

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-396-DB of 2010 (O&M)

Date of Decision: 01.10.2015.

Ranjit Singh alias Baba

....Appellant.

Versus

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Kuldeep V. Singh, Advocate and
Mr. Harpreet Singh, Advocate for the appellant.

Mr. P.P.S. Thethi, Additional Advocate General, Punjab,
for the respondent.

S.S. Saron, J.

This appeal has been filed by Ranjit Singh alias Baba (appellant) against the judgment of conviction and order of sentence dated 09.03.2010 passed by the learned Sessions Judge, Jalandhar whereby the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('IPC' - for short) for committing the murder of his mother-in-law Avtar Kaur and has been sentenced to undergo life imprisonment, besides, pay a fine of Rs.5,000/- and in default of payment thereof, undergo rigorous imprisonment for a period of one month.

FIR in the case was registered on the statement (Ex.PB) of Avtar Kaur (deceased in the case), resident of village Nangal Salempur (Iqbal Nagar), Police Station Maqsudan, District Jalandhar, aged about 52 years. It is stated by her that she was resident of the above address and did household

work. She had a daughter, namely, Baljinder Kaur (PW4), who was married with Ranjit Singh (appellant), resident of village Nangal Salempur for the last ten years. Her daughter (PW4) was running a general and grocery shop. On the date of incident, i.e. 29.10.2008 at about 02:30 p.m., the complainant Avtar Kaur and her daughter Baljinder Kaur (PW4) were sitting at their general and grocery shop. Her daughter (PW4) got up from near her and went out and her son-in-law Ranjit Singh (appellant) came there with a bottle filled with petrol and he addressed the complainant and asked her as to whether she was getting all her properties transferred in his name or not. The complainant replied that till she and his father-in-law (Jaswant Singh-PW5) were alive they would not transfer the property in his name. On this, the appellant from the bottle that he was carrying in his hand sprinkled petrol on her and set her on fire with a match box. Due to the fire, her body below the face got singed. The complainant raised an alarm of 'mar-ditta mar-ditta'. Her daughter (PW4) then came running to her and she tried to extinguish the fire but while she was dousing the fire, the entire body of the complainant got burnt and her son-in-law Ranjit Singh (appellant) ran away from the spot. Due to the fire that was caused, the shop also suffered a loss.

Baljinder Kaur (PW4) and Jaswant Singh (PW5), the daughter and husband of the complainant, by arranging a vehicle got her admitted at the Civil Hospital, Jalandhar for her treatment. She was admitted and under treatment. Her son-in-law Ranjit Singh (appellant) had burnt her by putting petrol on her with the intention to kill her. The motive was that Ranjit Singh, the son-in-law of the complainant, was wanting her to transfer her properties in his name but they were not willing to transfer the properties in his name.

Due to this grudge, Ranjit Singh, the son-in-law of the complainant, with the intention to kill her by putting petrol on her had set her on fire and burnt her. She suffered burn injuries on this account. She was complainant and she asked for legal proceedings being initiated against her son-in-law. She heard her statement which was accepted by her as correct. She signed below her statement in Punjabi.

Dr. Raj Kumar, Emergency Medical Officer, Civil Hospital, Jalandhar (PW11) on 29.10.2008 at 04:45 p.m. recorded a note (Ex.PP) below the statement of the complainant Avtar Kaur which was to the effect that the patient was conscious, cooperative, well oriented to time and space. B.P. (Blood Pressure) 100/70 mm Hg; P.R. (Pulse Rate) 84/minutes. The patient, it was recorded, was fit to make a statement and remained fit during her statement. ASI Pritam Singh, Police Station Maqsudan (PW9) attested the statement below the note of Dr. Raj Kumar (PW11) and recorded police proceedings to the effect that on that day, i.e. 29.10.2008, he was present at the police station. MHC of the police station informed him that Avtar Kaur wife of Jaswant Singh, resident of Nangal Salempur, Jalandhar was admitted in Civil Hospital, Jalandhar with burns. ASI Pritam Singh (PW9) was asked to reach Civil Hospital, Jalandhar for taking action. On this, ASI Pritam Singh (PW9) along with HC Jaswinder Singh, HC Manjit Singh and HC Nishan Singh reached Civil Hospital and after obtaining a chit from the guard in-charge, sought written opinion from the doctor regarding fitness of Avtar Kaur wife of Jaswant Singh, resident of Nangal Salempur for making a statement. The doctor, i.e. Dr. Raj Kumar (PW11), declared her fit to make a statement. Then the above statement of Avtar Kaur wife of Jaswant Singh

