

**Hari Ram Vs. the State**

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**Court :** Rajasthan

**Decided On :** Mar-11-1964

**Reported in :** AIR1965Raj130; 1965CriLJ132

**Judge :** D.M. Bhandari and; B.P. Beri, JJ.

**Acts :** [Evidence Act, 1872](#) - Sections 32(1)

**Appeal No. :** Criminal Appeal No. 128 of 1963

**Appellant :** Hari Ram

**Respondent :** The State

**Advocate for Def. :** S.N. Gurtu, Asst. Govt. Adv.

**Advocate for Pet/Ap. :** Chandmal,; H.M. Lodha and; R.N. Bisnoi, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Bhandari, J.**

1. This is an appeal by Hari Ram who has been convicted by the Sessions Judge, Ganganagar, by his judgment dated 28th January, 1963 under Section 302 I. P. C. for having committed the murder of Thakar Ram and has Been sentenced to imprisonment for life.

2. The deceased Thakar Ram had two brothers Biru Ram and Gopal (P. W. 2). Hanuman (P. W. 1) is the son of Biruram. Mst. Supari, sister of Hanuman was married to Hari Ram appellant while Mst. Vidhya, sister of the appellant, was married to Shankerlal, brother of Hanuman. Hari Ram had been convicted in a criminal case and was sentenced to five years' rigorous imprisonment. After his release from jail he and his father Ramchander resided in village Kanwarpura, where Biruram, Thakar Ram and Gopal also resided. The case for prosecution is that Mst. Vidhya left the house of her husband and went away to her parent's house for reasons, which need not be mentioned here. On this Mst. Supari is said to have left the house of her husband Hari Ram and gone to the house of her parents. This happened some six months before the date of occurrence and gave rise to bad blood between the two families. It is further alleged by the prosecution that on 25th February, 1962 at about 9 a. m. Thakar Ram accompanied by his nephew Hanuman (P. W. 1) was going to the school building in Kanwarpura where polling in connection with the last General Elections was going on.

They passed outside the house of Ramchander and Hari Ram. Ramchander and Hari Ram at that time were standing outside their house. Hari Ram ran after Hanuman in order to assault him. Thakar Ram intervened and thereupon Ramchander caught hold of Thakar Ram. Meanwhile Hari Ram went inside his house and brought a 12 bore single barrel gun and fired at Thakar Ram when he was running away having got himself released from Ramchander. Thakar Ram received the gun shot wound on the right side laterally in the lumbar region and at once fell down. This occurrence, according to the prosecution, was witnessed by Hanuman (P. W. 1) and Gopal (P. W. 2). Other villagers assembled at that time and Thakar Ram was carried in a motor vehicle borrowed from one of the polling parties to Raisingh Nagar Hospital. Dr. R.S. Agarwal, Medical Officer Incharge Dispensary Primary Health Centre, Raisinghnagar, examined Thakar Ram at 11.05 a. m. The wound of entry of the shot was a lacerated wound 2' x 1' with inverted edges and blackening of skin in the right renal area.

The wound of exit was a lacerated wound 1' x 1/2' with everted margin left side of abdomen 2' above the umbilicus. Thakar Ram was at that time conscious. Shri Ram Kumar, Second Class Magistrate, Raisinghnagar was called to record the

dying declaration of Thakar Ram and his dying declaration (Ex. P. 8) was recorded by the said Magistrate at 12.20 p. m. on the same day, Thakar Ram was thereafter carried to the Government Hospital at Ganganagar where he succumbed to injuries at 9 p. m. on 25th February, 1962. The post-mortem examination of the dead body of the deceased was performed by Dr. A.R. Acharaya (P. W. 3) at 11 a. m. on 26th February, 1962. In the opinion of the doctor the cause of death was haemorrhage and shock due to injuries of liver and ascending colon. Hari Ram was arrested at Chak 58 F on 25th February, 1962 at 5 p. m. but Ramchander absconded and could not be arrested for a long time. Baldev Singh, Circle Inspector, Raisingh Nagar searched the house of Hari Ram on 25th February, 1962 and recovered the gun (Ex. 1) lying concealed in a heap of cow-dung cakes in the courtyard of Hari Ram's house.

