4. A bare perusal of these two paragraphs clearly shows that the Division Bench of the High Court itself was aware that no case for imposing punishment was made out. It appears that the High Court was of the view that since the present appellant had already been out of job for eight years and he was aged about 53 years, he should not be brought back in service after such a long time. We are not inclined to agree with this view of the High Court. Once the High Court held that the charges had not been proved against the appellant, who was a judicial officer, his honour and dignity required that he should be brought back into the service. We hold that the appellant has not committed any act unbecoming of a judicial officer. Unfortunately, we cannot do so because now he has already passed the age of superannuation. Therefore, the only issue is how should the relief be molded? Should he be granted the entire back-wages with interest or can one lump-sum amount be granted as compensation?

5. We are of the considered view that since the appellant has not worked during all these years and this will lead to another round of litigation to decide what he was earning during this period, in lieu of awarding him back-wages, we direct that a lump-sum amount of Rs.20 lakhs be paid to the appellant. This amount to be paid within six months from today, failing which it shall carry interest at the rate of 9% per annum.

6. The appeal is allowed in the aforesaid terms.

Result:- Appeal allowed.

ABC 2019 (III) 291 SC

ACQUITTAL & BAIL CASES

SUPREME COURT OF INDIA

(Deepak Gupta & Aniruddha Bose, JJ)

Criminal Appeal No. 1660 of 2010

(From Madhya Pradesh High Court)

Decided on 05 September 2019

HARI SINGH & ANR ***- Appellant(s).***

Versus

STATE OF MADHYA PRADESH ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Sections 294, 307, 323, 302, 341, 506 r/w 34 — Identity of the accused not linked clearly with the offence — Dying declaration not reliable — Delay in***

FIR — hostile injured witness — Benefit of doubt —Acquittal. (Para 7, 8, 9, 10, 11 & 12)

(B) Criminal trial — Code of Criminal Procedure, 1973 — Section 161 — Statement under — Cross-examination of child witness — Contradiction with her statement recorded u/s 161, CrPC — Held, a 10 years old child cannot understand what is the effect of such contradiction & will never be able to explain them. (Para 9)

(C) Code of Criminal Procedure, 1973 — Section 161 — Statement under — Indian Evidence Act, 1872 — Section 32 — Dying declaration — The statement u/s 161 Cr.P.C. sought to be treated as dying declaration — recorded without even asking the doctor regarding the fitness of the deceased — Held, The manner in which the statement has been recorded casts a grave doubt with regard to the admissibility & evidentiary value — this so-called dying declaration does not meet the test of a verifiable dying declaration on which reliance can be placed. (Para 7 & 8)

(D) Code of Criminal Procedure, 1973 — Section 154 — FIR — Indian Evidence Act, 1872 — Section 3 & 32 — Relevant fact & Dying declaration — FIR was sought to be treated as dying declaration — Signatures of the first informant (deceased) — not compared — Held, the deceased was a Government employee — His signatures would have been available in the Government records — no effort made to compare the signatures — fatal to prosecution case. (Para 9)

(E) Code of Criminal Procedure, 1973 — Section 154 — FIR — delay in — took more than an hour for the injured to reach the police station — Not explanationed— delay becomes important because the informant had received serious wound — Natural course — to take such seriously injured person straight to the hospital — Even if he had to go to the police station first, it should not have taken so much time — fatal to prosecution. (Para 10)

(F) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Descriptions of the accused — Settled principle of criminal jurisprudence — It is for the prosecution to prove the identity of the accused. (Para 11)

(G) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Defective investigation — Conduct of the injured — Descriptions of the accused — Not given in FIR when he was not in so serious condition and could go to the hospital — but given in the second so-called dying declaration, when he was poor condition & when his

blood pressure was not recordable — casts doubt on the fairness of the investigation. (Para 11)

(H) Indian Evidence Act, 1872 — Section 3 — Relevant fact — Hostile injured witness — Why should a person who is injured by the same set of assailants turn hostile unless some evidence was led to show that he has been pressurized — The mere suggestion that he was pressurized is not sufficient to come to this conclusion. (Para 12)