aforesaid was recorded in the presence of Dr. Raj Kumar (PW11). After recording her statement, it was read over and heard by her and she accepted the same to be correct and signed below it in Punjabi. The doctor (PW11) on the statement gave written medical opinion in his hand. The statement and endorsement of the doctor were attested by ASI Pritam Singh (PW9). From the statement and the doctor's chit, offences under Sections 307 and 427 IPC were found to be made out. For registering a case (FIR) on the basis of the statement, the writing was being sent to the police station through HC Nishan Singh. The special reports were asked to be sent to the higher officers. The control-room was asked to be informed through wireless. The SHO of the police station was also asked to be apprised of the incident. ASI Pritam Singh (PW9) along with other police officials was proceeding with the investigation of the case. The proceedings were recorded by ASI Pritam Singh (PW9) at Civil Hospital, Jalandhar on 29.10.2008 at 04:45 p.m.

At the police station, SI Karpal Singh recorded that as per report No.27/29 dated 29.10.2008, FIR No.308 dated 29.10.2008 had been registered at Police Station Maqsudan at 05:25 p.m./06:15 p.m. for the offences under Sections 307 and 427 IPC.

ASI Pritam Singh (PW9) then went to the place of occurrence. Jaswant Singh (PW5) husband of Avtar Kaur (deceased), Baljinder Kaur (PW4) wife of appellant Ranjit Singh and others met him at that place. A photographer was called who took photographs. ASI Pritam Singh (PW9) inspected the place of occurrence and prepared a rough site plan (Ex.PH) with correct marginal notes. The statements of witnesses were recorded under Section 161 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' - for short).

An empty bottle (MO-2) soiled with oil and a match box (MO-3) were recovered from the spot. These were converted into a parcel (MO-1) and sealed with the seal 'PS' of ASI Pritam Singh (PW9). Jaswant Singh (PW5) produced the burnt clothes of Avtar Kaur before ASI Pritam Singh (PW9). These consisted of a 'salwar', a shirt and an underwear (MO-5 to MO-7). These were converted into a parcel (MO-4) and sealed with the seal 'PS' of ASI Pritam Singh (PW9). Memo (Ex.PJ) regarding recovery of empty plastic bottle and memo (Ex.PK) regarding recovery of clothes of Avtar Kaur (deceased) were prepared which were attested by Jaswant Singh (PW5) and HC Jaswinder Singh. ASI Pritam Singh (PW9) came to the police station at 10:00 p.m. after a raid had been conducted for arresting the accused.

SI/SHO Surinder Pal (PW12) was posted at Police Station Maqsudan on 04.11.2008. On that day, he was present at the Police Station and he received a slip (Ex.PM) from Pasricha Hospital regarding the death of Avtar Kaur. He (PW12) accompanied by HC Jaspinder Singh and HC Dilbag Singh (PW3) went to that hospital. The dead body of Avtar Singh was lying at that place. He (PW12) prepared inquest report (Ex.PQ) in respect of that dead body. During inquest proceedings, the statement of Jaswant Singh (PW5) and Harjinder Singh were recorded. The dead body along with an application (Ex.PR) through the said two Head-constables was sent to the Civil Hospital, Jalandhar for post mortem examination. Ranjit Singh (appellant) was arrested. Memo of his arrest (Ex.PS) was prepared. ASI Pritam Singh (PW9) was present with SI/SHO Surinder Pal (PW12) and the accused (Ranjit Singh) was arrested in his presence and intimation of his arrest was given to his brother. The accused was detained in the police

lock-up. After completing the investigation in the case, police report ('challan') under Section 173 Cr.P.C. was filed by SI/SHO Surinder Pal (PW12), which bears his signature.

