

**(2002) 09 MP CK 0026**  
**In the Madhya Pradesh High Court**  
**Case No : Criminal Appeal No. 86/95**

|                           |    |            |
|---------------------------|----|------------|
| Layakram and Another      | Vs | APPELLANT  |
| State of M.P. and Another |    | RESPONDENT |

**Date of Decision :** 11-09-2002

**Acts Referred:**

Evidence Act, 1872 — Section 3, 32  
Penal Code, 1860 (IPC) — Section 302, 34

**Citation :** (2002) 09 MP CK 0026

**Hon'ble Judges :** S.S. Jha, J;P.C. Agarwal, J

**Bench :** Division Bench

**Advocate :** J.P. Gupta and A.K. Jain, for the Appellant; Padam Singh, Additional Government Advocate, for the Respondent

**Final Decision :** Dismissed

## Judgement

P.C. Agarwal, J.—Both the appellants are convicted u/s 302/34 of the Indian Penal Code (for short "Code") and sentenced to undergo imprisonment for life and to pay a fine of Rs. 50,000/- each in default to undergo additional R.I. for three years with the direction of payment of Rs. one lakh as compensation to Smt. Gaymini, the widow of deceased.

2. Both the appellants are real brothers of deceased Chaturbhuj alias Mastram ("deceased" for short).

3. As per prosecution, on 11-4-94 at about 10.30 A.M., deceased was working in his barn. He was called by the appellants through their servant Sudama on the pretext that account of division of grain has to be settled. Deceased went to the house of appellants where Santosh (A-2) caught hold of him and Layakram (A-1) amputated both his hands from wrist and cut both the legs. Maniram Pathak, Ramswaroop Dhurri reached there hearing the cries of deceased. Prem Kumari (P.W. 13), his mother-in-law, Sandhya (P.W. 12), his sister-in-law and Gaymini, his wife rushed to the spot and saw both the appellants cutting the limbs of the deceased. Laxminarayan (P.W. 11), father-in-law of the deceased came to know

of the incident from one Raju Lohar. He rushed to Police Station, Badoni to call the police and returned on bicycle to the village and saw in the way that the deceased was being brought in a bullock cart of Ratna Kumbhar. Deceased informed him about his woe. He arranged for a tractor trolley and brought the deceased to Police Station, Badoni where deceased lodged FIR (Ex. P-10) which was scribed by Ajay Kumar Sharma (P.W. 17). He recorded the statement of deceased vide Ex. P-14 on the same day.

4. As per prosecution deceased was sent to District Hospital, Datia. Dr. S. Shivkumar Saxena (P.W. 4), Asstt. Surgeon medically examined him at 4.45 P.M. and noted following wounds on his body vide Ex. P-3 :--

(1) Incised wound on right heel measuring 5" x 1" bleeding caused by hard and sharp object.

(2) Incised wound size 3" x 2". 2" above the ankle on lateral side on right side.

(3) Incised wound 5" above the angle size 3" x 1/2" on lateral side - right side.

(4) Incised wound 3" x 2" on medial side. 7" above the ankle on medial side on right side. Bones coming out from wound. Advise X-ray of right leg.

(5) Right hand amputated from the wrist - by incised wound and it is clotted with blood. Advised X-ray of hand I/3rd of fore arm.

(6) Left hand amputated from the wrist - by incised wound and clotted blood. Advised X-ray of lower 1/3 of forearm.

(7) Incised wound medial side, size 3" x 2.5". 5" above the ankle on left side.

(8) Incised wound size 2" x 1". Five inches above ankle on lateral side.

All wounds caused of hard and sharp object. Grievous injury. Due to excessive haemorrhage from the wound, it may be dangerous to life.

Dr. S. Shivkumar Saxena (P.W. 4) recorded his dying declaration (Ex. P-2) in presence of Laxminarayan Sharma (P.W. 11), Chandrabhan Singh (P.W. 10) and Sharda Bhalla (P.W. 3), the staff nurse. Deceased died in casualty ward the same day. Dr. V.K. Diwan (P.W. 14) conducted autopsy on his dead body on 12-4-94 and noted following external injuries vide Ex. P-12 :--

(1) Both hand separated from wrist and both carpal wound in right wrist 10 cm x 6 cm. Carpel separated from hand and only scaphoid with wrist Wound in left wrist 8 cm x 6 cm through proximal carpel - illegible.

