13.11.1997 the post mortem was conducted on the dead body of Premwati, which revealed the following injuries :-

'EXTERNAL INJURIES :-

1. Laparotomy wound with fresh stitches over front abdomen, 23 c.m. long was present.

2. Stitched wound, stitches opened and wound examined. Lacerated circular penetrating wound, 1.5 X 1.5 c.m. With contused abraded collar present around the wound, no burning or tattooing was present around the wound, extensive black pink tattooing was present over left side of abdomen and chest in an area of 28X12 c.m. And same colour consistency was present over outer aspect of left arm, 15X8 c.m. The wound was present over left side chest in posterior axillary line, being 8 c.m. Obliquely below the left breast (entry wound of fire arm)

3. Stitched wound, stitches opened and wound examined as circular perforated wound, 1.5. X 2 c.m. over right lower chest in mid axillary line, margins were ragged, no seining, burning or tattooing was present around the wound. It was obliquely 6 c.m. Below from the right breast (exit wound of fire arm). Old scar of operation for removal of gallbladder was present.

INTERNAL INJURIES :-

1. Head, brain and the neck were normal except frothy blood was present in wind pipe. Chest cavity contained about 2 litres of blood and clots. The track of the missile after penetrating skin, subcutaneous tissues, bruised extensively intercostals muscles of the left side chest, further penetrated between ninth and

tenth intercostals space fracturing tenth rib in posterior axillary line. Spleen was removed by surgical operation freshly, it further perforated diaphragm and left plura was shattered and left lung, dicending Aorta were bruised, it further penetrated right plura, base of the right lung, dome of the right diaphragm and further lacerated upper convex boarder of the liver and came out form the seventh and eight inter costal space fracturing eight rib in mid axillary line and finally came out from the exit wound. (injury No. 3)

3. No bullet was recovered, plane horizontal, direction left to right from below upwards through and through the chest wall thickness. The stomach contained semi digested food and all other visas were normal except injuries mentioned. Urinary bladder ad rectum were empty.'

7. PW-5, Constable Karan Pratap, the photographer, took seven photographs Ex.PX-1 to Ex.PX-7. The negatives whereof are Ex.PX-8 to Ex.PX-14.

8. PW-6, ASI Sudev Pal Singh, has deposed that on 12.11.1997 he was posted at Police Post Anaj Mandi and on that day he Along with Constable Murli went to the spot, that is,6/64, Maharam, Shahdara, Delhi. SI Rajinder Singh met them there and he directs this witness to guard the spot and left for the hospital. The investigating officer returned to the spot, inspected the same and prepared the site plan. He also took blood from the floor of the house of Premwati with the help of cotton. He also took is to possession the empty bullet shell and wrapped the same in a cloth as also sealed the same. The empty shell and blood were seized vide memo Ex.PW6/A and Ex PW.6/B respectively. In cross-examination, this witness stated that the site plan was prepared in the pointing out of a public person accompanying SI Rajinder Singh but he did not know the name of that person. He also stated that Mohalla Maharam is a thickly populated area but he did not remember if the investigating officer has recorded the statement of persons present there. He also did not remember that the statements were recorded of the persons present, who had stated that some unknown person had shot Premwati. He further stated that empty cartridge has not been seized by him but the same is seized by the investigating officer himself after he returned from the hospital. He further stated that he did not know whether Sehdev Singh, who was a tenant in the

premises where the incident had taken place, is a constable with Delhi Police. He denied the suggestion that Sehdev Singh told the police that some unknown person had fired on Premwati and therefore, his statement was not kept on record and this fact has been concealed.

9. PW-7, Surinder Pal, identified the dead body of his mother-Premwati at General Hospital, Shahdara. His statement to that effect is Ex.PW7/B.

10. PW-8, Shri Jagdish Singh, stated that on 13.11.1997 he came to know that his mother-in-law was expired due to fire shot and he reached the mortuary of SDN Hospital and identified the dead body of his mother-in-law, Premwati. In his cross-examination, this witness stated that he reached the hospital at 12 or 12.30 noon, at which time Premwati was in the operation theater.