Facts:- *The FIR was allegedly lodged by the victim that he was attacked by accused. All the three accused surrounded him and started beating him. They alleged that he had taken some money from them which he did not return, which he denied. He was then assaulted with knives. According to the informant, the occurrence was witnessed by his son and daughter. On the basis of this oral complaint, initially a case was registered u/ss 341, 294, 323, 506, 307 r/w 34, IPC.. After the death of the vistim, the FIR was converted to one of murder and Sec. 302, IPC was added. During the course of trial, all the material witnesses turned hostile. The son was not examined and the daughter who was examined was only a child witness, aged about 10 years, and she did not support the prosecution at all. Another injured eye-witness was declared hostile. The accused was convicted by the Trial Court which was upheld by the High Court basically on two dying declarations. In the present appeal, the dying declarations were not found reliable by the honourable Apex Court. Accused persons were acquitted giving them benefit of reasonable doubt.*

Law of relief:- To declare an injured witness hostile mere suggestion that he was pressurized is not sufficient.

Held:- The statement of this witness does not inspire confidence as far as the recording of statement under Section 161 Cr.P.C, which is now sought to be treated as dying declaration. He first states that when he reached the hospital the condition of injured was serious and when he asked the doctor, the doctor replied that injured was not in a position to make a statement. In the later half of his statement, he says that he recorded the statement at 1.15 a.m. This means that he recorded the statement of Shyam immediately on reaching the hospital. If that be true then he has recorded the statement without even asking the doctor whether the injured was in a fit position to make a statement. (Para-7)

No doubt, in a statement recorded under Section 161 Cr.P.C. signatures of the witness are not to be affixed. In fact, that would make such a statement inadmissible under Section 161 Cr.P.C.

However, in a case like the present one where the condition of the injured was serious and his blood pressure was not recordable, without getting the opinion of the doctor that the patient was in a fit condition for making statement his statement should not have been recorded. The manner in which the statement has been recorded casts a grave doubt with regard to the admissibility and evidentiary value of the statement. We make it clear that we are not in any way indicating that such a statement cannot be read as a dying declaration. However, we are of the opinion that this so-called dying declaration does not meet the test of a verifiable dying declaration on which reliance can be placed to convict the accused. (Para-8)

The fact of the matter is that the deceased was a Government employee. His signatures would have been available in the Government records. The prosecution made no effort to compare the signatures on the FIR, with the signatures in the official records to prove that both are by the same person. This is total lapse on the part of the prosecution. (Para-9)

There is no explanation why the FIR was not recorded immediately thereafter at 10.30 p.m. or 10.45 p.m. and why it took more than an hour for the injured to reach the police station. We make it clear that we are not indicating that the delay is fatal to this case, but in the peculiar facts of the case delay becomes important because here the informant is an injured who had received four pierced wounds and one lacerated wound. Natural course of events would have been to take such seriously injured person straight to the hospital or to get medical attention from the nearest dispensary or hospital. Even if he had to go to the police station first, it should not have taken so much time. (Para-10)

Another aspect of the matter is that the descriptions given of the accused are (1) Rupa, (2) Hari 'the Tempowala' and (3) son of Nathu. We are constrained to observe that both the Trial Court as well as the High Court have gravely in holding that the burden was on the defence to prove that there were no other persons of this name in the locality. This is totally contrary to the settled principle of criminal jurisprudence. It is for the prosecution to prove who is Rupa; who is Hari 'the Tempowala' and who is son of Nathu. No evidence has been led in this regard except the second so-called dying declaration in which details of all these three persons are given. It is indeed surprising that when the injured was not in so serious a

condition and he could go to the hospital he did not give the details of the persons but when he was in a condition which was described to be poor and when his blood pressure was not recordable he gives details and the names of the persons. This casts doubt on the fairness of the investigation also. (Para-11)

In this view of the matter, we are clearly of the view that there is a reasonable doubt as to the identity of the persons and the accused have not been linked clearly with the offence and the benefit of doubt has to be given to them. We may also note that the other witness, who turned hostile, is an injured witness. Why should a person who is injured by the same set of assailants turn hostile unless some evidence was led to show that he has been pressurized. The mere suggestion that he was pressurized is not sufficient to come to this conclusion. As far as the non-examination of the son is concerned, we are not saying anything in this regard because from the record we cannot make out what was the age of the son. The appellants are on bail. Their bail bonds stand discharged. (Para-12)

Counsel:- ***For Appellant(s):*** *Chanchal Kumar Ganguli, Adv.*
For Respondent(s): *Swarupama Chaturvedi, Adv.*

