

Mada Singh Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jul-26-1984

Reported in : 1984WLN(UC)557

Judge : S.K. Mal Lodha and; Kanta Bhatnagar, JJ.

Appeal No. : D.B. Criminal Appeals Nos. 107 and 310 of 1980

Appellant : Mada Singh

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kanta Bhatnagar, J.

1. Mada Singh appellant was tried for the offence under Section 302 IPC by the Additional Sessions Judge, No. 1 Hanumangarh along with co-accused Banta Singh, Papni Singh and Jora Singh, respondents in Criminal Appeal No. 310 of 1980 who were tried for offences under Sections 302/24 IPC. By the judgment dated January 25, 1980, the learned Additional Sessions Judge convicted Mada Singh for the offence under Section 302 IPC and sentenced him to imprisonment for life. By the same judgment, the learned Judge acquitted the co-accused Banta Singh, Papni Singh and Jora Singh.

2. Feeling aggrieved by his conviction and sentence Mada Singh has preferred appeal in this Court. The State of Rajasthan felt dissatisfied by the acquittal of Banta Singh, Papni Singh and Jora Singh and challenged their acquittal by filing appeal against them.

3. As the appeals filed by Mada Singh and the State of Rajasthan arises out of the same facts and judgment, we propose to dispose them of by a common judgment.

4. Briefly stated the facts of the case giving rise to the aforesaid appeals are as under:

5. The relations between Banta Singh and deceased Pooran Singh got strained on account of the irrigation canal being turned towards the field of the latter by the irrigation department six or seven months prior to the incident of the murder of Pooran Singh. On March 28, 1978 in the evening, Thaman Singh (PW 5) and Balveer Singh (PW 7) father and son of Pooran Singh deceased respectively were sitting on a platform outside their house. Pooran Singh had gone to present money to the neighbour Hajara Singh, whose son was to marry on the next day. When Pooran Singh was returning to his house, Banta Singh and his three sons viz. Mada Singh, Popni Singh and Jora Singh reached towards him. Mada Singh and Banta Singh were armed with 'Gandasa'. Bapni Singh with 'Takua' and Jora Singh was empty handed. They gave a beatins to Pooran Singh. Pooran Singh sustained head injury at the hands of Mada Singh from the 'Gandasa' and fell down. Thoman Singh (PW 5) and Balveer Singh (PW 7) took Pooran Singh inside the house. Jogendra Singh (PW 6) and Dam Singh also reached the site. Balveer Singh, Thaman Singh, Jora Singh and Dam Singh took injured Pooran Singh in a jeep to Sadulshahar. As the condition of Pooran Singh was critical, the Doctor sent requisition to the Tehsildar Sadulshahar to record his dying declaration. In view of the serious condition of the injured, the Doctor did not examine him and referred the case to the Ganganagar Hospital for treatment. Prior to the injured being taken to Ganganagar hospital, Tehsildar, Ram Nath (PW 2) recorded his dying declaration which is Ex, P/2. Prahlad Rai SHO of the Police Station, Sadulsahar also reached the Primary Health Centre. He recorded the statement of Thoman Singh (PW 7) father of Pooran Singh. Dr. R.K. Gupta (PW 4), Medical Jurist,