The police report ('challan') was filed in the Court of learned Judicial Magistrate 1st Class, Jalandhar on 09.01.2009. The learned Magistrate from the police report and the accompanying documents found that these disclosed the commission of offences under Sections 302 and 427 IPC. The offence under Section 302 IPC was exclusively triable by the Court of Session. As such, the case was committed to the said Court in terms of order dated 22.01.2009. The accused, who was in custody, was directed to be produced before the Court of learned Sessions Judge, Jalandhar on 05.02.2009. The 'challan' was received by commitment on the said date and it was ordered to be registered. For consideration, it was adjourned to 16.02.2009.

The learned Sessions Judge, Jalandhar heard the case on 16.02.2009 and from the perusal of the police report and the documents accompanying it, found sufficient grounds for presuming that the accused had committed the offences punishable under Sections 302 and 427 IPC. He was charged on the allegations that firstly, on or about 29.10.2008/04.11.2008 in the area of village Nangal Salempur did commit murder by intentionally causing the death of Avtar Kaur and thereby committed an offence punishable under Section 302 IPC. Secondly, on the same date, at about 02:30 p.m. in the said area committed mischief by causing damage to the amount of more than Rs.50/- and thereby committed an offence punishable under Section 427 IPC. Both the offences were within the cognizance of the

Court of Session and the accused was directed to be tried by the said Court on the said charges. The contents of the charges were read over and explained to the accused in simple Punjabi which he heard and understood. He pleaded not guilty to the charges and claimed trial.

The prosecution, in order to establish its case, examined as many as twelve witnesses; besides, tendered documents in evidence and the prosecution evidence is closed. Manjit Singh (CW1) was recorded as a Court witness. The statement of the appellant in terms of Section 313 Cr.P.C. was recorded and the substance of the evidence appearing against him was put to him. In his defence he stated that his mother-in-law (deceased) had contracted a second marriage with Jaswant Singh (PW5). However, they were litigating and living separately. It is stated that she (Avtar Kaur-deceased) did not own any property and there was no question of making any demand by him to transfer any property by her in his name. He had contracted love marriage with Balwinder Kaur (PW4) against the wishes of deceased Avtar Kaur and her brothers. They were offended and were nourishing a grudge against him. They had even lodged a false complaint with the local police at the time of their marriage. His mother-in-law was running a 'kariyana' (grocery) shop in a rented shop and due to crackers' fire the said shop got fired (sic. burnt). His mother-in-law tried to extinguish the fire by going inside the shop and she received burn injuries. She was unconscious and was moved to Civil Hospital, Jalandhar where the maternal uncle of his wife prevailed upon the local police and the concerned doctor and got fabricated a false and tutored statement of Avtar Kaur. He was innocent. He had not set his mother-in-law on fire. He had been falsely

implicated in this case. The appellant in defence tendered in evidence certified copy of order dated 09.01.1999 passed in HMC Case No.5/2008 titled 'Jaswant Singh v. Avtar Kaur' and closed his defence evidence.

The learned Sessions Judge, Jalandhar from the evidence and material on record came to the conclusion that there was no evidence on record to show any motive to falsely implicate the accused (appellant) who was the real son-in-law of the deceased. Besides, it was said that it was duly proved on record by the prosecution that Avtar Kaur got her statement recorded which was duly signed by her. There was no evidence on record that they did not bear her signatures. Relying on the statement (Ex.PB) of Avtar Kaur and treating the same to be a dying declaration held the appellant guilty for the offence under Section 302 IPC. It was, however, held that the offence under Section 427 IPC was not made out and the appellant was acquitted of the said offence.

The appellant aggrieved against his conviction and sentence for the offence under Section 302 IPC has filed the present appeal.

