

f<sup>a</sup>ITEM NO.1A  
(For jt.)

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1680-1682 OF 2007

MUNNAWAR & ORS.

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

Date: 05/05/2010 These Appeals were called on for pronouncement of judgment today.

For Appellant(s)

Mr. Manoj Prasad,Adv.

For Respondent(s)

Mr. Kamendra Mishra,Adv.

Hon'ble Mr. Justice Harjit Singh Bedi pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice J.M.Panchal.

The Appeals are dismissed.

[SUMAN WADHWA]  
COURT MASTER

[VINOD KULVI]  
COURT MASTER

Signed Reportable judgment is placed on the file.  
[REPORTABLE]

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1680-1682 OF 2007

Munnawar & Ors.

.....Appellant (s)

Versus

State of U.P. etc.

.....Respondent (s)

J U D G M E N T

HARJIT SINGH BEDI, J.

The facts leading to the filing of these appeals are as under:

1. On the 20th May 2000, Fateh Mohammad deceased, Mohammad

Shamoon PW-1 and his elder brother Wali Mohammad PW-2 were on their way to Court for appearing in a case. They got down from the bus at about 11.15 a.m. at Mawana Bus Stand, Meerut and moved on towards the Courts and as they reached near the office of the Bus Union, Yaqoob and Manabbar and Qasim sons of Khuda Bux, Qasim son of Sanabbar and Zuber son of Manabbar, all residents of village Bisola, Police Station Evoli, armed with country made pistols, started firing at Fateh Mohammad. Mohammad Shamoon and Wali Mohammad ran towards the Sardhana Bus Stand to save their lives and in the meanwhile the assailants ran away from the spot. Fateh Mohammad, seriously injured, was admitted to Jaswant Rai Speciality Hospital, Saket, Meerut by Mohammad Shamoon and was examined by Dr. Anil Kapoor PW.4 at 11.35 a.m. Mohammad Shamoon thereafter lodged a report at about 12 noon at Police Station, Civil Lines, Meerut at a distance of two furlongs from the place of incident. Sub-Inspector Dhani Ram Arya PW.11 also visited the hospital and recorded the statement of the injured and the other witnesses including Wali Mohammad. He also moved an application for recording the dying declaration of Fateh Mohammad which was duly recorded on the 21st May 2000 at 8.15 p.m. by Shri Rajdev Singh, Additional City Magistrate, Meerut in the presence of Dr. Narender Trivedi PW.6. The Sub Inspector also visited the place of incident and made the necessary enquiries. Fateh Mohammad succumbed to his injuries on the 25th May 2000 and on receiving this information Sub-Inspector Subhash Chaudhary PW.5 reached the hospital, drew up the inquest proceedings and sent the dead body for its post-mortem examination. The case was also converted from one under Section 307 to 302 of the IPC. On the completion of the investigation, a charge-sheet was filed with respect to Manabbar, Qasim and Zuber as Yaqoob had, in the meanwhile, absconded. The prosecution placed primary reliance on the evidence of the two eye witnesses, Mohammad Shamoon PW 1 and Wali Mohammad PW 2. Dr. Anil Kapoor PW 4, who had examined Fateh Mohammad on 25th May 2000 at 11:30 a.m.,

Dr. N. Trivedi PW-6, who had certified Fateh Mohammad as being fit at the time of the reading of the dying declaration, Shri Rajdev Singh PW-10 aforementioned, Dhani Ram Arya PW 11 the police officer who had recorded the first dying declaration of Fateh Mohammad as a statement under Section 161 of the Cr.P.C. in the case diary, Dr. N.K. Gupta PW 3, who had conducted the autopsy on the dead body and had opined that death had been caused due to Septicemia and shock as a result of ante-mortem injuries and Sub-Inspector J.S.Pundhir PW 9, who had investigated the case under Section 302 of the IPC and had recovered two country made pistols at the instance of Qasim and Zuber accused. The accused in their statements under Section 313 of the Cr.P.C. denied all allegations and pleaded false implication. They also produced some witnesses in defence and in particular DW1 V. Roy a Ballistic expert, who deposed that if a bullet was left embedded in the body it could result in Septicemia. The trial court relying on the aforesaid evidence convicted the accused for an offence under Section 307 of the IPC and sentenced them to rigorous imprisonment for 4 years and fine of Rs.5,000/- each but acquitted them of the offence under Section 302 of the IPC. Two appeals were filed in the High Court, one by the accused-appellants and the other by the State Government challenging the acquittal of the accused for the offence under Section 302 of the IPC. The High Court by the impugned judgment dated 8th August 2007 dismissed the appeal filed by the accused but allowed the State appeal and convicted the accused-appellants for the offence punishable under Section 302/149 of the IPC and sentenced them to undergo imprisonment for life. It is in this background that the matter is before us at the instance of the accused.

