

**Criminal Appeal**  
Present: **The Hon'ble Justice Ashim Kumar Banerjee**  
**AND**  
**The Hon'ble Justice Kishore Kumar Prasad**  
Judgment on: 26.02.2010  
**C.R.A No. 453 of 1990**  
**Swapan Naskar**  
**-Vs-**  
**State of West Bengal**

**Point:**

**DYING DECLARATION:** Investigating Officer recorded the statement of the victim in presence of the doctor-Doctor signed on the statement- Whether it can be the basis of an order of conviction as dying declaration- Indian Evidence Act, 1872 S. 32 –Code of Criminal Procedure, 1973 S.162

**Fact:** The appellant preferred the instant appeal against the order passed by the Ld. Judge whereby he was convicted upon considering the evidence mainly on the basis of the complaint made by the deceased which was later on considered as dying declaration. It was contended that when the prosecution failed to produce any eye-witness to the incident it was unsafe for the learned Judge to hold that the accused is guilty of the offence, solely based upon the dying declaration which was not recorded in the manner it ought to have been.

**Held:**

There could be no straight jacket formula for recording a dying declaration which would depend upon the facts and circumstances. In the instant case the Investigating Officer belonged to the same police station where the deceased sustained injury. Upon receipt of information he went to the Hospital, met the doctor and recorded the statement of the victim in presence of the doctor. The FIR was registered on the basis of that statement. In these circumstances no fault could be found with the Investigating Officer for not getting the dying declaration recorded by a Magistrate which is ordinarily done. (Paragraph – 17)

In this case Dr. Sampurna Ghosh not only supported the dying declaration but also proved her signature on the said dying declaration made contemporaneously by her.

(Paragraph – 23)

**Cases cited:** i) All India Reporter, 1953, Supreme Court, Page-420 (Ram Nath Madhoprasad and Others –VS- State of Madhya Pradesh)

ii) 1983, Supreme Court Cases (Criminal), Page-523 (Darshan Singh alias Bhasuri and Others –VS- State of Punjab)

iii) 2001, Calcutta Criminal Law Reporter (Supreme Court), Page-258 (Uka Ram –VS- State of Rajasthan)

iv) 2002, Supreme Court Cases (Criminal), Page-211 (Panchdeo Singh –VS- State of Bihar)

v) 2010, Volume-I, Supreme Court Cases (Criminal), Page-159 (Chaman Lal And Others –VS- State of Punjab And Another)

vi) 2010, Volume-I, Supreme Court Cases (Criminal), Page-593 also 2009, Volume-XII, Supreme Court Cases, Page-498 (Kanti Lal –VS- State of Rajasthan)

v) State of Punjab –VS- Amarjit Singh reported in All India Reporter, 1988, Supreme Court, Page-2013.

For the Appellant : Mr. Jayanta Narayan Chatterjee

For the State : Mr. Ranjit Ghosal

**The Court:**

1. Niranjan Mandal son of Anil Mandal made statement before the police at about 10:55 p.m. on August 4, 1983 at Baruipur Hospital that he had left the grocery shop of Haripada Das at about 10:00 p.m. when Swapan Naskar, the appellant, above named, attacked him on the road with a knife on the left side of his belly. He was removed to Baruipur Hospital with profuse bleeding. He was brought to the Hospital by the Rickshaw of Madan Naskar, the brother of Swapan Naskar, the appellant above named. The doctors at Baruipur Hospital recommended him for Calcutta Hospital considering his precarious condition. He was removed to N.R.S. Hospital at Sealdah where he succumbed to injury.

2. The police initially acted on the basis of the complaint made by Niranjan at Baruipur Hospital in presence of Dr. Sampurna Ghosh who treated her at the said Hospital. The police arrested Swapan and charged him under Section 302 of the Indian Penal Code. Fact reveals, in the past Niranjan assaulted Swapan's mother. He was also compelled to pay fine for such assault in addition to bearing of all expenses for her treatment, by a village compromise (Salish).

3. Hariapada Das, PW-1 being the grocery shop owner deposed that on the fateful day, at about 9:00 p.m., Niranjan had been to his grocery shop. He saw Niranjan having a stab injury on his abdomen. Niranjan was removed to Hospital by the Rickshaw of Madan Naskar. Haripada identified Swapan in Court. In cross-examination, Haripada admitted that in the past, Niranjan had assaulted mother of Swapan. He also deposed that Swapan was not in common mess with Madan. He also deposed as to the penalty being imposed upon Niranjan by village compromise.

4. Arabinda Das, PW-2 also a neighbour, came out from his house after hearing hue and cry. He found Nirranjan being held by some persons. On enquiry he came to know that Nirranjan was stabbed on his abdomen. The injury was wrapped with clothes. Arun Das accompanied the victim to the Hospital. It was dark, Nirranjan was being removed on a Rickshaw Van with the help of flashes of torches of the persons accompanying him. In cross-examination he named few persons present at the material time. PW-3 Panchanan Das was also a neighbour. He also corroborated PW-1 and 2.

