

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR  
CRA No. 8304 of 2022**

*(MOHD. DAWOOD Vs THE STATE OF MADHYA PRADESH)*

**Dated : 06-12-2022**

*Shri Sankalp Kochar - Advocate for the appellant.*

*Shri S.K. Kashyap - Govt. Advocate for the respondent / State.*

---

Heard on IA No.20196/2022 for suspension of sentence and grant of bail to **appellant- Mohd. Dawood** arising out of judgment dated 09.09.2022 delivered in S.T. No.208/2022 by First Additional Judge to the Court of First Additional Sessions Judge, Raisen, Distt Raisen is taken up.

The appellant has been convicted for the offence punishable under Section 302 of IPC to undergo RI for life imprisonment and fine of Rs.2,000/- and Section 25(1-b) (a) of the Arms Act to undergo RI for 3 years and fine of Rs.500/- with default stipulations.

As per the prosecution story, on 24.02.2015 deceased Rizwan was travelling in a motorcycle driven by his friend Rakesh Meena. In the mid way, he was assaulted by means of *Katta* by present appellant who was on motorcycle with Saaud. Injured Rizwan was hospitalized and by *Dehati Nalishi* (Ex.P-32) his statement was recorded by J.P. Rai (PW-18) ( Investigation Officer). Shri Sankalp Kochar, learned counsel for the appellant submits that mainly the case of the prosecution is based on this *Dehati Nalishi* / dying declaration (Ex.P-32) and on two oral dying declarations allegedly given to Aashiq (PW-4) and Wasim (PW-5). To elaborate, it is urged that Ex.P-32 nowhere shows as to who used the fire arm which caused injury on the deceased person. It is simply mentioned that appellant with Saaud came on a motorcycle and from behind a gun shot injury was caused. It is submitted that this Ex.P-32 is not trustworthy because there is no certificate of fitness by any Doctor. The other two dying declarations given to Aashiq (PW-4) and Wasim (PW-5) narrates a different story. As per these dying declarations, it was appellant who was driving the motorcycle whereas Saaud was sitting

behind who fired the deceased person from behind. It is urged that both these witnesses were not declared as hostile. As per these statements, it was Saaud who has used the fire arm. The Statements of Devendra Kumar Mishra (PW-14) and J.P. Rai (PW-18) (both Investigating Officers) were relied upon to show that as per statements of these witnesses, the *plea of alibi* of Saaud was accepted at the stage of investigation itself. Thus, investigating agency / prosecution was satisfied that Saaud was not available at the place of incident / Bhopal on 24.02.2015. Hence, Saaud was not even made accused. Thus, the entire story of prosecution becomes doubtful. There is no other corroborative evidence. The fire arm was recovered after 10 months. There exists no ballistic report which shows that the bullet used was indeed fired by the *Katta* allegedly recovered from this appellant.

Shri Kochar placed reliance on **2008 (5) SCC 468 Amol Singh Vs. State of Madhya Pradesh** and **(2013) 12 SCC 255 State of Rajasthan Vs. Shravan Ram and Anr.** to submit that the discrepancies in dying declaration must be seen with circumspection and in a case of this nature Court must insist and examine the aspect of corroboration. Shri Kochar also placed reliance on **(1976) 1 SCC 20 Bhagirath Vs. State of M.P.** and **(2014) 11 SCC 355 Jumni and Ors. Vs. State of Haryana** to bolster his submission that if a dying declaration is incorrect / untrustworthy, the doctrine of severability cannot be pressed into service. Lastly, it is submitted that there is no other witness / evidence to support the case of prosecution. There is no legal evidence on the strength of which the conviction can get stamp of approval from this Court. The appellant has no criminal record. The final hearing of this appeal will take time, so the remaining jail sentence of the appellant may be suspended.

Shri Kashyap, learned Govt. Advocate on the other hand opposed the prayer and placed reliance on the objection / reply. He, by placing reliance on para-50 of the impugned judgment urged that no fault can be found in the impugned judgment.

We have heard the parties on this aspect.