(2) Incised wound on right leg lower 1/3rd cut size 6 cm x 2 cm bone deep and bone cut.

(3) Incised wound just above ankle lateral right side side size 7 cm x 3.5 cm bone deep.

(4) Incised wound over right heel posteriorly 8 cm x 1.5 cm bone deep.

- (5) Incised wound on 5th foot lateral side size 3 cm x 0.5 cm bone cut.
- (6) Incised wound left leg posteriorly oblique downwards size 7.5 x 4 cm bone deep bone cut.
- (7) Incised wound left thigh lower 1/3rd lateral 2.5 cm x 1 cm bone deep tissue.
- (8) Incised wound left leg low lateral 2.5 cm x 1 cm bone deep.
- (9) Abrasion right scapula 2 cm x 1 cm.
- (10) Abrasion left scapula 0.5 cm x 0.5 cm.
- (11) Incised wound on right leg middle - illeg 5 cm x 2 cm bone deep cut with fractured tibia.

Ante-mortem injuries caused by sharp weapon.

According to him deceased had died out of shock due to multiple injuries and haemorrhage. His death was homicidal. He had died between 12-24 hours of the examination. Such injuries on his person were sufficient to cause his death in ordinary course of nature.

5. Ajay Kumar Sharma (P.W. 17) recorded the statement of deceased on 11-4-94 u/s 161 of the Code of Criminal Procedure. He proceeded to the spot and prepared spot map Ex. P-15. Blood stained and simple soil was seized from inside the house of the appellants. Appellants were arrested on 24-4-94. Being discovered by Layakram (A-1) vide Ex. P-6, a blood stained Axe was seized from inside the house. F.S.L. vide report Ex. P-17 noted blood marks on soil seized from the house of appellants and Axe seized from Layakram (A-1). Chargesheet under Sections 302, 120B/34 of the Code was filed against the appellant and co-accused Sudama.

6. Appellants pleaded not guilty. They denied all the prosecution allegations and claimed false implication due to enmity. Dr. Suresh Bhadkariya (D.W. 1), an Asstt. Surgeon posted in P.H.C., Badauni claimed that the deceased was brought to him at P.H.C. However, he was not capable of giving any statement and was unconscious so he did not record his statement despite request by Police Constable. Brijesh Kumar (D.W. 2) claimed that he had seen the deceased, injured lying unconscious and unable to speak in the house of Sitaram Gupta and had sent the information to his in-laws and his mother-in-law had come to the spot. Wife had delivered a child a few days before the event and was in the house of father of appellant Layakram (A-1). Father of Layakram (A-1) was not in his house. He had called Ratna Kumhar and had sent the deceased in his bullock cart to Badauni. He himself had not accompanied them.

7. The learned Trial Court held both the appellants guilty u/s 302/34 of the Code and sentenced them as aforesaid. Co-accused Sudama was however acquitted.

8. Before this Court, the learned Senior Advocate for appellants has argued that independent witnesses of the occurrence Maniram Pathak and Ramswaroop

Dhurri though named in FIR have not been examined. Child witness Sandhya (P.W. 12) and her mother Prem Kumari (P.W. 13) are not only interested witnesses but had contradicted their previous statements on material points whereby their presence on spot is doubtful. Looking to the injuries on the person of deceased it was neither natural nor probable that he could be in a fit state of mind to lodge FIR (Ex. P-10), to give statement (Ex. P-14) to the I.O. or for record of dying declaration (Ex. P-2) to Dr. S. Shivkumar Saxena (P.W. 4). It is claimed that the prosecution has been not able to prove that the deceased was in a fit state of mind for record of dying declaration. As such, no offence was proved against the appellants.

9. On the other hand the learned Addl. Govt. Advocate has claimed that Sandhya (P.W. 12) and Premkumari (P.W. 13) were natural and probable witnesses of the occurrence having their house in the same vicinity. Minor contradictions or discrepancies in their statements are not sufficient to discard their evidence. Dying Declaration (Ex. P-2) was recorded by the Doctor himself. As such, it could not be held that deceased was not in a fit state of mind for such record. Inconsistent opinion of autopsy Doctor V.K. Diwan (P.W. 14) was only hypothetical and could not be preferred to the statement of Dr. S. Shivkumar Saxena (P.W. 4). Learned Trial Judge has recorded, conviction of both the appellants after consideration of all relevant material and no interference is warranted.