5. PW-4 Tarun another neighbour was declared hostile. He denied having found Nirranjan being stabbed by somebody else. He also denied to have accompanied Nirranjan to the Hospital. Another neighbour, Arun Kumar Das being PW-5 was also declared hostile. He also denied to have accompanied Nirranjan from the place of occurrence to Baruipur Hospital. He however admitted to have accompanied Nirranjan to Nilratan Sarkar Hospital.

PW-6, Dr. Sampurna Ghosh examined Nirranjan at Baruipur Rural Hospital. She described the injury. She also deposed that the patient had been found conscious. She also stated that the patient had stated to her that on his way from the shop he was stabbed with a knife by Swapan Naskar. She also deposed that the police had recorded the statement of Nirranjan in her presence. She also signed the statement as witness.

6. PW-7 Sankar Roy arranged a vehicle for removal of Nirranjan from Baruipur Hospital to Nilratan Sarkar Medical College. PW-9, Madan Naskar was declared hostile. He deposed that he did not recollect whether he had taken Nirranjan to the Hospital in his Rickshaw Van.

7. PW-12, Anil Mandal was the father of the victim. He also corroborated PW-2 and 3. He also stated that he had told the police that Niranjana had stated that Swapana had stabbed him while he had been returning from the shop of Haripada.

8. PW-15, another villager Gour corroborated the incident of village compromise. He stated that in later part of June 1983 during day time there had been a quarrel between Swapana's mother and Niranjana's mother over the issue of cutting coconut leaves. Niranjana assaulted Swapana's mother with a split bamboo on her forehead. He had to pay Rs.501.00 as penalty by village compromise. He also deposed that Niranjana was removed by the Rickshaw Van of Madan Naskar. Niranjana was holding his left abdomen with his hand. PW-16 Bhagirath Gyain also corroborated the other witnesses referred to above on the occurrence. PW-19, Prasanta Kumar Ganguly held inquest in presence of Gour and Arun. PW-20, Dr. A.K. Saha held postmortem. He gave vivid description of the injuries found by him. PW-21 the Investigating Officer corroborated what was stated by the witnesses referred to above.

9. The learned Judge, upon considering the evidence so discussed above held Swapana guilty of the offence mainly on the basis of the complaint made by Niranjana which was later on considered as dying declaration.

10. Being aggrieved, Swapana preferred the instant appeal. We heard the appeal on the above mentioned dates.

11. Mr. Jayanta Narayan Chatterjee, learned counsel appearing for the appellant contended as follows :

- i) From the evidence it would appear that there had been previous enmity for which Niranjana had to suffer. Hence, it was probable that Swapan was falsely implicated.
- ii) The Court below convicted Swapan and sentenced him solely based upon the dying declaration whereas Dr. Sampurna Ghosh did not give any contemporaneous certificate of fitness as would appear from the said exhibit.
- iii) The knife being the alleged weapon used for commission of the crime was recovered from the road side being a public thoroughfare. Moreover it was not sent for Forensic Examination.

12. To elaborate his contention Mr. Chatterjee relied on the following decisions :

- i) *All India Reporter, 1953, Supreme Court, Page-420 (Ram Nath Madhuprasad and Others – VS- State of Madhya Pradesh)*
- ii) *1983, Supreme Court Cases (Criminal), Page-523 (Darshan Singh alias Bhasuri and Others – VS- State of Punjab)*
- iii) *2001, Calcutta Criminal Law Reporter (Supreme Court), Page-258 (Uka Ram –VS- State of Rajasthan)*
- iv) *2002, Supreme Court Cases (Criminal), Page-211 (Panchdeo Singh –VS- State of Bihar)*
- v) *2010, Volume-I, Supreme Court Cases (Criminal), Page-159 (Chaman Lal And Others –VS- State of Punjab And Another)*
- vi) *2010, Volume-I, Supreme Court Cases (Criminal), Page-593 also 2009, Volume-XII, Supreme Court Cases, Page-498 (Kanti Lal –VS- State of Rajasthan)*

13. Mr. Chatterjee lastly contended that when the prosecution failed to produce any eye-witness to the incident it was unsafe for the learned Judge to hold the accused guilty of the offence, solely based upon the dying declaration which was not recorded in the manner it ought to have been. He prayed for setting aside of the conviction and the sentence and acquittal of the accused.

14. Mr. Ranjit Ghosal, learned counsel appearing for the prosecution contended that there was no hard and fast rule as to how a dying declaration was to be recorded. It would depend upon the facts and circumstances under which such declaration was made. He also contended that the dying declaration was proved by Dr. Sampurna Ghosh, an independent witness and corroborated by PW-12, the father of the victim. Mr. Ghosal further contended that it was well-settled principle that a dying man would not tell lie and his statement, if proved to have been properly recorded, could be the sole basis of a conviction. Mr. Ghosal relied on the decision in the case of *State of Punjab – VS- Amarjit Singh* reported in *All India Reporter, 1988, Supreme Court, Page-2013*.