It was seized under recovery memo Ex. P. 6. It was sent to the Ballistic Expert and the Ballistic Expert's report is that it was in working order. After committal proceeding both the accused stood their trial before the Sessions Judge, Ganganagar--Hari Ram under Section 302 I. P. C. and Ram Chancier under Section 302 read with, Section 34 I. P. C. Both the accused pleaded not guilty. Hari Ram denied the prosecution case altogether and pleaded that he had gone to village Mukha before the date of occurrence and was coming from Mukha to Kanwarpura on the morning on the day of occurrence when he was arrested by the villagers at 58 F. at 8 a. m. because some Baoris had suspected him to be a Muslim from Pakistan. Of the two eye-witnesses produced at trial Hanuman (P. W. 1) and Gopal (P. W. 2), Hanuman turned hostile. He stated that at the time of murder of Thakar Ram he was not with him but was in the school building where polling was going. He received the information of the incident from Hansraj Godara and when he reached near the house of Banwari he found Thakar Ram in a wounded condition. Gopal (P. W. 2) supported the prosecution case.

The prosecution also proved the dying declaration (Ex. P. 8) by the evidence of Shri Ram Kumar (P. W. 6) and Dr. R.S. Agarwal (P. W. 8). The learned Sessions Judge believed the evidence of Gopal (P. W. 2) and also the fact that Thakar Ram had made the dying declaration (Ex. P. 8). Relying on this evidence he held that Hariram had fired at Thakar Ram, as alleged by the prosecution, which resulted in

his death. The appellant has examined certain witnesses to prove that he was not near the place of occurrence at 9 a. m. on 25th February, 1962 but was in Chak 58 F having been detained by the villagers of that Chak. This evidence was disbelieved by the learned Sessions Judge.

3. In this appeal it is contended that the evidence given by Gopal was not true and that he had not at all witnessed the firing at Thakur Ram. The learned counsel for the appellant has advanced various arguments why the evidence of Gopal (P. W. 2) should not be believed and we shall take note of them when we shall discuss his evidence. It is then urged that the dying declaration (Ex. P. 8) suffered from certain infirmities and could not be relied on. The main question for consideration in this appeal, therefore, is whether the evidence relied on by the learned Sessions Judge for convicting the appellant was not properly appraised. We shall first take into consideration the evidence of Gopal (P. W. 2). (After discussing the evidence of P. W. 2 and considering the objections, his Lordship continued). The trial Court which had the opportunity to watch the demeanour of the witness, believed him. We do not find that the evidence of Gopal should be disbelieved on the grounds advanced by the learned counsel for the appellant.

4. Now, we come to the dying declaration made by Thakar Ram. In the dying declaration it is clearly stated that Ramchander grappled with the deceased and he got himself released and ran away. Then Ramchander again grappled with him. Hari Ram brought a gun from his house and fired at him, which struck him on the right side and he fell down. As already mentioned the dying declaration is proved by the evidence of Shri Ram Kumar (P. W. 6) and Dr. R.S. Agarwal (P. W. 8). Before the dying declaration was recorded Dr. R.S. Agarwal had given his opinion that the patient was in a fit condition to make a statement. He had in fact attached a certificate to the dying declaration that Thakar Ram injured was in senses and the dying declaration had been recorded in his presence. The first criticism about the dying declaration is that it was not recorded in the words of the deceased. In the statement of Ram Kumar it is mentioned that the deceased spoke in local dialect ckkMh Hkk'kk While the dying declaration was in the Hindi language.

We are of opinion that it is always proper if the dying declaration is recorded in the words of the injured, but simply because the very words uttered by the injured are not reproduced it is no reason to reject the dying declaration if the Court is otherwise satisfied that the dying declaration as recorded correctly reproduces what was stated by the injured. Reference in this connection may be made to *Bakshish Singh v. State of Punjab*, (S) AIR 1957 SC 904. In that case the trial Court had rejected the dying declaration on the ground that the narrative of the event given by the deceased was in Punjabi and the statement taken down was in Urdu. Their Lordships of the Supreme Court held that in the Punjab language used in the subordinate Courts and that employed by the police for recording of statements has always been Urdu and recording of the dying declaration in Urdu cannot be a ground for saying that the statement does not correctly reproduce what was stated by the declarant. No question was put in cross-examination to Shri Ram Kumar that he did not understand the local dialect in which the declarant gave his statement.

It may be mentioned that Ram Kumar was a Tehsildar at Raisinghnagar at the material time. The second criticism about the dying declaration is that it is not in the questions and answers form. Ram Kumar in cross-examination stated that he put questions to Thakar Ram as to who had caused him Injuries and how the occurrence took place. He has further stated that after every sentence he questioned him as to what happened next. The questions are not mentioned in the dying declaration, which is in the narrative form. But the evidence of Ram Kumar shows that initially the injured was put two general questions to lead him to say what had happened to him and thereafter he only asked him to go on narrating by putting the question 'what happened next.' Here again we may point out that it is always proper that the person who records the dying declaration should also note down the questions put to the deceased. But in this case the dying declaration is a very short document covering only about six lines. Mere omission to mention the questions in the dying declaration cannot be a ground for rejecting it specially when only general questions as put in this case are put to the declarant.