10. We have heard both the Advocates. We have gone through the entire evidence on record with the assistance of both. Judgment of Trial Court is also perused minutely.

11. Homicidal death of deceased is well proved by statements of child witness Sandhya (P.W. 12), Premkumari (P.W. 13) and Laxminarayan (P.W. 11), all near relatives of the deceased. As already seen, Dr. S.S. Saxena (P.W. 4) had medically examined the deceased when he was alive and found extensive cut injuries on his person. FIR (Ex. P-10) lodged by the deceased has supported the story. Deceased died in hospital despite treatment that could be available there. Dr. V.K. Diwan (P.W. 14) conducted autopsy on his dead body and noted extensive injuries including amputation of both the hands from the wrists and cut injuries in legs. He has claimed that death was due to shock as result of multiple injuries and haemorrhage. Such death was homicidal. The appellants have merely denied the offence. Their denial is clearly evasive and does not rebut the prosecution evidence. Thus, the finding that death of deceased was unnatural and homicidal is well proved. Thus, these findings of Trial Court are confirmed.

12. Prem Kumari (P.W. 13), the mother-in-law and Sandhya (P.W. 12), the sister-in-law of the deceased have claimed to have witnessed the occurrence. Both have claimed that Sudama (since acquitted) had come to call the deceased to the house of the appellants in pretext of division of crop. Deceased had gone to the house of Santosh (A-2). Sandhya (P.W. 12) has claimed to have seen that Santosh (A-2) was sitting on chest of the deceased while Layakram (A-1) was

cutting his hands by an Axe. Thereafter Layakram (A-1) had sat on chest of deceased and caught his other hand and Santosh (A-2) had cut his hand by Axe. Thereafter, Layakram (A-1) had caught both the legs of the deceased. Santosh (A-2) had sat on the chest of deceased. Prem Kumari (P.W. 13) has claimed to reach the paur of appellants with her daughter Sandhya (P.W. 12) and Gaymini. She had seen that both legs of deceased were already cut. Santosh (A-2) was sitting on his chest and Layakram (A-1) had cut his both hands. Both these witnesses claim that they had seen the event from near the doors of the paur. Both have claimed that there are only two houses between their house and the house of the deceased who used to live separate from them and also from the appellants who are his brothers. Both these witnesses have claimed that the deceased had also told the whole story to them how co-accused Sudama had called him and how the appellants had cut his hands and legs.

13. Their story is supported by Laxminarayan (P.W. 11), father-in-law of the deceased who was informed by Raju Lohar about the event. He had gone first to Police Station, Badauni and then proceeded on his bicycle to Village, Dhindori and had seen the injured deceased lying in the bullock cart of Ratna Kumbhar coming towards the police station. On his asking the deceased had told him that his hand and feet were cut by appellants. He had arranged for a tractor trolley and has taken the deceased in such tractor trolley to Police Station, Badauni where deceased himself had lodged FIR (Ex. P-10). According to him, the doctor had recorded the dying declaration (Ex. P-2) in his presence. All these three witnesses have denied that Gajrajpurji Baba had anything to do with the murder of deceased though of course this Gajrajpurji was tried once for another murder. All three have denied that Gajrajpurji had ever threatened the deceased to kill him. They have denied that the deceased himself was a criminal who used to carry with him a pistol or dagger and used to frighten villagers.

14. These three witnesses have been cross-examined at length. Anyhow, their statements have been consistent and coherent. No material contradiction or omission has been noted in their statements. Though of course, both Sandhya (P.W. 12) and Prem Kumari (P.W. 13) had not stated in statement before the I.O. that co-accused Sudama had come twice to call the deceased in the morning. It is also true that as per FIR (Ex. P-10) Santosh (A-2) had caught hold of the deceased and Layakram (A-1) had amputated both his hands from wrists and had cut both his legs. Prem Kumari (P.W. 13) has stated that before she reached both the legs of deceased were already cut. Santosh (A-2) was sitting on his chest while Layakram (A-1) had cut both his hands. However, such difference in sequence cannot be capitalized. Sandhya (P.W. 12) in para 2 has exchanged roles of appellant for cutting one hand and has attributed amputation of one hand to Santosh (A-2) directly while as per FIR Santosh (A-2) had sat on chest of the deceased to overpower and disable him and Layakram (A-1) had amputated both his hands. However, in our opinion such discrepancies do not touch the core of the prosecution case essentially. Both the appellants had acted conjointly. Witnesses may be stunned seeing such ghastly act to their near relative. In a