2. Mr. Sushil Kumar, the learned senior counsel for the appellants has raised four arguments in the course of the hearing. It has first been submitted that the first dying declaration recorded by PW Dhani Ram Arya of Police Station,

Civil Lines, Meerut in the Jaswant Rai Specialty Hospital did not bear the signature of the deceased or the endorsement of a Doctor as to the fitness of the injured and no credence could thus be attached to it. It has also been submitted that the second dying declaration recorded in the hospital by Shri Rajdev Singh, Additional City Magistrate, Meerut on the 21st May 2000 had not been properly endorsed by the Magistrate and did not satisfy the tests or instructions laid down relating to the recording of dying declaration and as the endorsement of the Doctor did not reveal the medical condition of the injured, this too was unreliable and could not be relied upon. For these assertions, the learned counsel has placed reliance on Balak Ram vs. State of U.P. 1975(3) SCC 219 and K. Ramachandra Reddy & Anr. vs. The Public Prosecutor 1976(3) SCC 618. It has, in addition, been submitted that as per the evidence on record the victim Fateh Mohammad had been admitted in the hospital not by Mohammad Shamoan PW 1 but by J.S. Pundhir PW 9 a Police Officer as per the statement of Sub-Inspector Subhash Chaudhary PW 5 and this by itself made it apparent that the two eye witnesses had not been present at the spot and had been called long after the incident. It has finally been submitted that from the medical and the other evidence it was clear that the appellants were, if at all, guilty for the offence under Section 307 of the IPC, as held by the trial court and not under Section 302 of the IPC, as held by the High Court, and for this additional reason the appeal was liable to succeed.

3. The learned State counsel has, however, controverted the stand taken by Mr. Sushil Kumar. It has been submitted that even assuming that there was some flaw in the recording of the first dying declaration by D.R. Arya, no serious objection could be raised with regard to the second dying declaration recorded by the Executive Magistrate. It has, further been submitted that the very promptness in the recording the FIR belied the argument that the eye witness had been brought to

the scene long after the event. It has also been argued that the evidence of Dr. N.K. Gupta PW3 would indicate that the injuries suffered by Fateh Mohammad were the immediate and proximate cause of death and merely because there was a time lag between the injury and death would not make any difference in so far as culpability of the appellants for the murder was concerned.

4. We have considered the arguments advanced by the learned counsel for the parties very carefully. It is true, as contended by Mr. Sushil Kumar, that PW Dhani Ram Arya the Police Officer had recorded the statement of Fateh Mohammad in the case diary as being one under Section 161 of the Cr.P.C. It is also true that this statement had not been recorded in the manner provided by the Police Regulations with regard to the recording of dying declarations by Police Officers. Left

at this stage perhaps, the judgment of the Supreme Court in Balak Ram's case (supra) would apply and the accused would be entitled to submit that this dying declaration could not be relied upon, but we notice that a second dying declaration had also been recorded by the Executive Magistrate PW Rajdev Singh and that this statement was in substance identical with the statement recorded by Dhani Ram. The second dying declaration recorded at 8.15 p.m. in the Jaswant Rai Specialty Hospital gives full details as to the identity of the assailants, the weapons they were using, the site of the injury and the fact that he had been brought to hospital by a neighbour and his elder brother who were accompanying him at the time of incident. We also find that Dr. N.K. Trivedi PW 6 who was looking after Fateh Mohammad when the dying declaration was recorded gave a certificate that he had been fully conscious and lucid at the time of its recording. PW Raj Dev Singh also deposed that Fateh Mohammad was fully conscious when the dying declaration had been recorded by him. It has been submitted by Mr. Sushil Kumar that the injuries on the person of the

deceased were so serious that the evidence of the Executive Magistrate endorsed by the Doctor with regard to the fitness of Fateh Mohammad, was a matter of suspicion. We see no basis for this submission for the simple reason that Fateh Mohammad had died long after he had sustained the injuries and we have no reason to disbelieve the statement of the Executive Magistrate or the attending Doctor. In Balak Ram's case this Court dealt with two dying declarations, one recorded by the investigating officer in the case diary which was held to be unreliable and the other by the Executive Magistrate which was held to be reliable notwithstanding the fact that the injured, when taken to the hospital, was in a very critical condition. This Court observed that though there may be some suspicion with regard to the statement recorded by the Police Officer, the same could not be said of the second dying declaration. It was observed thus:

"The circumstances surrounding the dying declaration, though uninspiring, are not strong enough to justify the view that officers as high in the hierarchy as the Sub-Divisional Magistrate, the Civil Surgeon and the District Magistrate hatched a conspiracy to bring a false document into existence. The Civil Services have no platform to controvert allegations, howsoever grave and unfounded. It is, therefore, necessary that charges calculated to impair their career and character ought not to be accepted except on the clearest proof. We are not prepared to hold that the dying declaration is a fabrication."

5. The aforequoted paragraph fully supports the view that (save for very good reasons) a dying declaration recorded by a Magistrate duly endorsed by a Doctor should not be discarded. In K.Ramachandra Reddy's case (supra), this Court again, on an appreciation of the circumstances leading to the recording of the dying declaration, held that it could not be relied upon. It is, therefore, obvious that the fact as to whether a dying declaration is reliable or not would depend upon the facts of the case and the evidence produced by the prosecution and no hard and fast rule by way of precedent can ever be adopted. As already observed by us, there are no suspicious circumstances

whatsoever with regard to the dying declaration recorded by Rajdev Singh and endorsed by Dr. Trivedi and no substantial reason has been spelt out by Mr. Sushil Kumar as to why these officers would be a party in favour of the prosecution.

It is

also extremely relevant that in both the cited cases, the primary argument was based on the physical condition of the maker of the dying declaration i.e. deceased.

In the present

case, however, the fact that the deceased had remained alive for a long period of time after the incident and died several days later of septicemia brought about by the gunshot injury clearly shows that his condition was not overly critical or precarious when the dying declaration had been recorded.

6. Mr. Sushil Kumar has also argued that the two eye witnesses were not present and the story that they had admitted the injured Fateh Mohammad to hospital was incorrect, more particularly as per the evidence of Sub-Inspector Subhash Chaudhary PW5, Fateh Mohammad had been admitted by J.S. Pundhir PW to the hospital. It has, accordingly, been submitted that

the duo had been brought to the place of incident after the incident had taken place and had been put up as eye witnesses.

It has been submitted that though it appeared that the incident had happened at 11.15 a.m. on the 20th May 2000 and the FIR had been recorded 45 minutes later but the facts indicated that it had been recorded much later and ante-time so as to make it possible for the eye witnesses to be brought to the spot and this plea was strengthened by the admitted position and that

the special report had been delivered to the Magistrate on the 23rd May 2000 and no explanation had been tendered as to why the delay had occurred.

Prima facie, it appears that some delay had occurred for the delivery of the special report, but that

by itself can be no consequence more particularly as the incident, as at that time, had not led to the death of the victim and case under Section 307 of the IPC had been registered. We see from the evidence of PW Dr. Anil Kapoor,

that Fateh Mohammad had been admitted to the Jaswant Rai

Specialty Hospital at 11.35 a.m. on 20th May 2000 by PW Shamoon

his son and that the injured was irritable but was mentally

conscious at the relevant time.

When cross-examined as to

whether J.S. Pundhir had admitted the injured to the hospital

on the basis of the Memo 13-A/T8, the Doctor explained that he

was the Doctor In Charge and the Bed Head Ticket had been

recorded by him on the admission sheet.

It is, therefore,

obvious that the prosecution story that Mohammad Shamoon had

admitted Fateh Mohammad to the hospital finds full support of

an independent witness, i.e. Dr. Anil Kapoor.