Learned counsel for the appellant submits that the statement (Ex.PB) of Avtar Kaur has wrongly been treated as a dying declaration. It is submitted that Dr. Puneet Pasricha (PW10) to whom the patient was taken stated that Avtar Kaur was admitted in his hospital on 29.10.2008 and she was suffering with 85 per cent burns of the second to third degree and despite this no efforts were made by ASI Pritam Singh (PW9) to get the statement of Avtar Kaur recorded either by an Executive Magistrate or a Judicial Magistrate. The said statement of Avtar Kaur made before ASI Pritam Singh (PW9) is highly suspicious and is improbable. It is also stated that no

property said to be owned by Avtar Kaur (deceased) had been brought on record by the prosecution from which it could be said that the appellant wanted her to transfer the property in his name. The defence taken by the appellant that Avtar Kaur who was running a grocery shop caught fire due to bursting of crackers, which is supported and accepted by Baljinder Kaur (PW4) in her deposition in Court. Therefore, it is submitted that the appellant is liable to be acquitted.

In response, learned counsel for the State has submitted that the learned trial Court has recorded cogent and convincing reasons for convicting and sentencing the appellant, which are not liable to be interfered with by this Court. It is submitted that the statement (Ex.PB) of Avtar Kaur (deceased) has rightly been treated as a dying declaration and the mere fact that it was recorded by the investigating officer ASI Pritam Singh (PW9) would not in any manner affect its evidentiary value. Besides, it is submitted that there was a motive for the appellant to commit the murder as he was wanting that his mother-in-law Avtar Kaur should transfer her property in his name. It is also submitted that there was no occasion for Avtar Kaur to falsely implicate her own son-in-law Ranjit Singh (appellant). Therefore, according to learned State counsel, the appeal of the appellant is liable to be dismissed.

We have given our thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the record of the case.

The prosecution in order to establish its case examined three doctors, two of whom had treated Avtar Kaur and one of them conducted the postmortem examination on her dead body.

Dr. Raj Kumar, Emergency Medical Officer, Civil Hospital, Jalandhar (PW11) on 29.10.2008 sent written information (Ex.PN) to the police about admission of Avtar Kaur in the Civil Hospital, Jalandhar with burn injuries. ASI Prem Singh (sic. Pritam Singh - PW9) on 29.10.2008 at 04:20 p.m. came to the hospital and made an application about the fitness of the patient for making a statement. He (PW11) made an endorsement (Ex.PO) on that application that she (Avtar Kaur) was fit to make a statement. The police recorded her statement (Ex.PB) in his presence. After her statement was recorded, he (PW11) appended his certificate (Ex.PP) on the same, which was to the effect that throughout the recording of her statement, she remained fit and conscious. In cross-examination, he (PW11) stated that he did not remember the time at which the patient was brought to the hospital. He had not given any such time in the written slip (Ex.PN). He did not remember orally who had brought the patient to the hospital. He prepared bed head ticket in respect of her admission and treatment.

The learned counsel for the accused made a request that the witness (PW11) be directed to produce the bed head ticket record in the Court as he wanted to cross-examine him about the contents thereof. The Court directed him to produce the bed head ticket and his further cross-examination was deferred. The bed head ticket of Avtar Kaur was produced. It is stated as correct by Dr. Raj Kumar (PW11) that as per the contents of the bed head ticket she (Avtar Kaur) was got admitted by her guardian Baljinder Kaur (PW4). It is also stated as correct that she was taken from the hospital on the same day on the request of Baljinder Kaur (PW4) and Jaswant Singh (PW5). It is stated as incorrect that the time of admission of the patient was not

mentioned in the bed head ticket. It is stated as correct that he (PW11) had not mentioned the nature of burns in the bed head ticket. He had read medical jurisprudence during MBBS. It is stated as correct that burns caused with the help of petrol or kerosene caused characteristic odour. It is stated as correct that burns with the help of petrol or kerosene caused soothing blanking. It is stated as correct that those characteristics were not mentioned in the bed head ticket. He (PW11) stated that he did not know if the attendants of the patient remained with the patient throughout her stay in the hospital. The information to the police was not recorded in the bed head ticket but was being recorded in the O.P.D. register. There was no note in the bed head ticket that he had given the opinion regarding the fitness of the patient to make her statement. It is stated as correct that he had given pain killers to the patient. It is stated as incorrect that he gave a false opinion regarding fitness of the patient to make her statement.