way such minor contradictions, inconsistencies add to the value of their statement. Pandappa Hanumappa Hanamar and another Vs. State of Karnataka, ], Sunil Kumar and others Vs. State of Madhya Pradesh, ; Mahendra Rai Vs. Mithilesh Rai and Others, ], State of Himachal Pradesh Vs. Lekh Raj and Another, ; Narayan Chetanram Chaudhary and Another Vs. State of Maharashtra, ], Joseph Poulo Vs. State of Kerala, ; Munshi Prasad and Others Vs. State of Bihar, ], Sukhdev Yadav and Others Vs. State of Bihar, ]. These discrepancies do not show that they had not seen the event.

15. It is noteworthy that event took place inside the house of Santosh (A-2), and Ajay Kumar Sharma (P.W. 17), S.O. Badauni had seized blood stained and simple soil from inside the house of Santosh (A-2) vide Ex. P-8. Though of course Kamtaprasad Yadav (P.W. 6) and Harcharan Sharma (P.W. 7) have not supported him but both have admitted their signatures on Ex. P-8 seizure memo. As such blood was found on points I and II in the Paur and house of Santosh (A-2). Kanhaiyalal Sharma (P.W. 8), Patwari had also prepared spot map (Ex. P-9). It is confirmed that the occurrence took place inside the Paur of the house of Santosh (A-2). Obviously these two witnesses have suppressed the facts and are not reliable in preference to Ajay Kumar Sharma (P.W. 17).

16. Besides this weapon of offence has been seized from Layakram (A-1) by Raj Bahadur Singh (P.W. 5), A.S.I. who on 24-4-94 inquired from Layakram (A-1) vide discovery memo (Ex. P-6). He has recovered Axe from house of Layakram (A-1) vide Ex. P-7. Bhagirath Parihar (P.W. 9) however has not supported him on the point of discovery and recovery yet he has also admitted his signatures on both Ex. P-6, discovery memo and Ex. P-7, recovery memo. He has been declared hostile by the learned public prosecutor and cross-examined. His statement has not been rightly preferred by the Court below to the statement of Raj Bahadur Singh (P.W. 5). Thus, recovery of an Axe (Article A) from Layakram (A-1) is proved. The F.S.L. has noted blood on both blood stained soil and Axe seized from Layakram (A-1). Anyhow, report of serologist is not there. Presence of human blood or blood of blood group of deceased on such Axe is not proved. Even then in absence of any explanation of presence of blood on Axe such evidence is not ineffective. It is also noteworthy that the appellants who are brothers of deceased were arrested on 24-4-94, i.e., about 13 days after the occurrence. Had they not been involved in this murder they would have surely reported against the actual culprit who murdered their mother inside their house to bring him to the book.

17. Of course Maniram Pathak and Ramswarup Dhurri named in FIR have not been examined. Ramratan Prajapati (P.W. 15) who had taken the deceased in his bullock cart has not supported the prosecution on both the points (1) that the appellants were the assailants or (2) that the deceased was able to speak. Though he has admitted that he had taken the deceased in his bullock cart to Badauni. In the way Laxminarayan (P.W. 11) had met him with police and the deceased was taken to Datia in a tractor trolley. He has been declared hostile

and cross-examined by the learned Public Prosecutor and on confronting has denied A to A portion of Ex. P-13 recorded by Ajay Kumar Sharma (P.W. 17), I.O. who has proved correct recording of such statement. His cross-examination has shown that he has suppressed the truth in favour of appellants. He has been rightly dis-believed by the Trial Court. It is noteworthy that there is absolutely no reason why Laxminarayan (P.W. 11), Sandhya (P.W. 12) and Premkumari (P.W. 13) would falsely implicate the appellants. There has been no bad blood between them and the appellants. They have no Axe to grind in their false implication. Obviously sentiments of both Santosh (A-2) and Prem Kumari (P.W. 13) who have been most natural witnesses of the occurrence having their house in the same vicinity have value, Nachhattar Singh Vs. State of Punjab, ). Lokeman Shah and Another Vs. State of West Bengal, ). Their close relationship with the deceased does not make them interested witnesses. State of Rajasthan v. Hanuman (AIR 2001 SC 282). Normally close relatives of deceased are not likely to falsely implicate a person in the incident leading to the death of their relation unless there are strong and cogent reasons. State of Rajasthan Vs. N.K.-The Accused, ].

