



2026:AHC:217989-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.
Reserved on 25.08.2026
Delivered on 16.10.2026

CRIMINAL APPEAL No. - 1697 of 1989

Krishna Kumar

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Sikandar B. Kochar A/C, M. Islam
Counsel for Respondent(s)	: D.G.A.

Court No. - 29

HON'BLE SIDDHARTHA VARMA, J.
HON'BLE JAI KRISHNA UPADHYAY, J.

(Per Jai Krishna Upadhyay, J.)

1. This criminal appeal has been preferred by the appellant Krishna Kumar @ Kumbh Karan against the judgment and order dated 31.07.1989 passed by the Additional Sessions Judge-9th, Bareilly, arising out of Sessions Trial No. 437 of 1987 (State Vs. Krishna Kumar @ Kumbh Karan and others), whereby the learned trial Court convicted the appellant Krishna Kumar @ Kumbh Karan under Section 302 I.P.C. and sentenced him to undergo life imprisonment with a fine of Rs. 100/-. In case of default of payment of fine, he was sentenced to undergo additional rigorous imprisonment for three months.

2. Since the Government Appeal No. 1392 of 1989 does not arise out of the impugned order dated 31.07.1989 and has been wrongly connected along with the criminal appeal No. 1697 of 1989, therefore, the same is hereby disconnected and is directed to be listed separately for hearing before the appropriate bench.

3. In brief, the prosecution case is that deceased Bhim Singh had an ongoing land dispute with Bhagwan Das, Kumbha karan, Ram Sahay, and Chhote. On 24.02.1987 at about 11:15 p.m., when deceased Bhim Singh reached his house at Nekpur, Madhinath from the Sugar Factory, the accused Bhagwan Das, Ram Sahay, Chhote, and Kumbhakaran met him. Among them, Ram Sahay, Chhote, and Bhagwan Das caught hold of the deceased and instigated Kumbhkaran, saying, "What are you

waiting for? Kill the bastard!". Thereupon, appellant-accused Kumbhakaran stabbed deceased Bhim Singh in the stomach with a dagger (gupti) with the intention to kill him. On the shouts of Bhim Singh, witnesses Sohan Lal (PW-1) and Budhpal (PW-2) arrived at the scene and witnessed the entire incident. The injured Bhim Singh reached the police station in a rickshaw and lodged a First Information Report (FIR), which was recorded by Constable Siyaram. The witnesses and the deceased clearly saw and identified the accused persons in the electric light.

4. Thereafter, Dr. U.K. Saxena (PW-3) medically examined the injured Bhim Singh, and his dying declaration was recorded by Executive Magistrate Leeladhar Nainwal (PW-7) after obtaining the doctor's certification confirming his fitness to make a statement. The injured Bhim Singh succumbed to his injuries on 25.02.1987 at 7:45 a.m. at the District Hospital, Bareilly. His medical examination was conducted on 25.02.1987 at midnight, and his dying declaration was recorded on 25.02.1987 between 1:15 a.m. and 1:30 a.m. The post-mortem examination of Bhim Singh was performed on 25.02.1987 at 4:30 p.m. at District Hospital, Bareilly. Inquest (Panchayatnama) proceedings and other statutory formalities were duly completed following his death.

5. Upon completion of the investigation, the charge-sheet against the accused was submitted to the court, and the case was subsequently committed to the Sessions Court. Charges were framed under Section 302 I.P.C. against the accused-appellant, who denied the charges and claimed trial.

6. During the course of trial, the prosecution examined as many as 9 witnesses.

7. PW-1 Sohan Lal is an eyewitness who testified that his field is adjacent to Madhinath Chowki. He stated that about one and a half years prior, at around 11:00 p.m., while returning home from his fields, he reached near Puran and Narayan's house at about 11:15 p.m. and saw Chhote, Ram Sahay, and Kumbhakaran surrounding Bhima (deceased). When he asked why they were surrounding him, Bhagwan Das stated, "What are you looking at? Why don't you hit?" Meanwhile, Kumbhakaran thrust a dagger into Bhima's stomach. As soon as the dagger struck, Bhima ran toward Chaupala, and the accused fled into the fields. PW-1 deposed that he witnessed the entire incident under the light of an electric pole. He identified the accused in court and confirmed the existence of prior enmity between the deceased and the accused.