Ganganagar Hospital examined Pooran Singh at about 1.30 A.M. in the intervening night of March 29, 1978 and March 30, 1978. The Doctor noted one incised wound 6' x 1' brain protruding extending from the right mastoid region behind the ear to the right parietal bone. Pinna of right ear was also cut. The wound was caused by some sharp edged weapon. The duration of the injury according to Dr. Gupta was 8 to 12 hours. X-ray was advised. The injury report is Ex. P/6. Dr. Gupta sent Ex. P/7, 'tehrir' to the police station for getting recorded the dying declaration of the injured. S.C. Goyal (PW 8), Munsif and Judicial Magistrate, Ganganagar recorded the dying declaration of Pooran Singh Ex. P/8 in the same night at 3.10 P.M. in the presence of Dr. R.K. Gupta. On the next day SHO Prahladrai (PW 12) went to the site and prepared the site plan Ex. P/24 and site inspection memo Ex. P/24A. The SHO took blood soaked earth and control soil from the site vide memo Ex. P/16. One blood stained 'chadar, one 'chuni', and 'angocha, and there pieces of turban were also taken in possession from the site and sealed. On March 13, 1978 the SHO took in possession the blood smeared clothes of the injured. Pooran Singh injured breathed his last in the intervening night of March 30 and 31, 1978 at 2.00 A.M. in the surgical ward of Ganganagar hospital. Dr. R.K. Gupta conducted the autopsy over the dead body in the morning of March 31, 1978. The Doctor noted as follows:

External Examination:

Normal built, Rigor morits developed all over the body. Post mortem staining on the back of neck and chest abdomen and the extremities.

Incided wound of 6' x 1' x brain matter coming just extending from the right mastoid region behind the ear to the right parietal region pinna of the right ear of cut-Anti mortem in nature.

6. In the opinion of the Doctor the cause of death was head injury resulting in injury to brain and fracture of skull bone and in the cranial haemorrhage. The mode of the death was coma.

7. The accused were arrested on April 5, 1978. On April 8, 1978 Mada Singh furnished information Ex. P/29 for getting recovered 'Gandasa' from the fodder in

the kotha. In pursuance of that information 'Gandasa' Article 11 was recovered vide memo Ex. P/19. The SHO suspected blood on the blade of 'Gandasa' and, therefore, sealed it. On the same day accused Papni Singh furnished information Ex. P/30 for getting recovered 'Takua' from his house. Accordingly 'Takua' was recovered vide memo Ex. P/20. The articles recovered during the course of investigation were sent for chemical examination. The report of the Chemical Examiner is Ex. P/34 and that of Serologist is Ex. P/32. Human blood was detected on the clothes recovered from the site and the clothes of the injured recovered in the hospital.

8. Upon completion of necessary investigation, charge sheet against four accused was filed in the Court of Judicial Magistrate, No. 2, Hanumangarh. The learned Magistrate finding a case exclusively triable by the Court of Sessions, committed the four accused to the Court of Additional Sessions Judge No. 1, Hanumangarh. The learned Judge charge sheeted the accused Mada Singh for the offence under Section 302 IPC and the remaining for the offence under Section 302/34 IPC and recorded their pleas. All of them denied the indictment and claimed to be tried. Prosecution examined 13 witnesses in all to substantiate its case. All the accused denied the allegations levelled against them in their statements under Section 313 of the Code of Criminal Procedure. No defence witness was examined.

9. The learned Additional Sessions Judge believed the prosecution evidence so far as Mada Singh was concerned and convicted and sentenced him as stated earlier. The prosecution case against the remaining co-accused viz. Banta Singh, Papni and Jora Singh was not held to be established and the judgment of acquittal was passed in their favour. The two appeals under consideration have arisen out of the aforesaid judgment.

10. Mr. S.R. Singhi, learned Counsel for Mada Singh appellant has assailed the conviction of the appellant on a number of grounds. According to the learned Counsel, as the learned trial Judge has disbelieved the alleged eye witness Balveer Singh, Thaman Singh and Jorasingh and the circumstantial evidence of the recovery, of the 'Gandasa' in pursuance of the information furnished by Mada Singh, there remains no evidence worth the name against the appellant Mada

Singh for holding him guilty. Mr. Singhi strenuously contended that there is no corroboration to the two dying declarations Ex. P/2 and Ex. P/8. The dying declarations according to the learned Counsel suffer from the grave infirmities should not have been made the basis of the conviction of Mada Singh.