Dr. Puneet Pasricha, Plastic Surgeon and Burn Surgeon, Pasricha Hospital, Jalandhar (PW10) stated that he was running the hospital under the name and style of Pasricha Hospital since 1994. He had brought the summoned record consisting of the bed head ticket of Avtar Kaur (deceased). She was admitted in the hospital with severe burns all over her body on 29.10.2008. She was suffering from 85% burns of second to third degree. He (PW10) sent information in writing to the police about her admission. He again said that no such information was sent by him regarding her admission. About her death, such an information was given to the police by him in pursuance of writing (Ex.PL) which bears his signatures. He prepared the injury statement (Ex.PM) which bears his signatures. In cross-examination,

he stated that the patient was referred by the Civil Hospital, Jalandhar and a reference slip was received from that hospital, which was contained in the file brought by him. It was mentioned in the reference slip that she (Avtar Kaur) was discharged from that hospital on the request of Jaswant Singh (PW5), who had been described as her husband. At the time of her admission, she was not fully conscious.

Dr. Parminder Kaur, Medical Officer, Civil Hospital, Jalandhar (PW6) conducted the post mortem examination on the dead body of Avtar Kaur on 04.11.2009 (sic. 04.11.2008 - which is evident from the postmortem report Ex.PE) at about 01:30 p.m. The dead body was brought by HC Jaswinder Singh and HC Dilbagh Singh from Pasricha Hospital, Jalandhar. It was identified by Jaswant Singh (PW5) and Harjinder Singh, the husband and nephew respectively. As per police information, the lady (Avtar Kaur), it was alleged, had died of burns. Dr. Parminder Kaur, Medical Officer (PW6) observed that the length of the body was 164 cm and it was moderately built. It was covered with bandages below her breast. Rigor mortis was present. Fluid was coming out of the nose. Pharynx and oesophagus were congested. Larynx and trachea were also congested and contained frothy fluid. The following injuries were found on the dead body:-

- “1. Right side of breast, sole of both feet, face and upper 1/3rd of left arm were spared. Rest of the body was having superficial and deep burns containing pus at places. Meninges and brain showed area of focal necrosis and congested.

Pleural cavities were congested. Lungs were also

congested and showed area of focal necrosis. Pericardium, heart, large vessels and coronary vessels were congested and right side contained blood.

Peritoneum was congested. Stomach was congested and contained 50 ML of fluid. Small intestines, large intestines, liver, spleen, kidneys were congested and showed necrosis at places.”

The cause of death of in the case, it was stated, was septicemic shock due to burn injuries which were sufficient to cause death in the ordinary course of nature. All the injuries were ante mortem in nature. The probable time that elapsed between injuries and death was more than four days and between death and post mortem was within twenty-four hours. Carbon copy of the post mortem report was Ex.PE. In cross-examination, it is stated as correct by Dr. Parminder Kaur (PW6) that in the post mortem report, she had given the probable time between injuries and death as; 'as per the record'.

Apart from the doctors depositions, the statements of Baljinder Kaur (PW4) and her father Jaswant Singh (PW5) were recorded. Both of them resiled from their statements made before the police and they turned hostile. They did not support the prosecution case. Baljinder Kaur (PW4) stated that when she went to the shop on 29.11.2008 (sic. 29.10.2008) at about 01:00 p.m., her mother was present there. At that time, she (PW4) was told by others that her mother had gone inside the shop to extinguish the fire. By the time she (PW4) reached the spot, the fire had already been extinguished by the people. At that time, she (PW4) found burn injuries on

her mother and she took her to the hospital. She (PW4) had seen Ranjit Singh accused (appellant) present in the Court at the time of deposition. He was her husband. He was driver by profession and at the time of occurrence, he was away in connection with his work.