During cross-examination, PW-1 remained consistent with his examination-in-chief.

8. PW-2 Budh Pal, another eyewitness named in the FIR, did not support the prosecution version during trial and was declared hostile.

9. PW-3 Dr. D.K. Saxena, Medical Officer at District Hospital Bareilly, testified that on 25.02.1987, Bhim Singh was admitted to the hospital at 12:05 a.m. He proved the bed-head ticket (Ex. Ka-8). He deposed that at 1:15 a.m. on 25.02.1987, the Executive Magistrate arrived to record the dying declaration. PW-3 certified that prior to recording the statement, the deceased was fully conscious and mentally fit, endorsing his handwriting and signature on Ex. Ka-7B. He further certified at 1:30 a.m. that even after completion of the declaration, the deceased remained conscious and capable. He proved the death intimation memo (Ex. Ka-9).

10. PW-4 Siyaram, a formal police witness, proved the Inquest (Panchayatnama) (Ex. Ka-12).

11. PW-5 Rajbala Vishnoi, Station Officer, deposed that initial investigation was conducted by S.I. R.D. Tyagi and that she took over the investigation at Kotwali on 27.02.1987. On that day, she recorded statements of Puran Lal, Virendra Singh, Budh Pal, Sohan Lal, and the recovery witnesses. She conducted a search at the house of accused Krishna Kumar, inspected the spot under PW-1's direction, prepared the site plan (Ex. Ka-2), and recorded inquest witness statements. She subsequently submitted Charge-sheet No. 23 (Ex. Ka-3).

12. PW-6 Raj Bahadur Singh, Head Constable, proved G.D. Entry (Ex. Ka-7) and FIR (Ex. Ka-4).

13. PW-7 Leeladhar Nainwal, A.S.D.M., deposed that upon receiving a police memo after midnight on 25.02.1987, he reached the emergency ward of District Hospital, Bareilly. After obtaining a doctor's certificate regarding the victim's mental fitness, he commenced recording the dying declaration at 1:15 a.m. The victim stated:

"I went to the house from Alakhnath (place). I spoke to my brothers. They said, 'Get out. You've become a saint.' I told them I had property worth lakhs, and they stabbed me in the stomach with a knife or dagger. Ram Sahay S/o Narayan, and his younger son Narayan caught hold of me. Kumbhakaran S/o Puran Lal, stabbed me in the stomach with a dagger. I ran

away in fear. I came to Chaupula and a traffic constable there brought me to the hospital. This is my statement."

He proved that the statement was read over to the injured, who confirmed its correctness and affixed his thumb impression. PW-7 obtained the doctor's final certificate and signed Ex. Ka-7B at 1:30 a.m.

14. PW-8 Dr. F.A. Khan conducted the post-mortem on 25.02.1987 at 4:30 p.m. He noted average build, rigor mortis present, and the following ante-mortem injuries:

- Punctured wound 3' x 1.5' x abdominal cavity deep on right side of abdomen, 3' outer to umbilicus at 10 o'clock position, directed upward and leftward, cutting omentum, lower stomach, and small intestine through and through.
- Incised wound 4 cm x 2 cm x muscle deep on left palmar aspect at base of left thumb.
- Incised wound 7 cm x 1 cm x muscle deep cutting base of left index, middle, and ring fingers in a line.
- Incised wound 5cm x 1 cm x bone cut between left little and ring fingers on palmar aspect.
- Incised wound 3 cm x 1.5 cm x muscle deep on palmar aspect of left index finger.

He recorded that the cause of death was shock and haemorrhage resulting from Injury No. 1, caused by a sharp and long weapon.

15. PW-9 Ram Sewak Upadhyay, Constable, proved Case Diary Parchas No. 1 and 2 written by initial Investigating Officer S.I. R.D. Tyagi.