11. The learned Public Prosecutor controverted these contentions and submitted that learned trial Judge should have discarded the testimony of eye witnesses whose versions were somewhat similar to the contents of the written dying declarations. The learned Public Prosecutor emphasised that the two dying declarations having been recorded by responsible person like Tehsildar and the Judicial Magistrate, suffer from no infirmity and have been rightly believed by the learned trial Judge.

12. At the very outset we may observe that the learned trial Judge has based the conviction of the appellant Mada Singh on the two dying declarations Ex. P/2 and Ex. P/8. He has not placed reliance on the evidence of motive i.e. the alleged strained relations between Pooran Singh and Banta Singh regarding the irrigation canal said to have been opened six or seven months prior to the incident. The learned trial Judge has elaborately discussed the evidence of Balveer Singh (PW 5) and Thaman Singh (PW 7), the alleged eye witnesses to the occurrence and Jogendra Singh (PW 6) who according to the prosecution had reached the site immediately after Pooran Singh had sustained the blow and has disbelieved them. The alleged recovery of the 'Gandasa' in pursuance of the information furnished by appellant Mada Singh has also been disbelieved for the reasons that the motbir to the recovery has turned hostile and according to the Serologist the origin of the blood on the blade of the 'Gandasa' Article 11 was not traceable.

13. The learned Public Prosecutor has urged that the learned trial Judge should have believed the eye witnesses. As such before proceeding to discuss the dying declaration Ex. P/2 and Ex. P/8, we consider it proper to express our opinion regarding the veracity of the statements of the alleged eye witnesses to find out whether their testimony has rightly been discarded by the learned trial Judge or not.

14. Thaman Singh (PW 7) and Balveer Singh (PW 5) happen to be father and son respectively of deceased Pooran Singh. The incident had taken place at some distance from their house in the way. The two, witnesses have stated that they were sitting on the platform outside the house. The incident according to them had taken place when Pooran Singh was returning from the house of Hajura Singh after giving present of money to him on the occasion of his son's marriage. Attention of the witnesses was drawn to the version in their police statements regarding the exact place and the posture in which the injured is said to be at the time of the occurrence. Their statements on the point are inconsistent. They have also contradicted each other on the point. Thaman Singh has improved from his police statements Ex. D/3 on various points, such as Banta Singh and Jora Singh instigated Mada Singh to kill Pooran Singh and Jogendra Singh reaching the site while he and Balveer Singh were lifting the injured from the place of occurrence. Similarly Balveer Singh (PW 3) has also improved upon his statements on a number of material points. His initial version was of the assailants not reaching near the injured simultaneously, which he subsequently changed.

15. The two witnesses have stated about Banta Singh being unarmed which is in utter contradiction to the version given by the deceased in the dying declaration Ex. P/I where Banta Singh is also said to have been armed with 'Gandasa' and having given a beating to the injured. The Learned trial Judge has also taken into consideration the version of Thama Singh (PW 7) and Balveer Singh (PW 5) regarding Papni Singh inflicting 'Takua' blow to Pooran Singh. The medical evidence does not support the version. There is force in the argument of the learned Counsel for the appellant that in order to fit in their statements with the medical evidence the two witnesses improved upon the earlier version and stated that they do not recollect whether the 'Takua' hit the injured or not. According to these witnesses there was none to intervene when the 'Takua' blow was inflicted by Papni Singh and that there was a sound of blow. If that was so, some injury with 'Takua' would have been there on the person of Pooran Singh but the Doctor found none.