*Prima facie* there exists discrepancy regarding description of the person who has allegedly fired on deceased Rizwan. As per oral dying declaration given to Aashiq

(PW-4) and Wasim (PW-5), the gun shot injury is caused by Saad. As per both the Investigating Officers Devendra Kumar Mishra (PW-14) and J.P. Rai (PW-18), Saad was given the benefit of *alibi* and he was not found to be at the scene of crime / Bhopal on the date of incident. The Apex Court considered the aspect of severability of a dying declaration in **Godhu v. State of Rajasthan, (1975) 3 SCC 241**, the relevant portion reads as under:-

"16.....The rejection of a part of the dying declaration would put the court on the guard and induce it to apply a rule of caution. There may be cases wherein the part of the dying declaration which is not found to be correct is so indissolubly linked with the other part of the dying declaration that it is not possible to sever the two parts. In such an event the court would well be justified in rejecting the whole of the dying declaration. There may, however, be other cases wherein the two parts of a dying declaration may be severable and the correctness of one part does not depend upon the correctness of the other part. In the last mentioned cases the court would not normally act upon a part of the dying declaration, the other part of which has not been found to be true, unless the part relied upon is corroborated in material particulars by the other evidence on record. If such other evidence shows that part of the dying declaration relied upon is correct and trustworthy the court can act upon that part of the dying declaration despite the fact that another part of the dying declaration has not been proved to be correct."

सत्यमेव जयते (Emphasis Supplied)

This judgment was considered in the case of **Jumni (Supra)** on which reliance is placed by Shri Kochar. Similarly, a great deal of argument was advanced before the Supreme Court in a case of multiple dying declarations. After considering the previous judgments, the Apex Court in **State of Rajasthan (Supra)** recorded as under :-

"18. This Court had occasion to consider the scope of multiple dying declarations in *Kamla v. State of Punjab* [(1993) 1 SCC 1 : 1993 SCC (Cri) 1]. This Court held as follows : (SCC p. 7, para 8)

"8. ....A dying declaration should satisfy all the necessary tests and one such important test is that **if there are more than one dying declaration they should be consistent particularly in material particulars.**"

19. In *Kishan Lal v. State of Rajasthan* [(2000) 1 SCC 310 : 2000 SCC (Cri) 182] this Court held as follows : (SCC p. 316, para 17)

"17. Examining these two dying declarations, we find not only that they gave two conflicting versions but there are inter se discrepancies in the depositions of the witnesses given in support of the other dying declaration dated 6-11-1976. Finally, in the dying declaration before a Magistrate on which possibly more reliance could have been placed the deceased did not name any of the accused. Thus, we have no hesitation to hold that these two dying declarations do not bring home the guilt of the appellant. The High Court, therefore, erred in placing reliance on them by erroneously evaluating them."

20. In *Lella Srinivasa Rao v. State of A.P.* [(2004) 9 SCC 713 : 2004 SCC (Cri) 1479] this Court had occasion to consider the legality and acceptability of two dying declarations. **Noticing the inconsistency between the two dying declarations, the Court held that it is not safe to act solely on the said declarations to convict the accused persons.**

21. In *Amol Singh v. State of M.P.* [(2008) 5 SCC 468 : (2008) 2 SCC (Cri) 637] this Court interfered with the order of sentence noticing inconsistencies between the multiple dying declarations.

"13. .... it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration [but] the statement should be consistent throughout. .... However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not [and] while scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances." (SCC p. 471, para 13).

**(Emphasis Supplied)**

*Prima facie* in view of material inconsistencies between the dying declaration (Ex.P-32) and oral dying declarations coupled with the aspect that Saaud who caused gun shot injury as per oral dying declarations was not even prosecuted and was given the benefit of *alibi*, we deem it proper to give benefit of suspension of sentence to the appellant. Accordingly, I.A. No.20196/2022 is allowed.

Subject to depositing the fine amount (if not already deposited), the remaining jail sentence of **appellant Mohd. Dawood** shall be released on bail on

his furnishing a personal bond for the sum of **Rs.50,000/- (Rupees Fifty Thousand only)** with one solvent surety of the like amount to the satisfaction of the concerned trial Court with a further direction to appear before the **trial Court, Raisen** on **02/02/2023** and also on such other dates, as may be fixed by the Court in this regard during the pendency of this appeal.

C.C. as per rules.

**(SUJOY PAUL)**  
**JUDGE**

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

sarathe