16. All incriminating circumstances appearing in the prosecution evidence were put to the appellant while recording his statement under Section 313 Cr.P.C. The appellant denied the incriminating circumstances and claimed false implication. He pleaded ignorance regarding the dying declaration and filed a written statement during his examination under Section 313 Cr.P.C., wherein he stated that his father was unable to walk and that deceased Bhimsen harboured a grudge against him regarding the sale of land and distribution of money. On the day of the incident, his father was attacked at his house with an intention to kill him. To save his father, the appellant tried to snatch the

dagger from Bhimsen, who then attacked to kill him. In the scuffle to snatch the weapon, the dagger struck Bhimsen's stomach. The appellant snatched the dagger, which was subsequently taken from him by persons present at the spot. Before he could take his father to the police station to report the matter, the police arrived at his residence and arrested him.

17. No evidence was led by the defence.

18. By the impugned judgment and order dated 31.07.1989, the learned Trial Court convicted and sentenced the appellant, leading to the present appeal.

19. We have heard Sri Sikandar B. Kochar, learned Amicus Curiae for the appellant Krishna Kumar @ Kumbh Karan, and the learned A.G.A. for the State.

20. Sri Sikandar B. Kochar, learned Amicus Curiae appearing on behalf of the appellant, submitted that:

(i) The prosecution case fundamentally suffers from material inconsistencies across the multiple statements treated as dying declarations. While the First Information Report (Ex. Ka-4) registered at the instance of the injured recites that he reached the police station in a rickshaw with local assistance, the written dying declaration (Ex. Ka-7B) recorded by the Executive Magistrate (PW-7) sets up a divergent narrative that a traffic constable brought him directly from Chaupala to the hospital. Furthermore, PW-3 Dr. D.K. Saxena recorded in the bed-head ticket (Ex. Ka-8) that the injured was brought by Constable 330 Bahadur Singh. These contradictory versions regarding the transit and conveyance of the injured destroy the spontaneity, voluntariness, and credibility of the dying declaration (Ex. Ka-7B).

(ii) The ocular evidence produced by the prosecution is thoroughly untrustworthy and uncorroborated. PW-2 Budh Pal, cited as an independent eyewitness in the FIR, turned completely hostile during trial. The sole remaining eyewitness, PW-1 Sohan Lal, is an interested witness whose statement under Section 161 Cr.P.C. was recorded after an unexplained and inordinate delay of three days (on 27.02.1987) by Investigating Officer PW-5. Such deliberate delay in examining an alleged neighbour generates serious doubt regarding his presence at the scene and points toward post-incident tutoring.

(iii) The learned Trial Court failed to evaluate the plausible defence

version set up by the appellant in his written statement under Section 313 Cr.P.C. The appellant cogently explained that the deceased initiated an unprovoked attack on his physically disabled father over a land dispute. The injury to the deceased was accidentally sustained during a scuffle while the appellant was exercising his right of private defence to save his father's life. The prosecution completely failed to negate this probable defence plea.

(iv) The prosecution failed to recover the alleged weapon of assault (gupti/dagger) or establish any forensic linkage connecting the appellant to the crime. In the absence of corroborative physical evidence, a conviction under Section 302 I.P.C. based solely on contradictory dying declarations is unsustainable in law.

21. On the other hand, supporting the impugned judgment, the learned A.G.A. for the State submitted that:

(i) The core substratum of the prosecution case has remained unshakeable throughout the trial. Across all recorded statements, including the FIR narrative, medical entries, and the solemn dying declaration (Ex. Ka-7B), the specific and primary overt act of inflicting the fatal dagger blow into the abdomen of the deceased has been consistently attributed to appellant Krishna Kumar @ Kumbh Karan. Minor variations regarding the exact vehicle used or the identity of the person assisting the injured during transit are trivial peripheral details that do not erode the core truthfulness of the assault.

(ii) The dying declaration (Ex. Ka-7B) was recorded by an independent Executive Magistrate (PW-7 A.S.D.M.) after obtaining written certification of mental fitness from attending Medical Officer Dr. D.K. Saxena (PW-3) prior to and after recording the statement. The declaration satisfies all tests under Section 32(1) of the Indian Evidence Act, 1872 (now Section 26 of the Bharatiya Sakshya Adhiniyam, 2023). Being voluntary, truthful, and untainted by tutoring, it independently forms a valid legal foundation for conviction.

(iii) The ocular account of PW-1 Sohan Lal corroborates the dying declaration on all material points. PW-1 clearly identified the appellant stabbing the deceased in electric light, and his testimony remained firm under cross-examination. His account is fortified by the post-mortem report (Ex. Ka-11) proved by PW-8 Dr. F.A. Khan, which revealed a deep, fatal abdominal cut (Injury No. 1) along with multiple incised defence wounds on the deceased's left hand.