11. PW-9, Raj Kumar, stated that on 12.11.1997 he was residing at the house of his nani, Smt. Premwait. On that day at 10 a.m. while Premwati was brooming the floor, this witness saw Hari Om and Narinder coming from the side of Vishwas Nagar and when they came in front of the house of Premwati, both Hari Om and Narinder fired from their respective kitties which they were holding in their hand. On bullet struck Premwati above her abdomen and passed on the other side. On being hit, Premwati raised an alarm that she had been shot. He Along with two/three persons picked up Premwati and took her inside the house and made her lie on the bed. There, Premwati told them that Narender and Hari Om had come and had run away after shooting her. The witness further went on to say that there is enmity between the families of the accused and Premwati. This witness Along with the others administered first-aid and thereafter, he took Premwati to SDN Hospital. He Along with two others, namely, the driver Birju and on police official, whose name he did not remember but that police official was the tenant in the ground floor of house No. 6/64. His younger brother, Sanjay, reported the matter to police on his narration of the events. This witness was declared hostile.

The public prosecutor cross-examined him, on which this witness has stated that it is correct that one Sehdev Singh was the tenant on the upper portion in the said house No. 6/64 and it was with his help that Premwati was put in the maruti van which was parked near the house in which she was taken to the hospital. He

further stated that it was Sehdev Singh, the Police Constable, who had informed the Police Post about the incident. This witness was extensively cross-examined by the counsel for Hari Om, wherein the witness has made material contradictions as regards Sehdev Singh and denied that there was any such person by the name of Sehdev Singh. This witness was confronted on various points with his earlier statements. He stated that in his presence Premwati told the doctor, PW-3 Dr. Anju Tulian, that she was shot by Hari Om. On further cross-examination, this witness stated that the police obtained the thumb impression of Premwati on her statement, that is on paper, again said that he was not sure in how many papers the thumb impression of Premwati was obtained. He also stated that he was not sure as to whether his statement was recorded by the police or not. He admitted that doctors and nurses were present in the room when the statement of Premwati was recorded. He also admitted that no signature was taken of any doctor on the statement of Premwati. He was unable to say whether the thumb impression on the MLC Ex.PW3/A was of Premwati as the same was not taken in his presence. On being shown a statement, this witness stated that it his statement and thereafter, corrected himself to say that the statement was of Premwati, but he was unable to say as to whether the thumb impression beneath the statement of Premwati was taken in his presence. We denied the suggestion that the thumb impression was taken at the police station after the death of Premwati and that the same was obtained on blank paper on which the statement was written subsequently. He also denied that he paid a bribe of Rs. 2 lacks to Drl. Anju Tulian to delete the word 'not' before the word 'fit' in Ex.PW3/A.

12. PW-10, Dr. Kuldeep Singh, Head of Department (Surgery) has deposed that on 12.11.1997, Dr. A.K. Jain, Dr. Amitabh and Dr. B.S. Shergill operated on Premwati. MLC No. 5946/97 was prepared, which was signed by him as the Head of Department. The same is Ex.PW10/A. In cross-examination, this doctor stated that the surgical team had taken over the treatment of Premwati at 10.30 a.m. when she was transferred to the surgical ward, which fact found mention in Ex.PW3/A. The patient was in a bad shape as a result of which the first-aid started in the casualty department from the doctors of his unit. This doctor further stated that certain tests which ought to be done prior to the surgery were not done since the life of the patient was in danger. He also stated that as per record Ex.PW3/A,

Doctor Amitabh Singh had started the treating the patient, Premwati, at 10.30 a.m. He also admitted that once doctor of surgical department had taken charge of the patient, Dr. Anju Tulian, PW-3, had no control over the patient. This witness further admitted that no police man approached the doctors for recording the statement of the injured. He further stated that the MLC of Premwati was not sent to the surgical department after 10.30 a.m.. It remained with the casualty department. He further stated that if a police man had to record the statement of a patient admitted to the surgical ward, he would have to seek the permission of the doctor of that ward and has also to obtain a clearance that the patient is fit to make statement. Ex.PW10/A did not show that the police officer had approached any of the surgical ward's doctor and recorded the statement of the deceased.

13. PW-14, Head Constable Virender Pratap has recorded the FIR No. 478/1997 under Section 307 IPC.

14. PW-15, Constable Sansar Chand, stated that on 12.11.1997 he was posted as Duty Constable at SDN Hospital when at 10.30 a.m. one woman named Premwati was brought and admitted in the hospital.