18. As already seen medical evidence fully supports such story. Dr. S. Shivkumar Saxena (P.W. 4) had seen 8 incised wounds, deep cuts and amputations on both hands from wrists on body of deceased when he was alive. Dr. V.K. Diwan (P.W. 14) who conducted autopsy has noted 9 incised wounds with amputations of both the hands from wrists and two abrasions vide Ex. P-12 as detailed above. Obviously, such injuries can be caused to the deceased by means of an Axe which is a heavy and sharp cutting object.

19. Obviously, such story is fully supported by FIR (Ex. P-10) lodged by the deceased himself. Ajay Kumar Sharma (P.W. 17), S.O., Badauni has scribed the same. According to him it was got written by deceased who was in senses and was not semi-conscious. Deceased had spoken and he had written. He had not questioned or cross-examined the deceased. He has denied that such report was got written either by Laxminarayan (P.W. 11) or Chandrabhan Singh (P.W. 10). He had obtained signatures of Chandrabhan Singh (P.W. 10) and Laxminarayan (P.W. 11) on Ex. P-12 as they were present at the time of lodging such report. He has denied that he had requested Dr. Suresh Bhadkariya (D.W. 1) to record the dying declaration. It is true that Suresh Bhadkariya (D.W. 1) has stated that he was called to Police Station, Badauni to see the patient with amputated hand and cut legs. According to him, he was lying in trolley of the tractor and was unconscious and unable to speak. He had advised the S.O. to take the patient to district hospital. Before he could come with the first-aid material, the patient was taken to Datia. According to him the Police Constable had requested him to record the statement of the patient but he did not record the same as the patient was unconscious. He has been cross-examined in detail by the Public Prosecutor. Certain questions are put by the Sessions Judge also. His statement has not impressed the Trial Court. Obviously, despite call he had not taken with him even the first-aid material. He had not accompanied the patient to district hospital. No

requisition either for his medical examination or for recording dying declaration was given to him by S.O., Badauni. The Trial Court has rightly disbelieved the witness. Ajay Kumar Sharma (P.W. 17) in para 16 has alleged that this doctor earlier also had been remiss in attending the patients.

20. Dr. S. Shivkumar Saxena (P.W. 4) has recorded dying declaration (Ex. P-2). He is disinterested independent and respectable witness posted at Datia. He cannot be said to be under influence of either the I.O. or the complainant. D.D. recorded by him cannot be lightly rejected. Abdul Majid Abdul Rahman Vs. State of Gujarat, ). Such dying declaration is recorded in question and answer form. According to him, the deceased was in his senses and was able to speak and depose. He is supported by Smt. Sharda Bhalla (P.W. 3), staff nurse who has signed on A to A part of Ex. P-2. Dr. S. Shivkumar Saxena (P.W. 4) has admitted that Laxminarayan (P.W. 11) and Chandrabhan Singh (P.W. 10) were present with three or four persons of the hospital staff when Ex. P-2 was recorded. Smt. Sharda Bhalla (P.W. 3) in para 3 has admitted that the deceased was in half-conscious stage when he was brought in the hospital. In para 5 she admits that she had to leave often to bring some instruments but she had signed Ex. P-2 in the end.

21. It is true that doctor has not scribed the certificate in Ex. P-2 that the deceased was in a fit state of mind at the time of recording declaration. The Sr. Advocate for the appellants has relied upon Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, ) wherein a dying declaration recorded by Magistrate without certificate was held to be unacceptable by three Judges Bench of the Apex Court. Only Magistrate recording declaration had satisfied himself that the injured was in a fit state of mind at the time of declaration, he was not relied upon. Other three Judge Bench of Apex Court in Koli Chunilal Savji and Another Vs. State of Gujarat, ] in similar facts had held that the dying declarations being consistent with and corroborated each other. Satisfaction of recording officer about mental and physical fitness of the deceased was held sufficient. This cleavage of opinion between "certification" and "satisfaction" has been ended by a Constitution Bench of the Apex Court in Laxman v. State of Maharashtra [JT 2002(6) SC 313] and satisfaction theory holds the field. Allegations of tutoring by relatives being baseless. Such dying declarations being truthful, voluntary and reliable can be relied upon. The Apex Court has already explained away contrary view and have followed Ravi Chander and Others Vs. State of Punjab, ]. Harjit Kaur Vs. State of Punjab, ]. Of course in the present case Dr. S. Shivkumar Saxena (P.W. 4) had satisfied himself before recording dying declaration that the deceased was in a fit condition mentally and physically.