(iv) The short delay of two to three days in recording the Section 161 Cr.P.C. statement of PW-1 was adequately explained by S.O. Rajbala Vishnoi (PW-5), who took over investigation on 27.02.1987. As settled by the Hon'ble Supreme Court, a short delay in examining witnesses during an active investigation is not fatal per se when the underlying evidence is reliable. The defence plea under Section 313 Cr.P.C. is an unproven, self-serving afterthought lacking medical or testimonial support.

22. Having considered the rival submissions advanced by learned counsel for the parties and perused the entire material available on record the point of determination which arises for adjudication is that whether the learned Trial Court committed any legal error or perversity in convicting and sentencing the appellant under Section 302 I.P.C. on the basis of the evidence available on record.

23. Since the core arguments advanced by both the parties rests upon the evidentiary value and reliability of the multiple dying declarations, it is necessary to analyse the statutory principles and the law propounded by the Hon'ble Supreme Court in this regard.

24. The statutory framework governing dying declarations, formerly embodied under Section 32(1) of the Indian Evidence Act, 1872, is now encapsulated under Section 26 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA, 2023). Section 26 of BSA, 2023 provides that written or verbal statements of relevant facts made by a person who is dead are relevant when made as to the cause of death or as to any circumstances of the transaction resulting in death.

25. The jurisprudential foundation of Section 32(1) / Section 26 BSA rests upon the legal maxim *Nemo morit urus praesumitur mentiri* that a person will not meet their Maker with a lie in their mouth. There is no rigid statutory form prescribed for recording a dying declaration; it can be made verbally, in writing, or by any recognized method of communication, provided cognitive fitness is established. As Matthew Arnold famously observed, "*truth sits on the lips of a dying man*", the general principle on which these statements are admitted is that these declarations are made in extremity, when every hope of this world is gone and every motive to falsehood is silenced, create an obligation equal to that imposed by a positive oath in a court of justice. A dying declaration, if voluntary, truthful, and unprompted, can form the sole basis of conviction without requiring corroboration. However, where multiple dying declarations exist, the Court must subject each to close

scrutiny to ensure coherence and absence of material variance.

26. As held by the Hon'ble Supreme Court in **Mohan Lal Gangaram Gehani Vs. State of Maharashtra [(1982) 1 SCC 700]**, where the prosecution relies upon multiple statements in the nature of dying declarations, the statement first in point of time is ordinarily preferred unless subsequent statements are proven equally spontaneous and reliable. For a plurality of dying declarations to be accepted, they must exhibit coherence on the core substratum.

27. In **Abhishek Sharma Vs. State (Govt. of NCT of Delhi) [(2024) 13 SCC 660]**, the Hon'ble Supreme Court codified the parameters for appreciating multiple dying declarations:

- (1) The primary requirement for all dying declarations is that they should be voluntary and reliable and that such statements should be made in a fit state of mind;
- (2) All dying declarations should be consistent. In other words, inconsistencies between such statements should be 'material' for its credibility to be shaken;
- (3) When inconsistencies are found between various dying declarations, other evidence available on record may be considered for the purposes of corroboration...;
- (4) The statement treated as a dying declaration must be interpreted in light of surrounding facts and circumstances;
- (5) Each declaration must be scrutinized on its own merits...;
- (6) When there are inconsistencies, the statement that has been recorded by a Magistrate or like higher officer can be relied on, subject to the indispensable qualities of truthfulness and being free of suspicion;
- (7) In the presence of inconsistencies, the medical fitness of the person making such declaration, at the relevant time, assumes importance along with other factors such as the possibility of tutoring..."

28. In view of the aforesaid settled position of law, we now proceed to critically evaluate and scrutinize the multiple dying declarations and ocular evidence available on record in the instant matter.