At the said stage, on the request of the learned Public Prosecutor, he was allowed to cross-examine her as she was not supporting the prosecution version. In cross-examination, she (PW4) stated that it took about 30 minutes to take her mother to the civil hospital. The police had not come to the hospital. The police recorded the statement of her mother in her presence. After hearing the contents thereof and admitting those to be correct, she put her signatures on her statement (Ex.PB). Her mother used to put her signatures in Gurmukhi script. It is stated as correct that her father (Jaswant Singh - PW5) had married twice and with Avtar Kaur (deceased), it was his second marriage. It is stated as incorrect that she (PW4) had made a statement before the police. The police had obtained her signatures on two/three blank papers. She had not challenged the police as to why her signatures were being obtained on blank papers as she was not in a position to think right or wrong at that time. It is stated as incorrect that the accused (appellant) had demanding the share in the property of her parents. It is stated as incorrect that on 29.10.2008 she (PW4) along with her mother Avtar Kaur was present in the shop when at 02:30 p.m., the accused (appellant) came there holding the petrol bottle and asked her mother that if she was to transfer her property in his name or not and she replied that she was not to transfer her property in his name during her life time and the life time of Jaswant Singh (PW5). It is stated as incorrect that she had stated so before the police. Her attention was

drawn to her statement (Ex.PC) dated 29.10.2008 recorded under Section 161 Cr.P.C. and she was confronted with portion 'A' to 'A1' wherein it was so recorded. It is stated as incorrect that the accused sprinkled petrol from the bottle on her mother and then set her on fire with the help of a match stick and as a result thereof her face and the lower part of her body were burnt. It is stated as incorrect that she had stated so before the police. Her attention was drawn to her statement Ex.PC and she was confronted with portion B to B1 thereof wherein it was so recorded. It is stated as incorrect that after setting her mother on fire, the accused escaped from the spot leaving the bottle and the match box at that place. The attention of the witness was drawn towards her statement Ex.PC and she was confronted with the portion 'C' to 'C1' thereof wherein it was so recorded. It is stated as incorrect that as the accused was her husband, she was resiling from her previous statement.

Baljinder Kaur (PW4) was also cross-examined by the learned counsel for the defence. She stated that she was born from the loins of Harbhajan Singh and he was the first husband of Avtar Kaur (deceased). It is stated as correct that she (Avtar Kaur) had obtained a divorce from him. It is stated as correct that thereafter she (Avtar Kaur) had contracted second marriage with Jaswant Singh (PW5). It is stated as correct that he was residing in Gurudwara Kalgidhar, Mohalla Santokhpura, which was at a distance of 4 kilometres from the said shop. Jaswant Singh (PW5) was residing in the locality name as Gurudwara Kalgidhar and not in the Gurudwara itself. It is stated as correct that Avtar Kaur had filed an application for maintenance against Jaswant Singh (PW5) at Hoshiarpur. The said application was pending when the present occurrence had taken place. It

is stated as correct that Jaswant Singh (PW5) had two sons and two daughters from his first marriage. Baljinder Kaur (PW4) was further cross-examined. She inter alia stated that at the time of occurrence she was present in the house and at that time Jaswant Singh was present in his own house in Mohalla Santokhpura and she had given information to him on telephone. She had gone to the shop after coming to know that a fire had taken place in the shop. It is stated as correct that by the time she reached the shop of Santokh Singh, the other shopkeepers and other persons of the locality were present. At that time, Avtar Kaur was very nervous and was speaking irrelevant things. Jaswant Singh, it is stated, had come to the hospital after she (PW4) had already got her admitted at that place. Her maternal uncle Gurmit Singh had also come at that place. She had performed love marriage with the accused (appellant). It is stated as correct that her maternal uncle had lodged the police report against them with the police station. The doctor had given an injection to Avtar Kaur as she was complaining of severe pain. At that time, Gurmit Singh (i.e. the maternal uncle) was sitting with her and she (PW4) was asked to go outside. The police had come there after about an hour. At that time, Avtar Kaur was semi-conscious and she was talking irrelevant at that time. Avtar Kaur never made a statement in her (PW4) presence that she was set on fire by the accused. It is stated that when the police recorded the statement of Avtar Kaur, her other relatives were present. She herself was not present at that time. She did not know what statement was made by her. On the same day, she had removed Avtar Kaur to Pasticha Hospital in the evening at about 4:00/5:00 p.m. She had remained unconscious in that hospital and she regained her conscious on the next day.