16. There are three versions regarding the exact place and position in which Pooran Singh was at the time of the incident According to Balveer Singh the

incident took place just when Pooran Singh was about to sit near him and his grand-father Thaman Singh after returning from the house of Hajura Singh. The version in the dying declaration Ex. P/2 is that Pooran Singh was sitting on the platform. Thaman Singh has stated that it was at about a distance of 11' or 12' from the platform they were sitting on that, Pooran Singh was attacked and injured. It is relevant to observe that the learned trial Judge has also given importance, and, in our opinion, rightly so, to the improved statements of the two witnesses. The learned trial Judge has placed much importance on the statements of the two initial versions of Thaman Singh before the police. to which his attention was drawn, was that it was at the time on returning from the house of Hajura Singh when Pooran Singh was having a talk with Dam Singh that the miscreants attacked him. The two witnesses have stated in the Court about Dam Singh reaching the site when they were lifting injured Pooran Singh. Dam Singh was an important witness in the case. The prosecution for the reasons best known to it did not produce him in the witness box. The learned trial Judge has taken the matter seriously and took it to be a point adversely affecting the prosecution case. In the view of the matter Mr. Singhvi argued that Dam Singh, if examined, might have given a version different from that of Balveer Singh and Thaman Singh and there were chances of these two witnesses being falsified by the statement of Dam Singh. The learned Judge in view of this type of evidence coming forth from the deposition of Balveer Singh and Thaman Singh has rightly not considered them to be truthful witness.

17. Apart from the aforesaid infirmities in the testimony of these two witnesses, it is important to note that had the witnesses been there, at the time of the occurrence or rushed there within no time, in the natural course of event, their clothes must have had some blood stains while lifting and taking the injured who must be bleeding from the head injury to a distance of about 15' i.e. from the lane to the room. It is also to be considered that there was no trail of blood found from the place of the incident to the place where the two witnesses claimed to have taken the injured immediately after the incident. The possibility of the two persons reaching the injured after the starting of the conglutination of blood, therefore, cannot be ruled out and if it was so, their evidence regarding seeing the actual occurrence stands shattered.

18. So far as Jogendra Singh's evidence is concerned, the learned trial Judge has rightly disbelieved his presence at the site at the time of the occurrence or immediately thereafter. According to Balveer Singh when his father fell down and his grand-father raised a cry, the assailants took to heels and it was when they were lifting his father that Dam Singh and Jogendrasingh had reached there. Attention of Balveersingh (PW 5) was drawn to his police statement where he has not stated reaching the site prior to the accused running away from there and giving a Malkar'. Thaman Singh (PW 7) about Jogendra Singh (PW 6) has stated about Jogendrasingh reached the place of occurrence when he and Balveer Singh were lifting Pooransingh. His attention was drawn to his police statement where this fact does not find place. The witness only stated that he had so stated but police might not have written so. Jogendrasingh (PW 6) does not claim to be the actual witness of the occurrence but has stated that when he reached he had seen four assailants running from there, According to him he reached the site when Balveersingh and Thamansingh were lifting Pooransingh. There is also force in the argument of Mr. Singhi that had the alleged eye witnesses seen the incident they would have so stated before Doctor Jhakhad instead of saying that quarrel had taken place. The learned Counsel also stressed that this shows that the witnesses were either not there at the time of the incident said to be the sudden attack by the assailants or they were concealing the true story of some quarrel.

19. The learned Additional Sessions Judge has rightly taken into consideration the fact that the three eye witnesses to the occurrence viz. Balveersingh (PW 5), Jogendra Singh (PW 6) and Thamansingh (PW 7) being related to the deceased were interested witnesses and their testimony requires close scrutiny.

20. The testimony of related and interested witnesses need not in all cases be discarded because cases are not rare where only family members or persons interested are available at the site. All that is required in such cases is a careful scrutiny of their deposition to find out whether the version given by them is true or not. In the present case also, but for the above discussed infirmities in the statements of these witnesses we would not have disbelieved them simply because of their being related to the deceased. Had there been no independent witness available to the prosecution, the matter would have been different but this

is a case where from the prosecution evidence itself presence of Damsingh has been established, The prosecution has no explanation for not bringing the independent witness in the witness box.

21. So far as the recovery of 'Gandasa' is concerned, it requires no discussion, the learned trial Judge has discussed this point in detail and in view of the evidence of motbirs and the origin of the blood on the 'Gandasa' not being known, he has rightly not considered it to be a circumstance against Madasingh.

