

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 634/2013

JITENDRA @ TUNDA

APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH

RESPONDENT(S)

O R D E R

1. The appellant, along with two other co-accused, were convicted by the Trial Court for the major offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short, 'the IPC') and sentenced to undergo life imprisonment. On appeal, the High Court, while acquitting the two co-accused, confirmed the conviction of the appellant, vide the impugned order, on the premise that the dying declaration of the deceased named the appellant.
2. The case of the prosecution is that the appellant and the two other co-accused, who stand acquitted, indiscriminately stabbed the deceased. Witnessing the occurrence, one boy, not named by the prosecution, ran to the house of the complainant, who is the wife of the deceased and informed her. She, along with her maternal father-in-law, who is PW-2, reached the place of occurrence and found the deceased lying in a pool of blood. They took the deceased to the hospital in an auto-

rickshaw. While being taken to the hospital, the deceased informed them that the appellant and three to four of his associates attacked him and committed the offence.

3. The Trial Court convicted all the three accused while the High Court has extended the benefit of doubt to the other two co-accused. While doing so, it took into consideration the recovery of knives qua the accused and the dying declaration made by the deceased. Accordingly, the High Court held that the recovery of the knives qua the two co-accused cannot be accepted and the dying declaration, in any case, does not implicate them specifically.
4. Learned counsel appearing for the appellant submitted that the appellant's right hand has been amputated and he suffers from a 60% disability, which is supported by the evidence of DW-1, the appellant's doctor. Thus, it would not be possible for him to commit the offence. If the recovery of the knives was disbelieved qua the others, the same would be applicable to the appellant. The so-called dying declaration is also doubtful as a person with so many stab injuries on the vital parts would not have been conscious to make a statement. Moreover, it is important to note that the key witness, namely the boy who witnessed the occurrence and thereafter informed PW-1 has not been examined for the reasons best known to the prosecution. Similarly, the auto-rickshaw driver, in whose vehicle the deceased was taken to the hospital along with PW-1

and PW-2 has also not been examined. Accordingly, the benefit of doubt extended to the co-accused will have to be extended to the appellant as well.

5. Learned counsel appearing for the respondent-State submitted that the case of the appellant stands on a different footing. The dying declaration and the recovery implicate the appellant. Independent witnesses to the recovery have supported the case of the prosecution. The fact that the appellant was incapacitated with a 60% disability cannot be a ground to render an acquittal, as it is a case of stab injuries. As both the Courts have considered the entire evidence *in extenso* and rendered a conviction, there is no need to interfere.
6. We find force in the submissions made by the learned counsel appearing for the appellant. It is rather strange that the only witness who can throw light on the incident, namely the boy who saw the occurrence and thereafter ran to inform PW-1, has not been examined by the prosecution. If one goes by the case of the prosecution, it is clear that the said boy knew PW-1 as that is the reason why he was able to identify the house of PW-1 and inform her. He also knew the accused as well as the deceased. Non-examination of this witness certainly curtails the case of the prosecution.
7. On examination of the other evidence available on record including the postmortem report and the evidence of the

doctor, we can simply assume that the deceased would not have survived after suffering multiple injuries on the vital parts of his body. Admittedly, he was found dead when he was taken to the hospital. Thus, whether he was alive and if so, conscious enough to give a statement to PW-1 and PW-2 becomes extremely doubtful. We do not wish to rely upon the said dying declaration, particularly, when this statement itself shows that there were other persons with the appellant who attacked the deceased as well.

8. Considering the above, we are inclined to hold that the appellant is also entitled to the benefit of the doubt.
9. In our considered view, both the Trial Court and the High Court have not considered the aforesaid aspects. The very presence of PW-1 and PW-2 when the deceased was alive is highly doubtful. Once that is the situation, the so-called dying declaration will fall to the ground. Apart from that, there is no other evidence, particularly, when the boy has not been examined by the prosecution and thus, it becomes a case of circumstantial evidence. We find that the link required in a case of circumstantial evidence has not been duly established by the prosecution.
10. Accordingly, we set aside the impugned order of the High Court by extending the benefit of doubt to the appellant. The appellant is acquitted.
11. The appeal is allowed, accordingly.

12. Pending application(s), if any, shall stand disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[NONGMEIKAPAM KOTISWAR SINGH]

NEW DELHI;
30th JULY, 2025

ITEM NO.102

COURT NO.5

SECTION II-E

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 634/2013

JITENDRA @ TUNDA

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 30-07-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.M. SUNDRESH
HON'BLE MR. JUSTICE NONGMEIKAPAM KOTISWAR SINGH

For Appellant(s) Mr. Merusagar Samantaray, AOR
Ms. Ayushi Upadhaya, Adv.

For Respondent(s) Mr. Pashupathi Nath Razdan, AOR
Ms. Maitreyee Jagat Joshi, Adv.
Mr. Astik Gupta, Adv.
Mr. Yuvraj Nagpal, Adv.
Mr. Amandeep Bhardwaj, Adv.
Mr. Raman Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(SWETA BALODI)
ASTT. REGISTRAR-cum-PS

(POONAM VAID)
ASSISTANT REGISTRAR

(Signed order is placed on the file)