It is stated as correct that thereafter she remained conscious till her death. The police had been visiting the hospital daily. She herself and Jaswant Singh (PW5) stayed with Avtar Kaur throughout and had not gone to their house. It is stated as correct that neither she herself nor Jaswant Singh (PW5) were taken by the police to the place of occurrence. It is stated as incorrect to suggest that Avtar Kaur never suffered any statement before the police. The Court put a question to the witness i.e. PW4 which is to the effect that in the first part of her statement she stated that the statement of Avtar Kaur was recorded by the police in her presence and she put her signatures thereon in her presence and in the second part of her statement she had stated that her statement was not recorded in her (PW4) presence, which part of her statement, it was asked were correct. She replied that the first part of her statement that the statement of Avtar Kaur was recorded in her presence and signed by her, was false.

Jaswant Singh (PW5) is the husband of Avtar Kaur (deceased). He stated that his first marriage was performed with Gurmit Kaur and his second marriage was with Avtar Kaur (deceased) in the year 1992. At that time, she had a '*pichhlag*' daughter (i.e. a daughter from the previous marriage), namely, Baljit Kaur (sic. Baljinder Kaur - PW4). She was brought up by him. About ten years back, she (Baljinder Kaur) was married to Ranjit Singh (appellant). It is stated that he was present in his house situated in Santokhpura on 29.10.2008 at about 01:30 p.m. and he (PW5) received a telephone call from his daughter's side that someone had set her mother on fire and that she (Baljinder Kaur) had taken her to the hospital and that he (PW5) should come to that place. Jaswant Singh (PW5) then went to the

hospital and found that Avtar Kaur was lying admitted in the hospital and she was on a drip. He had not gone to the shop before going to the hospital.

At the said stage, the learned public prosecutor requested that the witness (Jaswant Singh - PW5) had turned hostile and he be allowed to cross-examine him as he was not supporting the prosecution version. The learned public prosecutor was allowed to cross-examine him. In cross-examination, he stated that it was incorrect that he made a statement before the police in this case. He also stated as incorrect that he had gone to the shop on 29.10.2008 at about 2:30 p.m. after doing his personal work and had found that his daughter Baljinder Kaur (PW4) was putting off the fire of Avtar Kaur and that at that time Ranjit Singh was abusing that in case the property was not transferred in his favour, he would not spare anyone. It is stated as incorrect that he had stated so before the police. The attention of the witness was drawn to his statement dated 29.10.2008 Ex.PD recorded under Section 161 Cr.P.C. and he was confronted with the portion A to A1 thereof, wherein it was so recorded. It is also stated as incorrect that the accused was having a petrol bottle and a match box and that he escaped from the spot after leaving those. The attention of the witness was drawn to his statement Ex.PD and he was confronted with the portion 'B' to 'B1' thereof, wherein it was so recorded. He stayed in the hospital for about one and a half hour. The police came to that place during that time. It is stated as incorrect that her (Avtar Kaur's) statement was recorded by the police in his presence. He voluntarily stated that he was asked by the police to go out of the room before recording her statement. Avtar Kaur, it is stated, used to put her signature in Punjabi. He could not identify the same. It was stated as incorrect that he had been

won over by the accused and on that ground he was resiling from his previous statement. He was not cross-examined by the defence although opportunity was given.

The Court examined Manjit Singh CW1 as a Court witness. He stated that he was residing on the Tanda Road in October, 2008. He had gone in front of the Lal Godown, Dhogri Road, Jalandhar on 29.10.2008. In the evening he found the shop on fire. One lady used to sit in that shop. She was examined about this occurrence by SI Surinder Pal (PW12). He (CW1) had not disclosed to him as to how the fire had taken place. He did not know Ranjit Singh, accused present in the Court. He had never disclosed to that SI (PW12) that it was the accused, who poured the oil on the deceased with the help of a bottle. In cross-examination by the learned defence counsel, it is stated as correct by him that Diwali was just one day earlier to the occurrence. He never saw with his own eyes if the fire took place on account of crackers. After that date, he never met the police.