22. In the absence of any specific evidence regarding the alleged strained relations between the assailants and the victim, the prosecution case regarding the motive for the commission of the crime has not been taken to be of any help to the prosecution by the learned trial Judge. The learned Public Prosecutor also did not throw any light on the point in this Court.

24. under Section 32(i) of the law of Evidence, a statement made by a person as to the cause of his death is relevant and admissible in evidence. A person making such a statement is considered to be in the same situation as a witness deposing on oath. That is to say, the testimony coming forth in the form of dying declaration has the same value as a sworn deposition before the Court. Dying declaration may be oral or written. The circumstances in which the dying declaration is made the opportunity of the deponent having consultation with and coaching by the persons surrounding him and his mental and physical condition play an important role in forming an opinion by the Court as to whether the statement is genuine and truthful or a fabrication. In cases of oral declaration the danger of the statement of the person on the verge of dying being misunderstood or misreported is much more than the written dying declaration. However, implicit reliance cannot always be based on a written dying declaration when there is reason to suspect its truthfulness. Before basing conviction on dying declaration, it had to be ascertained whether necessary formalities required in recording of dying declaration were observed or not and whether the person recording the declaration has satisfied himself about the physical and mental condition of the deponent being fit to give the statement.

25. There is no difficulty when the dying declaration gets corroboration from other evidence on record direct or circumstantial. The difficulty arises when the Courts are to decide the case like the present one where there is no corroboration of the dying declaration made by the injured. There is no illegality in basing conviction on the uncorroborated dying declaration for the reason that in many cases the assailants are vigilant to commit the crime when there are no chances of any eye witness being present at the site and due to the cleverness of the miscreants or for any other reason, circumstantial evidence is not available. Formerly there was a controversy about the uncorroborated dying declaration being made the basis of conviction. The controversy however was set at rest by the decision of *Khushal Rao v. State of Bombay* : 1958 CriLJ106 wherein the following principles have been propounded:

It cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; each case must be determined on its own-facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; a dying declaration stands on the same footing as a another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; a dying declaration which has been recorded by a competent Magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than an oral dying declaration which may suffer from the shortcoming of human memory and human character. In order to test the reliability of a dying declaration, the Court has to keep in view, the circumstances like the opportunity of the dying man to remember the facts stated had not been impaired at the time the observation whether the capacity of the man was making the statement by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

26. The sanctity of the dying declaration is considered for the reason that the person leaving for the heavenly abode would try to depart from this world with clean soul to meet his Maker. In other words a person on the verge of death is ordinarily not expected to indulge in falsely implicating innocent persons. This however cannot be taken to be a universal rule. Instances are not rare where the injured may take an opportunity to wreck the vengeance from his enemies by falsely implicating them in his statement or improving upon the facts and involving the whole family of the enemies when only one or a few of there are the real culprits. It is for this reason that the Courts are required to closely scrutinise the deposition of the dying man in the light of checks available on record and not taking the dying declaration as a gospel truth on the assumption that the departing | man would not commit the sin of fabricating false statement against I innocent person.

27. Keeping these principles in mind, we would now scrutinise the two dying declarations of Pooran Singh.

28. Ex. P/2 was recorded at Sadulshahar Primary Health Centre by Tehsildar Ram Nath Singh (PW 2) in the presence of Dr. S.P. Jakhar. It is a detailed narration of what had happened according to the prosecution. The dying declaration speaks about the injured Pooran Singh sitting in front of his house and then the four accused going there and at the instigation of Banta Singh, Mada Singh inflicting 'Gandasa' blow on his head. Regarding the physical and mental condition of the injured Dr. S.P. Jakhar (PW 13) has stated that he did not recollect whether the wound was bleeding or not. According to him, the wound was got cleaned and bandaged by the Compounder. The brain matter, as far as the Doctor recollected, was protruding out of the wound. He could not say whether the brain matter got injured or not. The Doctor did not recollect as to what was the pulse count and blood-pressure when the dying declaration was recorded. He, however stated that the injured was fit to give statement. Tehsildar Ramnath Singh (PW 2) states that when he recorded the statement, the injured was conscious and fit to give statement. He has however, deposed that he was feeling agonised. He could not recollect whether the injured could move or not. He has also stated that the injured was lying on the cot and his thumb impression was got appended by catching hold