JUDGMENT

DEEPAK GUPTA, J.: - 1. An FIR (Ext.P17) was allegedly lodged by the victim Shyam with the Police Station Ujjain to the effect that he was working in the Malaria Department and on 17.10.1997 he was standing near his shanty behind Ashok Talkies. He was attacked by Rupa, Hari 'the Tempowala' and the son of Nathu. These three people surrounded him and started beating him. They alleged that he had taken some money from them which he did not return, which he denied. Then Hari 'the Tempowala' and the son of Nathu took out knives and both of them attacked him with knives on the left side near the spine on the back and below the ribs. The son of Nathu gave knife blows on the waist and two other places. In the meantime, Ramchander Dholi (PW.12) reached the spot. According to the informant, the occurrence was witnessed by his son and daughter, Kallu and Kallo.

2. On the basis of this oral complaint, initially a case was registered under Sections 341, 294, 323, 506, 307 read with 34 IPC but in the original FIR it appears that there is overwriting in respect of Section 307. The informant was taken to hospital where he was

admitted. The bed head ticket (Ext.D1) shows that the informant was admitted in hospital on 18.10.1997 at about 12.30 a.m. The bed head ticket also shows that at about 1 am the condition of the Shyam was not good and he had presumably ingested some alcohol; he had multiple stabs on his back; his general condition was poor; his pulse was 60 beats per minute and his blood pressure was not recordable. His condition kept deteriorating and at 3.30 a.m. it is recorded that his general condition was poor and blood be arranged for transfusion and he died soon thereafter.

3. After his death, the FIR was converted to one of murder and Section 302 IPC was added. During the course of investigation, the weapons of offence were allegedly recovered from the accused and thereafter report under Section 173 Cr.P.C. was filed and the accused were put to trial. The accused pleaded not guilty and claimed trial. During the course of trial, all the material witnesses turned hostile. The son was not examined and from the record it is not forthcoming what is the reason for not examining him. The daughter who was examined was only a child witness, aged about 10 years, and she did not support the prosecution at all. She has been cross-examined with her statement, recorded under Section 161 Cr.P.C. by the police, but in our view a 10 years old child cannot understand what is the effect of such contradiction and will never be able to explain them.

4. That leads us with the statement of the injured eye-witness Ramchander (PW-12). As far as the incident is concerned, he does not deny the incident. He does state that occurrence took place. He also states that in this occurrence he was attacked with a sword and that sword caused injuries to him running from the cheeks to eye. However, his statement is that immediately after the occurrence he and Shyam were taken to the hospital. Further, according to this witness, it was dark and he could not identify who had attacked him. He denied having given the names of the accused in the statement under Section 161 Cr.P.C.

5. The accused have been convicted by the Trial Court which conviction has been upheld by the High Court basically on two dying declarations. The first dying declaration being in the nature of the FIR and the second dying declaration being the statement of the deceased Shyam recorded under Section 161 Cr.P.C. by the Investigating Officer (PW-14).

We shall deal with the second dying declaration first and see what reliance can be placed in that. This so called dying declaration is Ext.P20 and it is a statement recorded by PW-14 under Section 161 Cr.P.C. It is stated to have been recorded on 18.10.1997 but the time of recording the same is not mentioned anywhere in the statement. This statement gives details of how the deceased allegedly told the investigating officer that he was attacked by the three accused and injured by them.The issue is what reliance can be placed in this regard. As pointed out above the bed head ticket (Ext.D1) showed that at 1 am the condition of Shyam was very poor and his blood pressure was not recordable. Unfortunately, in the bed head ticket it is not mentioned whether the patient was conscious or unconscious.

6. We shall now deal with the statement of PW-14. The relevant portion of the statement of PW14 is that he met the injured Shyam, for the first time in the hospital on 18.10.1997 between 1.15 to 1.25 am. He also states that the condition of Shyam was serious. He then asked the doctor about the condition of the deceased for recording his statement. The Doctor said that Shyam is not in a position to make a statement. He then stated that this happened at about 2.30 a.m. He then says that he submitted an application in writing to the doctor presumably about the condition of the deceased. However, such application has not been placed on record. Therefore, it is not clear at what time this application was sent to the doctor, whether immediately after 1.15 a.m. or after 2.30 a.m. This witness also states that he deputed Sub-Inspector Sharma to record the dying declaration of the deceased. After having said this, he says that he himself felt at about 1.15 a.m. that the deceased was in a position to make a statement and therefore recorded his statement under Section 161 Cr.P.C.