The third criticism about the dying declaration is on the basis of certain answers given by Shri Ram Kumar on his cross-examination. At one stage the witness

stated that he did not remember whether the injured made some answers only by gestures and not by mouth. The last answer given by the witness in cross-examination was that he had not put any leading question to Thakar Ram but it was a fact that he had made some answers by nodding his head, and did not remember those answers at the time of his examination. It is urged that from the above it may be inferred that Ram Kumar had not only taken down what was stated by mouth by the injured but also recorded in the dying declaration certain answers given to him by gestures. But it should not be forgotten that the witness had clearly stated that whatever was stated by the injured was reduced to writing and was contained in Ex. P-8. Dr. R.S. Agarwal is also definite on this point. On cross-examination he clearly stated that the injured was making his statement by speaking from his mouth and not by gestures. In view of this evidence we do not think that Ex. P-8 contained anything beyond what was stated by mouth by the declarant, though it may be that at the time of giving dying declaration the deceased was making gestures.

5. The proper method for recording a dying declaration by a person, be he a Magistrate or a Police Officer or a doctor or any other person is that he must be first satisfied that the declarant is in his senses. If the declarant is not in senses the person recording the dying declaration should not proceed further beyond making a note that the declarant, in his opinion, was not in his senses. If the person recording the dying declaration is satisfied that the injured person is in his senses second thing to be done is to ascertain whether the injured is in a position to speak coherently. If he is so satisfied then he may proceed to put any general question or questions to elicit from the injured person as to what had happened to him. It is always proper that the questions put by the person recording the dying declaration should also be recorded so that the Court may judge the nature of the questions put. So far as possible putting leading questions should be avoided. Then the person recording the statement may record what is said to him by the injured.

If during the course of recording the statement of the injured it becomes necessary to put any question in order to elucidate what is stated by the declarant it may be permissible to do so. But such question must be recorded. What is thus recorded

may at the end be read over to the Injured, if the circumstances do not warrant otherwise. For example, it may be necessary to remove the injured as early as possible for operation and the reading over of the statement may cause such delay as may not be proper, In such, event it may be dispensed with. If the injured person is in a position to append his signature or put his thumb mark on such statement the signature or the thumb impression should be obtained or appended. If the injured is in his senses but is not in a position to speak by mouth in a coherent way he may be put short questions and his answers given by gestures may be noted. It is imperative, however, In such a case that the gestures of the injured person signifying the answers given by him should find an appropriate mention.

This will enable the Court at the trial to properly evaluate the dying declaration. We may also mention that in such a case putting of leading questions may be permissible. The anxiety of the person who records the dying declaration should be to see that the injured properly comprehends what is asked from him and the gestures given in pursuance to the questions put to him should be faithfully recorded and interpreted. Over and above all this It is necessary that the person recording the dying declaration should see that there is no chance of prompting of the injured person by persons near him and no replies should be recorded which are given on such prompting. The possibility of prompting should be entirely excluded. This can be done by excluding from the place where the dying declaration is recorded the relations of the deceased and all other unnecessary persons. These are some of the desirable steps to ensure that a faithful record of the dying declaration is made. However, these should not be taken to be exhaustive or Inflexible.

6. After examining all the evidence of Shri Ram Kumar and Dr. R.S. Agarwal, we are of the opinion that in this case the dying declaration (Ex. P-8) is a faithful record of what was stated by Thakar Ram. We are of opinion that the learned Sessions Judge has rightly relied on Ex. P-8. From the evidence of Gopal (P. W. 2) and the dying declaration Ex. P-8 it is established beyond any manner of doubt that it was appellant Hariram who had caused the gun shot Injury to Thakar Ram which resulted in his death. The learned counsel for the appellant has not led any

stress on the defence evidence and we think rightly. We are, therefore, of opinion that the appellant has been rightly convicted under Section 302 I.P.C. As he has been awarded lesser of the two sentences permissible under law, there is no room for interference.

7. The appeal, therefore, fails and is dismissed.

8. The learned counsel for the appellant prays for leave to appeal to the Supreme Court. The case is decided on facts. We do not think it proper to grant leave. It is refused.

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