15. On a sum total of the evidence as discussed above, we find that although some of the neighbours who possibly accompanied the victim to the hospital turned hostile there had been corroboration from the other witnesses to the incident so narrated by the prosecution.

16. The police complaint was lodged on August 4, 1983 when Niranjana was alive. It was sent to the learned Magistrate who received it on the very next day. On the issue of village compromise there had been corroboration from the witnesses being PW-12 and 15. Hence, the motive could well be inferred. On the dying declaration, it appears that the same was recorded at Baraipur

Hospital by the police authority immediately after he had been brought to the Hospital. PW-14, the Police Officer deposed that he had registered the complaint after receipt of the same at about 11:45 p.m. and on that basis Police Case No.4 dated August 4, 1983 was initiated. Dr. Sampurna Ghosh proved her signature on the said statement. The statement was proved by the Police Officer being PW-14 as well as PW-21 who recorded the statement being exhibit 4/2. Lot of comments was made by Mr. Chatterjee that considering the nature of the injury, it was not probable that the victim was in his sense and in any event, no certificate to this said effect was given by the doctor contemporaneously. We find from the deposition of the neighbours that he was holding his belly with one hand. Dr. Sampurna Ghosh also deposed that he was conscious. From the statement it would also appear that with great difficulty he could make the complaint as he stated at the end that he was unable to “speak more”. He also deposed that he could identify Swapan with the help of the torch in his hand.

17. From the facts and circumstances as discussed above, we are of the view that the statement of Niranjana made before the police in presence of Dr. Sampurna Ghosh was sufficient to convict Swapan for the heinous crime committed by him. As observed by the Apex Court in the case of State of Punjab –VS- Amarjit Singh (Supra), there could be no straight jacket formula for recording a dying declaration which would depend upon the facts and circumstances. In the instant case the Investigating Officer belonged to the same police station where the deceased sustained injury. Upon receipt of information he went to the Hospital, met the doctor and recorded the statement of the victim in presence of the doctor. The FIR was registered on the basis of that statement. In these circumstances no fault could be found with the Investigating Officer for not getting the dying declaration recorded by a Magistrate which is ordinarily done.



18. In the case of Ramnath Madhoprasad (Supra), the Apex Court observed that it was not safe to convict a person merely on the evidence furnished by a dying declaration without further corroboration. As discussed hereinbefore, we have found corroboration. Hence, the ratio decided herein would not help the appellant in any way.

19. In the case of Darshan Singh (Supra), the Apex Court discarded the dying declaration after finding it improbable after considering the facts and circumstances of the case. In the said case, the doctor opined that the vital organs were completely smashed and there was remote chance of his remaining conscious after receipt of the injury. In the instant case, the victim received a single injury on the left side of his belly. He had profuse bleeding. He was holding his belly while going to the hospital as corroborated by the witnesses, referred to above. The doctor also deposed that he was conscious. 20. We are unable to find out any support, the appellant could get from this decision. Similarly, in the case of Uka Ram (Supra) the Apex Court did not rely upon the dying declaration being the sole evidence after holding it not reliable “beyond all reasonable doubts”.

21. In the case of Panchdeo Singh (Supra) the Apex Court held, “*dying declaration itself can be treated as a substantive piece of evidence and can be the basis of an order of conviction and sentence without there being any corroboration, provided, however, the same brings forth a sense of confidence and trustworthiness in the mind of the Court.*” This observation of the Apex Court helps us to rely upon the dying declaration in the instant case.

22. In the case of State of Rajasthan –VS- Asfak Ahmad (Supra) the Apex Court discarded dying declaration after observing that there was no evidence shown that the deceased was in a fit condition to make such declaration.

23. In the case of Kantilal (Supra) the Apex Court once again reiterated that credibility of the dying declaration depends upon the satisfaction of the person recording such declaration that the deceased was in a fit state of mind. 24. In the said case the doctor was allegedly present at the time of recording of the dying declaration. However, he did not make any endorsement on the dying declaration to the effect that it was recorded in his presence. In our case Dr. Sampurna Ghosh not only supported the dying declaration but also proved her signature on the said dying declaration made contemporaneously by her.

25. We are in full agreement with the learned Judge of the Court below, holding the appellant guilty of the offence and sentencing him for life. We do not find any scope of interference.

26. The appeal fails and is, hereby, dismissed.

27. The appellant is now on bail. His Bail-bond / Surety Bond is cancelled. He is directed to surrender before the Court of learned Trial Judge within seven days from the date of receipt of the Lower Court Records by the learned Trial Judge, to serve out the remaining part of his sentences as awarded by the learned Trial Judge, failing which the learned Trial Judge must take appropriate steps in this regard.

28. Urgent xerox certified copy will be given to the parties, if applied for.

Let the Lower Court Records along with a copy of this judgment be sent down at once to the concerned learned Trial Judge for information and necessary action.

Urgent xerox certified copy will be given to the parties, if applied for.

**Kishore Kumar Prasad, J:**

I agree.

**[ASHIM KUMAR BANERJEE,J.]**

**[KISHORE KUMAR PRASAD,J.]**