Mr. Sushil Kumar

has, however, referred us to the cross-examination of Sub-

Inspector Subhash Chaudhary PW who had entered into the

investigation after the death Fateh Mohammad that as per the

memo receipt after the death of Fateh Mohammad, it was Sub-

Inspector J.S.Pundhir who had admitted Fateh Mohammad to the

hospital. We are of the opinion that this memo cannot be

relied upon in the face of the statement made by Dr. Anil

Kapoor and by J.S. Pundhir PW himself very emphatically

testified that he had not admitted Fateh Mohammad to the hospital. Any doubt as to the suspicion with regard to the

promptness of the FIR or the ante-timing of the FIR on account

of the delivery of the special report under Section 157 of the

Cr.P.C. is, therefore, clearly dispelled.

7. We, therefore, find that the promptness of the FIR is a

clear reflection of the fact that the two eye witnesses had

been present at the time of incident. It must also be borne in

mind that as per the evidence, Fateh Mohammad and family were

involved in several criminal and civil litigations with other

persons. It is also the admitted position that Fateh Mohammad

and party were on their way to attend a court hearing when they

had been attacked. We must also observe that those who are

involved in serious criminal litigation seldom go alone to

attend court hearings, and are invariably accompanied by other

persons as per the dictates of tradition and prudence in rural

North India. We must, therefore, accept the presence of the two eye witnesses PW's Shamoan and Wali Mohammad.

8. Mr. Sushil Kumar has also pointed out that the Sessions Judge had, in his judgment, acquitted the accused-appellants for the offence punishable under Section 302 of the IPC but had convicted them under Section 307 of the IPC and that in any case this was the proper order to be made in the peculiar facts of the case. It has been submitted that the injuries had been suffered by Fateh Mohammad on the 20th May 2000 but he had died on the 25th May 2000 and that as per the statement of PW Dr. N.K. Gupta, who had conducted the post-mortem of the dead body, the death was due to septicemia on account of the infection caused by the injuries and that had Fateh Mohammad been given proper treatment, he may have survived. It has been pleaded that from the evidence of PW Dr. Anil Kapoor, who had initially treated the injured at the Jaswant Rai Specialty Hospital, it was apparent that the infection had set in on account of the lack of proper treatment and that in the light of this medical opinion the appellants were entitled to claim the benefit of doubt and plead that, if at all, a case under Section 307 of the IPC was spelt out. We are of the opinion, however, that the trial court has ignored some basic issues. We have gone through the statement of the Dr. Anil Kapoor who had noticed the following injuries on the person of the Fateh Mohammad at the time of his admission to hospital:

3. Lacerated wound size of wound 2.9. x 1.0 cms fresh bleeding present. Depth not probed, with inverted margins present at right side of chest 08.0 cms from right nipple at 2.00 o'clock position. Tattooing present in an area of 17.0 x 4.5 cms area.
4. Tattooing without any wound present over right side of neck obliquely vertical in an area of 9.0 cms x 3.0 cms upper end starting at the level of mastoid process, 04.0 cms posterior to mastoid process.
5. Lacerated wound with inverted margins present over left side of face 5.0 x 2.0 cms x depth not probed. 2.0 cms below left eye. Tattooing present around the wound in an area of 6.0 x 5.0 cms. Fresh bleeding present.
6. Lacerated wound with inverted margins present over back of left hand 13.0 cms below left olecranon process size 3.0 cms x 1.0 cm x depth not probed, fresh bleeding present. Tattooing present

in an area of 4.0 x 3.0 cms around wound.

7. Lacerated wound with everted margins present over antero-lateral size of left forearm size 1.0 x 1.0 cms x depth not probed fresh bleeding present.
8. Lacerated wound with everted margins 4 x 2 cms x depth not probed present over right scapular rg.7.0 cms from post. Axillary line fresh bleeding present.
9. Lacerated wound with everted margins 1.0 x 1.0 cms x depth not probed present over left scapular rg.6.0 from mid line, fresh bleeding present.

9. We see from the injuries that they had been caused from a very close range as tattooing was present. Dr. Anil Kapoor

also pointed that injury Nos.1, 3, 6 and 7 were grievous and were fatal to life and all the injuries were sufficient to cause death as they were on sensitive parts of the body and that the injured was under severe shock, and had been given three units of blood at the time of his admission to hospital. In the light of this evidence, we are unable to comprehend as to how the trial court could have concluded that it was the negligence on the part of Dr. Anil Kapoor which had led to septicemia and finally to the death of the patient.

We, therefore find no merit in these appeals. Dismissed.

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(H.S. BEDI)

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(J.M. PANCHAL)

Dated: 05 May, 2010  
New Delhi