7. The statement of this witness does not inspire confidence as far as the recording of statement under Section 161 Cr.P.C, which is now sought to be treated as dying declaration. He first states that when he reached the hospital the condition of injured was serious and when he asked the doctor, the doctor replied that injured was not in a position to make a statement. In the later half of his statement, he says that he recorded the statement at 1.15 a.m. This means that he recorded the statement of Shyam immediately on reaching the hospital. If that be true then he has recorded the statement without even asking the doctor whether the injured was in a fit position to make a statement.

8. No doubt, in a statement recorded under Section 161 Cr.P.C. signatures of the witness are not to be affixed. In fact, that would make such a statement inadmissible under Section 161 Cr.P.C. However, in a case like the present one where the condition of the injured was serious and his blood pressure was not recordable, without getting the opinion of the doctor that the patient was in a fit condition for making statement his statement should not have been recorded. The manner in which the statement has been recorded casts a grave doubt with regard to the admissibility and evidentiary value of the statement. We make it clear that we are not in any way indicating that such a statement cannot be read as a dying declaration. However, we are of the opinion that this so-called dying declaration does not meet the test of a verifiable dying declaration on which reliance can be placed to convict the accused.

9. The first dying declaration is the so-called FIR which has also been proved by scribe of the FIR (Ext.P17) who states that he recorded the statement verbatim, as told to him by the injured Shyam. There are some signatures in the portion marked 'B' to 'B' of Annexure P-17. In cross-examination a suggestion was put to this witness that these are not signatures of the deceased. He, obviously, has denied the suggestion. The fact of the matter is that the deceased was a Government employee. His signatures would have been available in the Government records. The prosecution made no effort to compare the signatures on the FIR, with the signatures in the official records to prove that both are by the same person. This is total lapse on the part of the prosecution.

10. The manner in which the FIR has been lodged casts a doubt with regard to the veracity thereof. As per the FIR, the incident took place at about 10 p.m. on 17.10.1997. The FIR was recorded at about 11.35 p.m. From the facts proved on record by PW-13 as well as the investigating officer, the distance of the police station from the place of occurrence is one kilometer and it will not take more than 10-15 minutes to reach the police station. There is no explanation why the FIR was not recorded immediately thereafter at 10.30 p.m. or 10.45 p.m. and why it took more than an hour for the injured to reach the police station. We make it clear that we are not indicating that the delay is fatal to this case, but in the peculiar facts of the case delay becomes important because here the informant is an injured who had received four pierced wounds and one lacerated wound. Natural course of events would have been to take such seriously injured

person straight to the hospital or to get medical attention from the nearest dispensary or hospital. Even if he had to go to the police station first, it should not have taken so much time.

11. Another aspect of the matter is that the descriptions given of the accused are (1) Rupa, (2) Hari 'the Tempowala' and (3) son of Nathu. We are constrained to observe that both the Trial Court as well as the High Court have gravely in holding that the burden was on the defence to prove that there were no other persons of this name in the locality. This is totally contrary to the settled principle of criminal jurisprudence. It is for the prosecution to prove who is Rupa; who is Hari 'the Tempowala' and who is son of Nathu. No evidence has been led in this regard except the second so-called dying declaration in which details of all these three persons are given. It is indeed surprising that when the injured was not in so serious a condition and he could go to the hospital he did not give the details of the persons but when he was in a condition which was described to be poor and when his blood pressure was not recordable he gives details and the names of the persons. This casts doubt on the fairness of the investigation also.

12. In this view of the matter, we are clearly of the view that there is a reasonable doubt as to the identity of the persons and the accused have not been linked clearly with the offence and the benefit of doubt has to be given to them. We may also note that the other witness, who turned hostile, is an injured witness. Why should a person who is injured by the same set of assailants turn hostile unless some evidence was led to show that he has been pressurized. The mere suggestion that he was pressurized is not sufficient to come to this conclusion. As far as the non-examination of the son is concerned, we are not saying anything in this regard because from the record we cannot make out what was the age of the son. The appellants are on bail. Their bail bonds stand discharged.

13. In view of the above discussion, we allow the appeal, set aside the judgments of the High Court and the Trial Court and acquit the accused.

***Result*:-** Appeal allowed.