15. PW-16, Dr. A.K. Jain, stated that on 12.11.1997 he operated on Premwati vide MLC No. 5946/1997, which was signed by Dr. Admitabh Singh. He was the head of the operating team. In cross-examination, this witness stated that as per Ex.PW3/A, the patient, Premwati, was received at the Surgical Ward at 10.30 a.m. He also stated that since the patient was shifted to the Surgical Ward at 10.30 a.m., Dr. Anju Tulian had no control over the patient. He stated that from the surgical note it appears that the vial organs were badly injured. The patient was removed to the operation theater at about 10.50 am.

16. PW-17, Dr. Bhupinder Singh, has deposed that on 12.11.1997 he was working as Senior Resident in the SDN Hospital. On which day, patient Premwati was admitted for surgery. He was called in the operation theater to assist the operation conducted by Dr. A.K. Jain and Dr. Amitabh Singh. In cross-examination, this witness admitted that Ex.PW10/B and Ex.PW10/C were prepared by Dr. Amitabh Singh and were sent to the Pathologist Department at 10.30 a.m. for urine and hemoglobin tests. He admitted that before a patient was put to an operation, blood

matching test was also conducted to ascertain the blood group of the patient. The witness further admitted that Premwati was under the care of Surgical Department on 12.11.1997 at 10.30 a.m. He also admitted that a police official had come to the doctors of the Surgical Department to secure an endorsement whether Premwati was fit to make a statement. He further admitted that after 10.30 a.m. on 12.11.1997, the patient was in the care of Dr. Amitabh Singh.

17. PW-18, SI Rajinder Kumar, stated that on 12.11.1997 he was posted as in charge Police Post Anaj Mandi, Police Station Vivek Vihar. On that day at about 10 a.m. he was present at Police Post Anaj Mandi and received a telephonic message that there had been firing in Mohalla Maharam street. The said information was recorded in the form of DD No. 14. He Along with Constable Jagdish, ASI Inder Pal and Constable Murli went to Mohalla Maharam, where he came to know that the injured, who had been shot, had been removed to the SDN Hospital. After leaving ASI Inder Pal and Constable Murli at the spot, he Along with Constable Jagdish proceeded to the SDN Hospital. There, he found that Premwati/injured had been admitted in the hospital. On enquiry being made from the concerned doctor, he came to know that the injured was fit to make a statement. This enquiry was made orally. He recorded the statement of Premwati, which is Ex.PW18/A and also obtained right hand thumb impression of Premwati at point X thereon. The said information was then sent through Constable Jagdish Prasad to Police Station Vivek Vihar. At the hospital, he met Raj Kumar, the grandson of Premwati, and recorded his statement. He further narrated the steps taken by him during the course of the investigation. He stated that he inspected the spot and prepared a seizure memo of the empty cartridge recovered at the spot. In cross-examination, this witness stated that Premwati had not been shifted to the surgical ward when he reached the hospital at 10.30/10.45 a.m. He was unable to tell the name of the doctor who told him that Premwati was fit to make a statement but the said doctor at that time was treating Premwati. He did not record the statement of the said doctor under Section 161 Cr.P.C. He did not ask any doctor to make the endorsement on the MLC to the effect whether Premwati was fit to make a statement before recording her statement. He admitted that he did not record the statement of Dr. Anju Tulian regarding cutting of the word not in Ex.PW3/A. He admitted that he remained in the hospital till 1 p.m. on 12.11.1997

and the site plan prepared by him at the instance of Raj Kumar is Ex.PW18/C. He also admitted that in the recovery memo Ex.PW6/A, which was regarding the recovery of empty cartridge, he did not secure the signatures of Raj Kumar. He admitted that he did not record the statement of Raj Kumar to the effect that empty cartridge was recovered from the spot. He admitted that Dr. Anju Tulian, PW-3, had not recorded the time in the endorsement that Premwati was fit to make a statement. He admitted that he recorded the statement of Premwati at about 11 or 11.15 a.m. He further admitted that by the time he had reached the hospital, Premwati was being administered drugs in the hospital. He admitted that initially the doctor has recorded 'not fit for statement' and subsequently, the word 'not' was deleted and it was made as 'fit for statement'. He also admitted that he had not obtained the opinion of doctor on Ex.PW18/A to the effect that Premwati was fit for making a statement. He further stated that he has not mentioned either in Ex.PW18/A or in rukka Ex.PW18/B that the statement of Premwati was recorded in the presence of any doctor. He further admitted that he had not obtained the opinion of the doctor before recording statement of Premwati that she was not only conscious but was oriented and fit to make a statement.