22. It is well settled that deceased must be in a fit mental and physical condition at the time of record of dying declaration. Mere plurality of dying declarations would not add to its weight. Smt. Laxmi Vs. Om Prakash and Others, ]. Dying declaration must be true, voluntary, and not influenced by any extraneous consideration, conviction can be based upon it without any further corroboration.

A rule requiring corroboration is not a rule of law, but only a rule of prudence. *Uka Ram Vs. State of Rajasthan*, ]. It is well settled that if the dying declaration is truthful trustworthy and reliable conviction can be based solely thereupon. *State of Assam Vs. Mafizuddin Ahmed*, ]. Corroboration of dying declaration may be necessary only where the same is infirm. Anyhow, in the present case two of the eye-witnesses have clearly supported the case of prosecution and their statements are trustworthy and dying declarations are being used merely for corroboration of such eye-witnesses and to lend assurance to their statements. It is well settled that an FIR can also be used as a dying declaration. *Munnu Raja and Another Vs. The State of Madhya Pradesh*, ). A dying declaration can well be recorded by a doctor. *P. Bahu v. State of A.P.* (1993 AIR SCW 3174). *Padma Ben Shyamla Bhai Patel v. State of Gujrat* (1991 AIR SCW 464). The doctor had stated that the declarant was in a fit state of mind for making dying declaration in question. He was not dis-believed by the Trial Court. *Suresh Vs. State of Madhya Pradesh*, ).

23. The learned Sr. Advocate for the appellants has argued that deceased had very serious injuries on his person. Both his hands were amputated from wrist. There were deep cuts in his legs also. According to him, he could not have been in senses and in fit condition mental or physical when he reached the police station and in District Hospital, Datia before Dr. S. Shivkumar Saxena (P.W. 4). He has emphasised admission of Smt. Sharda Bhalla (P.W. 3), the staff nurse that the deceased had come in half conscious condition to the hospital. Anyhow, Dr. Shivkumar Saxena (P.W. 4) in para 17 has admitted that the condition of deceased was precarious. In para 19 he has claimed that deceased was conscious and able to speak and that is why his dying declaration was recorded. Anyhow, in para 19 he admitted that there was no time left to call an Executive Magistrate. Ajay Kumar Sharma (P.W. 17), S.O., Badauni has been definite that deceased was in a fit mental and physical condition to lodge FIR. Though he was lying in a trolley of the tractor. He has vehemently denied that deceased was unconscious, though he was weeping. As already seen statement of Dr. Suresh Bhadkariya (D.W. 1) has not been reliable and rightly discarded by the Court below. The same can be said for statement of Ramratan Prajapati (P.W. 15) who has claimed that the deceased was not able to speak even at the village when he had gone to him. Anyhow, he has been declared hostile by the prosecution and has been cross-examined. He has actually suppressed the facts. Brijesh Kumar (D.W. 2) has also claimed that the deceased was lying unconscious in the house of Sitaram Gupta. Such a story has not been admitted by any of the prosecution witnesses. He has also been rightly dis-believed by the Court below. It is true that Dr. Vijay Kumar Diwan (P.W. 14) in para 6 has admitted that the patient could remain in senses when his limbs are cut but would lose his consciousness steadily. According to him he could come in shock within 1 -1.5 hours. Anyhow, this is merely an opinion evidence which could not be given preference over the direct evidence of Laxminarayan (P.W. 11), Ajay Kumar Sharma (P.W. 17), Dr. S. Shivkumar Saxena (P.W. 4) and even Smt. Sharda Bhalla (P.W. 3) the staff nurse.

On the basis of such suppositions, the dying declarations contained in FIR (Ex. P-10) and in Ex. P-2 cannot be discarded. Both dying declarations are consistent and coherent and name both the appellants and thus the Court below has not erred in relying upon the same for corroboration of evidence of eye-witnesses.