29. The statutory sanctity of the written dying declaration (Ex. Ka-7B) is

established through the testimony of Leena Dhar Nainwal, the then A.S.D.M. (PW-7). PW-7 deposed that upon receiving a police memo after midnight on 25.02.1987, he reached the emergency ward of District Hospital, Bareilly, and verified from the doctor on duty that the victim, Bhim Sen alias Bhim Singh, was in a fit mental state to give a statement. Commencing at 1:15 a.m., the dying declaration was recorded verbatim, wherein the deceased categorically stated that Ram Sahay and his son caught hold of him, and appellant Kumbhakaran stabbed him in the stomach with a dagger. PW-7 read the statement back to the injured, who confirmed its correctness and affixed his thumb impression at 1:30 a.m.

30. The veracity of the Executive Magistrate (PW-7) stands fully fortified by the medical officer, Dr. D.K. Saxena (PW-3). PW-3 proved the bed-head ticket (Ex. Ka-8) and testified that he endorsed his handwritten and signed medical certificates both before recording commenced (confirming full consciousness and fitness) and immediately after its completion (confirming the deceased remained stable throughout). A joint and harmonious reading of PW-3 and PW-7 demonstrates that the dying declaration was recorded under rigorous medical oversight, free from any tutoring or fabrication.

31. Further, the dying declaration is corroborated by the eyewitness account of PW-1 Sohan Lal, who identified the appellant stabbing the deceased under electric lighting. PW-1's account matches the medical findings of PW-8 Dr. F.A. Khan. Significantly, Injuries No. 2, 3, 4, and 5 on the left hand of the deceased are classic incised defence wounds, establishing that an unarmed victim attempted to ward off a lethal attack. This physical evidence falsifies the defence plea raised under Section 313 Cr.P.C. that the injury occurred accidentally during a scuffle over a weapon. Furthermore, the defence produced no medical or testimonial evidence showing injuries to the appellant or his father.

32. The main challenge raised by the defence relates to minor variations between the FIR narrative and the written dying declaration (Ex. Ka-7B) regarding how the deceased reached the hospital, whether by rickshaw, via a traffic constable from Chaupala, or accompanied by Constable 330 Bahadur Singh. As mandated by Principle (2) in **Abhishek Sharma** (*supra*), only material inconsistencies shake credibility. The core substratum of the prosecution case across all declarations, that appellant Krishna Kumar @ Kumbh Karan inflicted the fatal dagger/guption blow into the abdomen of deceased Bhim Singh, remains unwavering. The minor variance regarding the mode of conveyance does not destroy

the consistent attribution of the fatal assault to the appellant.

33. So far as the three-day delay in recording PW-1's statement under Section 161 Cr.P.C., is concerned, it was explained by PW-5 S.O. Rajbala Vishnoi, who took over investigation on 27.02.1987 from S.I. R.D. Tyagi. As established in **Goutam Joardar v. State of W.B. [(2022) 17 SCC 549]**, **Sunil Kumar v. State of Rajasthan [(2005) 9 SCC 283]**, and **V.K. Mishra v. State of Uttarakhand [(2015) 9 SCC 588]**, delay in recording witness statements is not fatal per se when explained and where the substantive evidence remains trustworthy.

34. Upon a comprehensive evaluation of the evidence available on record, arguments advanced by parties, relevant statutory provisions and settled position of law, this Court finds that the prosecution has established beyond reasonable doubt that appellant Krishna Kumar @ Kumbh Karan inflicted the fatal dagger blow on deceased Bhim Singh. The findings of the learned Trial Court are supported by evidence, free from perversity or legal error, and warrant no interference and the judgment and order dated 31.07.1989 is liable to be affirmed and present criminal appeal is liable to be dismissed.

35. Accordingly, the present criminal appeal is **dismissed**. The impugned order dated 31.07.1989 of conviction and sentence passed by the Additional Sessions Judge-9th, Bareilly in Sessions Trial No. 437 of 1987 is hereby affirmed.

36. The accused-appellant **Krishna Kumar @ Kumbhkaran** is directed to surrender before the Court concerned to serve the remaining sentence.

37. Let a copy of this judgment along with the lower court record be transmitted to the trial court for necessary information and compliance.

38. This Court would like to record its appreciation of the assistance given by the learned Amicus Curiae, Shri Sikandar B. Kochar, and asks the Legal Services Authority to pay him the legal aid fees of Rs. 30,000/- for the same.

October 16,
2026
AKT

(Jai Krishna Upadhyay,J.) (Siddhartha Varma,J.)