18. PW-19, Shri K.L. Yadav, stated that on 28.11.1997, the accused Hari Om made a disclosure statement Ex.PW19/A. From the possession of the accused one country made pistol Along with nine live cartridges were recovered. He was tried separately for the said recovery in a case arising out of FIR No. 761/1997 under the Arms Act. He admitted that in FIR No. 761/1997 under the Arms Act, the accused Hari Om has already been acquitted.

19. On the basis of the aforesaid material, the trial court has returned a finding that the statement of the deceased, which is a dying declaration, is admissible and therefore, taking the same into consideration found the appellant guilty under Section 302 IPC.

20. We have heard learned counsel for the parties and with their assistance have gone through the records of the case. It is contended by counsel for the appellant that the so-called dying declaration is a suspect document which has been prepared at the instance of Raj Kumar to falsely implicate the accused persons on

account of a long pending enmity in which the family members of Raj Kumar have been convicted for the murder of a member of the family of the accused.

21. Counsel for the State on the other hand contended that in the present case the material witnesses are PW-9, Raj Kumar and the investigating officer, who recorded the statement of the deceased. He contended that a reading of the statement of Raj Kumar as also the contents of the statement of the deceased leave no manner of doubt that the accused have been rightly charged and convicted.

22. Having heard learned counsel for the parties, it appears to us that the controversy in this case hinges upon the alleged dying declaration as also the statement of PW-9, Raj Kumar. While appreciating the deposition of PW-9, Raj Kumar, it appears that according to this witness he was present in the house of Premwati when the incident took place. In his chief-examination, he stated that he saw Hari Om and Narender coming from the side of Vishwas Nagar and on reaching the house of Premwati, both fired a shot each from their respective kattas at Premwati. He also deposed that Hari Om and Narender were holding their respective weapons when he first saw them. In the same breath this witness stated that Premwati raised an alarm that she had been shot, where upon he along with two or three tenants of Premwati came and took her inside the house and made her lie on the bed. It is here that Premwati told all of them that Narender and Hari Om had come and run away after shooting her. It also transpires that this witness told his brother, Sanjay and one of the tenants to go and inform the police regarding this incident. It is in evidence that Sanjay came to the spot later on and it is also in evidence of this witness that Sanjay already knew as to who had shot Premwati. This fact was also known to Constable Jaivir and Constable Sehdev Singh, who were tenants, yet DD No. 14 made in the Police Station in respect of the information received regarding the incident does not mention that Hari Om and Narinder had come to the spot and shot Premwati. Interestingly, neither Jaivir nor Sehdev Singh or Sanjay have been examined by the prosecution as witnesses. It is also in the evidence of PW-9 that he along with Birju as also one other police official took Premwati to the hospital. The investigating officer reached the hospital at about 10.30 or 10.45 a.m. It is also in evidence that he met PW-18 at the

hospital and that he was present at the time of recording of the statement of Premwati by PW-18. Further that the statement of PW-9 was also recorded by PW-18 at the hospital. From this, it can safely be deduced that SI Rajinder Kumar had knowledge of the incident and the manner in which it may have occurred from Raj Kumar. PW-18, SI Rajinder Kumar, has deposed that we received the information over telephone, which he recorded in DD No. 14 at 10 a.m., where after he went to the spot and thereafter to the hospital. He stated to have reached the hospital at or about 10.45 a.m. He then made enquiries from a concerned doctor about whether Premwati was in a fit condition to make a statement and thereafter, recorded her statement which was also thumb marked by Premwati. On the other hand, we have the statements of PW10, 7, 16 and 17, doctors of the hospital, who categorically stated that Premwati was placed in their charge at 10.30 a.m. She was in a critical condition and they began administering medical treatment to her. They also stated that no police official sought their opinion as to whether Premwati was in a fit condition to make a statement or that any statement of Premwati was recorded after she was placed in their charge at 10.30 a.m. The statements of all these witnesses is corroborated by the documentary evidence in the form of MLCs. PW-3, Dr. Anju Tulian, woe stated to have attended Premwati in the first instance has recorded initially that the patient is not fit for making a statement but later on after re-examining her had struck off the word 'not'. She however does not note down the time at which the patient became fit to make the statement. She neither stated that any opinion had been sought of her by the investigating officer to ascertain whether the injured was in a fit condition to make a statement nor is there anything on record to show that an application was moved to this doctor by the investigating officer to ascertain the physical condition of the injured. The situation that emerges is that after 10.30 a.m. Premwati was in the care of Department of Surgery, at which time PW-3, Dr. Anju Tulan, had no control over the injured. There was no request made to the surgeons by the investigating officer to ascertain her condition and that no statement was recorded by the investigating officer of Premwati while she was in the care of the surgery doctors. The investigating officer received the information of the incident at 10 a.m.. Thereafter, he went to the place of occurrence and reached the hospital at about 10.45 a.m. There was no possibility of a statement being given to him by the injure