of his hand. Doctor Jhakar (PW) 13 has further stated that necessary treatment was given to the injured but in view of his condition, his treatment was not possible there and therefore, he was referred to Ganganagar hospital. Dr. Jakhar further stated that there was no facility to treat the injured in view of his condition and that had it been so why should he have referred him to Ganganagar hospital, That, he was not competent to treat such case.

29. From the statements of Doctor Jakhar and the Tehsildar this is evidence that the condition of injured Pooran Singh was critical. Dr. Jakhar has specifically stated that the condition of the injured was critical because of the head injury and for that reason he sent the 'Tehrir' to the Tehsildar for recording the dying declaration.

30. It should be evident from the dying declaration that the person recording it had satisfied himself about the fitness of the deponent to give the statement. On perusing Ex. P/2, we did not find any material to suggest that the Tehsildar had satisfied himself about the fitness of the injured to give statement prior to recording the statement. The requisition sent for recording the dying declaration has not been brought on record. It cannot be spelt out as to what has been written in it regarding the condition of the injured. The persons who brought the injured to the hospital have stated that Pooran Singh had become unconscious after the occurrence and it was only in the hospital after giving injections that he regained consciousness. Dr. Thakar only states about antiseptic treatment being given and not about any injection for regaining consciousness being given to the injured. There is an endorsement by Dr. Jhakar at the bottom of the statement Ex. P/2 that the patient was conscious and statement had been recorded in his presence. There is no verification to the effect that the injured was fit to give statement. The term fit to give statement means, the fitness of the deponent physical as well as mental. A person may be unconscious but mentally he may not be in a fit state to understand what he deposed or the implications of his utterance. It is the verification of the fitness of the deponent as evident from the written dying declaration which is of importance and not the subsequent statement of the person recording the statement or present at the time.

31. Assuming that the Tehsildar felt satisfied about the fitness of the injured to give statement, the possibility of the dying declaration not being recorded as exactly the same which the injured stated cannot be ruled out for the reason that the Tehsildar was not in a position to understand the language in which the injured was speaking. The Tehsildar admitted that he was not fully understanding 'Punjabi' language spoken by the deponent. He stated that he got the 'Punjabi' language clarified by Dr. Jakhar (PW 13) who was present there. Dr. Jakhar has denied to have translated what the injured stated. He has also not stated that he clarified what the injured stated at the instance of the Tehsildar who could not properly understand the language used by patient. We make it clear that it is not always necessary to record the statement in the language spoken by the deponent. However, if the person recording the statement is not well conversant with language spoken by the deponent then there must be cogent and convincing evidence to the effect that the statement recorded in a language different from the one spoken by the deponent contains its true version. Lack of this type of evidence in the present case throws suspicion about its genuineness and therefore, devalues it.

32. Balveer Singh (PW 5), Jogendra Singh (PW 6) and Thaman Singh (PW 7) had accompanied the injured to the hospital. Jogendra Singh had stated that Thaman Singh was present inside when the statement of Pooran Singh was recorded by the Tehsildar. This had led to the arguments of Mr. Singhi that the chances of the injured being influenced, impressed, coached and tutored cannot be ruled out, specially when the person recording the statement could not properly understand the language the deponent had used.

33. Regarding the inconsistencies between Ex. P/2 and subsequent dying declaration Ex. P/8 we would discuss later on, suffice it to say for the present that even if it is believed that Madasingh had regained consciousness at the time of giving the statement, Ex. P/2 still in view of the grave infirmities, discussed above, it cannot be said to be the true and exact version of Madasingh. We are, therefore, not inclined to place any reliance on dying declaration Ex. P/2.