24. Learned Sr. Advocate has argued that intention of the appellants to cause death of the deceased has not been proved. He has cited *Kapur Singh Vs. State of Pepsu*, wherein 18 injuries on arms and legs of deceased with Gandasi were caused by the appellant while his companion had held the head of the deceased. No injury was caused on vital part of body. Motive of the crime was to wreck vengeance from the deceased. In the facts and circumstances of that case, it was held that the accused had no intention to cause death. Anyhow, in the present case Dr. V.K. Diwan (P.W. 14) has opined that injuries on the person of the deceased were sufficient in ordinary course of nature to cause his death. There has been no cross-examination on that point. *Dhupa Chamar v. State of Bihar* (2002 AIR SCW 3217) is a recent case in which the Apex Court considered *Mahesh Valmik v. State of M.P.* (AIR 1999 SCW 3334). *Virsa Singh Vs. The State of Punjab*, and several other cases and held that even if a solitary injury is inflicted intentionally and if the same was sufficient to cause death in ordinary course of nature, the accused can be convicted of the murder. In the facts of the present case intention of the appellants was clearly to cause death of the deceased or atleast they had intentionally caused such injuries to the deceased which were sufficient in ordinary course of nature to cause his death. Thus, clearly it is a case of murder.

25. Next point raised by the learned Sr. Advocate is that Santosh (A-2) cannot be held guilty for murder with the aid of Section 34 of the Code. In the present case both the appellants called the deceased inside the house of Santosh (A-2). Santosh (A-2) caught hold of the deceased, sat on his chest, and continued to do so to disable the deceased while Layakram (A-1) used his Axe so as to amputate both the hands of deceased from wrist and caused serious cut injuries on his legs. Such case is not comparable to *Ram Lal Singh and others Vs. State of Haryana*, wherein one of the accused had caused injuries to the deceased and others had merely dragged her from the train compartment. They were not armed nor had assaulted the deceased or exhorted the co-accused causing injuries to attack the deceased or indulged in fisting or kicking the deceased. The case is not parallel with *Mithu Singh Vs. The State of Punjab*, wherein the accused had merely accompanied the co-accused to the house of deceased. Though he knew that co-accused was armed with a pistol and had previous enmity with the deceased. No inference as to common intention of killing was raised on those facts alone. In *Gajjan Singh Vs. State of Punjab*, Charge was u/s 302/149 against 8 accused. Co-accused was convicted u/s 302 for murder of A by single rifle shot. Appellant was convicted u/s 307 for attempt to murder D by single rifle shot and was also convicted for murder of A u/s 302/34. Anyhow, Apex Court did not held any common intention proved between the appellant and co-accused. In *Bhaba Nanda v. State of Assam* (AIR 1975 SC 2252) three

accused had held the victim. Out of them two had used their weapons and the manner in which they gave blows clearly showed their intention to kill the victim. Anyhow, the third accused did not use his lathi to cause injury to the victim and thus common intention of the third to kill was not held proved. Obviously, all these cases are not comparable to the present case.

26. The present case is nearer to Harpal Singh Vs. The State of Haryana, ). In this case the accused had borrowed money from the deceased and had failed to repay the same. Deceased went to the house of accused and demanded his money. Accused armed with a gun alongwith co-accused came out of his house. Demand by deceased led to exchange of words between the parties followed by grappling between accused and deceased. Co-accused also took part in assault and after holding hairs of deceased gave lalkara to accused to fire shot. The death of deceased by gun shot on chest. In this case co-accused was held to share common intention to cause the death of the deceased. In the present case also, it is in evidence that Santosh (A-2) caught hold of the deceased to disable him, to make him defenceless, had sat on his chest and caught his limbs while Layakram (A-1) had amputated both his hands and had cut both legs mercilessly and the deceased had died the same day due to excessive haemorrhage and consequent shock. Thus the Court below has not erred in holding Layakram (A-1) guilty u/s 302 of the Code and Santosh (A-2) guilty u/s 302/34 of the Code. There has been no substance in this appeal. The same merits to be dismissed. Conviction and sentence are hereby upheld.

27. Appeal is dismissed. Conviction and sentence recorded by the Court below are confirmed. Appellants are in jail. They shall undergo the remaining sentence.