at this time since she was already in the care of the Surgical Department. The alteration made by PW-3 in the MLC appears to have been done subsequently when the MLC was still with PW-3 and the patient was in the care of the surgery doctors. This is borne out from the statement of PW-10, Dr. Kuldeep Singh to the effect that 'MLC of the patient Premwati was not sent to the Surgical Department after 10.30 AM on 12.11.97 but it remained in the Casualty Deptt.' From this, it can safely be deduced that Raj Kumar, who was present in the hospital, narrated a story to the investigating officer and the investigating officer introduced the so-called dying declaration and also made PW-3, Dr. Anju Tulian, a party to this fabrication by manipulating the MLC. At the cost of repetition, it is strange that neither Jaivir, Sehdev, nor Sanjay were examined as witness to corroborate the statement of Raj Kumar.

23. So far as the recovery of empty cartridge from the place of occurrence is concerned, it is the statement of PW-9 that he saw both Hari Om and Narender fire from their respective kattas, one shot each but there is nothing on record to show that any of them broke their kattas to eject an empty shell before fleeing or reloaded their kattas. Further, the recovery memo is not signed by Raj Kumar, who was allegedly present at the spot when the alleged recovery has been made. There is also no independent witness joined in recoveries though present. Even the two constables/tenants, who were introduced by Raj Kumar as having heard the first dying declaration were not made witnesses in the case or to the recoveries. It would not be out of place to mention that the accused has been acquitted under the Arms Act.

24. From the above, it becomes clear that the so-called empty cartridge found at the spot is an ingenuity of the investigating officer, who has introduced the same into this case possibly at the instance of Raj Kumar, who had axe to grind against the accused. Further, since the accused has already been acquitted under the Arms Act for the recovery of the katta, through which the alleged empty has been fired, the accused surely cannot be connected with the incident only on the basis of the statement of PW-9.

25. Analysing the statement of PW-9, it appears that besides him a number of other people had witnessed the occurrence or had arrived at the spot soon thereafter and had been told by the victim of the incident, yet the prosecution has chosen not to field them as witnesses to corroborate the statement of PW-9, Raj Kumar, who is otherwise an interested witness. This witness states that two person brandishing their weapons came and opened fire with their kattas on the deceased. This does not find support room any other evidence. He says the deceased told him as also others present about the incident. It too finds no support. He say that Sanjay as also Sehdev knew of the facts and were sent to inform the police. This also finds no support from the DD entry nor any ocular statement. The manner in which the investigating officer has introduced the dying declaration and also the empty cartridge creates grave doubt in the prosecution's version as put forth through its witnesses. Raj Kumar appears to have taken centre stage in ensuring fabrications to nail the accused. The statement of Raj Kumar is full of contradictions and improvements, which does not inspire confidence.

26. Having analysed the evidence on record, we are of the opinion that the prosecution has failed in establishing its case. The trial court was wrong in placing reliance on the dying declaration to convict the appellant. In that view of the matter, we set aside the judgment dated 18th July, 2000 and order on sentence dated 24th July, 2000 and acquit the appellant of all charges. Crl. A. 610/2000 is accordingly allowed and disposed of. Crl.M.B.1664/2004 also stands disposed of. The appellant be set at liberty forthwith, if not wanted in any other case.