34. Ex. P/8 was recorded by Munsif Magistrate S.C. Goyal (PW 8) on March 29, 1978 at Ganganagar hospital. The Magistrate had taken care to note that the Medical Jurist with him had certified that patient was fit to give statement. However, in his deposition at the trial, the Magistrate stated that Pooran Singh was restless and was feeling difficulty in speaking and he could not tell anything after two questions. That Pooran Singh become unconscious while giving the statement. The Doctor further added that even the replies to the two questions put to the injured were given in restlessness and after pausing again and again. A statement given in such a state cannot be said to be a statement given in a fit condition of body and mind. Only two questions could however be asked to the injured. One, as to how he sustained injuries and second, as to why he was belaboured. The answer to first question was that in the evening at 6.00 P.M. Banta Singh and his son Mada Singh gave a beating to him. Both had 'Gandasa' with them. Mada Singh inflicted 'Gandasa' blow on his head. The answer to the second question was that Banta Singh used to tell him that he would be dragged by being tied to the cart. The note appended at the end of these two questions and reply thereto, is that the patient was highly restless. He was giving the replies to the questions after pausing very much. That, he had not been given any sedative and he could not tell anything more.

35. The learned Public Prosecutor urged that whatever be the state of the injured he must at least state that it was Mada Singh who had inflicted 'Gandasa' blow on his head. Reply to this argument is available in the comparison of the contents of the two dying declarations. This is a case of plural dying declarations. When there are more than one dying declaration a check is available to the Court to find out their genuineness by comparing one with another. If different dying declarations recorded at different times by different circumstances, do not tally with each other or differ on material points, that itself raises a suspicion regarding their genuineness and truthfulness. In the first dying declaration, though a detailed one, there is mention of only Mada Singh being armed with weapon. Improvement in the second dying declaration about Banta Singh also being armed with 'Gandasa' and he along with Mada Singh belabouring the injured raised a doubt about the truthfulness of the second dying declaration also. The relatives had accompanied Pooran Singh to Ganganagar hospital from Sadulsahar hospital. If injured was

conscious at that time, Mr. Singhi rightly argued that the possibility of coaching by the accompanying relatives for the improvement in the second version by the injured cannot be ruled out. If an important factor does not find place in the first declaration when the condition ordinarily would have been better and the statement was a detailed one, but such a fact appears in the second dying declaration when the condition had much deteriorated and the injured was feeling restless and became unconscious while giving the statement, cannot be believed to a true narration of the facts by the deponent. The inconsistencies between the two dying declarations and the subsequent improvement in the second dying declaration recorded in the circumstances stated above, constrain us to discard the second dying declaration also.

36. In view of the above discussion, we feel hesitant to uphold the conviction based on the solitary testimony in the form of the two infirm dying declarations recorded in the circumstances raising a doubt about their genuineness and truthfulness. This being the state of affairs, the judgment of the learned Additional Sessions Judge based on the dying declaration alone, cannot be sustained and Mada Singh deserves to be acquitted.

37. The appeal filed by the State of Rajasthan need not detain us much in view of our discussion above. So far as Papni Singh and Jora Singh are concerned, the learned Public Prosecutor did not advance any substantive argument. For Banta Singh, of course, he has referred to the persons present there with 'Gandasa'. We have already adverted to inconsistencies between the two dying declarations. When we have not believed the dying declarations regarding the appellant Mada Singh even, there arises no question of the same being pressed into service. The State appeal, therefore, has no merits and deserves to be dismissed.

38. Consequently, the appeal filed by Mada Singh appellant is allowed. The judgment of his conviction and sentence is set aside and he is acquitted of the charge levelled against him. He is in jail and shall be set at liberty forthwith if not required in any other case. The appeal filed by the State against the acquittal of Banta Singh, Papni Singh and Jora Singh is rejected.