The other evidence is that of formal witnesses namely the Investigating Officer ASI Pritam Singh (PW9) and SI/SHO Surinder Pal (PW12). The investigations conducted by them have already been noticed. Besides, Dalip Singh (PW1) prepared the map Ex.PA dated 22.12.2008, which he prepared after visiting the spot at the instance of ASI. The same was correct as per the spot. HC Kamaljit Singh (PW2) tendered in evidence his affidavit Ex.PB (This has wrongly been marked as Ex.PB again as the statement of Avtar Kaur in fact was initially marked as Ex.PB). He (PW2) was MHC at Police Station, Maqsudan and on 29.10.2008 ASI Pritam Singh (PW9) deposited the case property with him i.e. one parcel, one empty petrol

bottle and a match box sealed with the seal bearing impression 'PS' and one parcel of the clothes of the dead body in which there was a blue colour 'salwar' in a burnt condition, a blue colour shirt in a burnt condition and a deep blue colour underwear in a burnt condition sealed with the seal bearing impression 'PS'. After entering these in registration No.19 he placed them intact in a 'malkhana' and did not allow anyone to tamper with them.

HC Dilbagh Singh (PW3) received a written slip from Pasricha hospital on 04.11.2008 that Avtar Kaur had died. He accompanied the SHO (SI Surinder Pal Singh PW12) to that hospital. The SHO conducted inquest proceedings and handed over the dead body to him and HC Jaswinder Singh for getting the postmortem conducted. They took the dead body to Civil Hospital, Jalandhar and deposited it in the mortuary. The police papers were handed over to the doctor. After postmortem examination, the doctor handed over the report to them, which was produced before the SHO. Constable Des Raj (PW7) had taken the Special Report of this case on 29.10.2008 at 06:15 p.m. First he delivered the special report to the Duty Magistrate and then the reports were given to the higher officer. He was sent with those special reports by SI Kripal Singh. During the period, the reports remain in his possession he did not tamper with them. In cross-examination, he stated as correct that the distance of the house of the Duty Magistrate and the police station was three kilometers. He had gone to his house on a motorcycle. Gurinder Singh (PW8) stated that he had gone to Dhogri Road, Nangal Salempur Village on 29.10.2008. He went to the General Merchant Shop owned by Jaswant Singh (PW5). At that place, he took photographs Ex.P1 to Ex.P3 with the help of a digital camera. In cross-examination, it is stated as

correct that the said shop was of a small size shop. He could not tell if the size was 8 ft. x 5 ft.

A perusal of the evidence on record would show that except for the statement Ex.PB of Avtar Kaur (deceased) recorded by ASI Pritam Singh (PW9), there is no other evidence from which it can be said that Ranjit Singh (appellant) committed the murder of Avtar Kaur by sprinkling petrol on her.

The question, therefore, that would require consideration is as to whether the statement Ex.PB of Avtar Kaur can be treated as a dying declaration and, if so, whether a finding of guilt can be recorded on its basis.

It is to be noticed that the grocery shop where the incident had occurred is a small size shop. The place of incident and recovery of petrol bottle in the site plan Ex.PH prepared by ASI Pritam Singh (PW9) are depicted by mark 'A' and mark 'B' respectively. The same is the position in the scaled site plan Ex.PA prepared by Dalip Singh (PW1). The photographs Ex.P1 to Ex.P3 also depict the shop. The plastic bottle and match box were recovered in pursuance of recovery memo Ex.PJ, which mentions that one empty plastic bottle smeared with petrol and a match box of match sticks was recovered and taken in possession as a proof. The recovery memo was prepared by ASI Pritam Singh (PW9) on 29.10.2008 and was signed by Jaswant Singh (PW5) and HC Jaswinder Singh as witnesses. The witnesses examined by the prosecution, however, do not state that the recovered bottle had a smell or an odour of petrol although it is said to be smeared with petrol. Besides, the empty petrol bottle was not sent to the FSL for its examination so as to ascertain as to whether it was indeed smeared with petrol or it was smelling of petrol.

HC Kamaljit Singh (PW2) was MHC of Police Station Maqsudan during the time of the incident. He deposed an affidavit Ex.PB [wrongly again marked as Ex.PB, in fact, it is the statement of Avtar Kaur recorded by ASI Pritam Singh (PW9), which is also Ex.PB]. In any case, HC Kamaljit Singh in his affidavit Ex.PB stated that the case property of the present case was deposited by ASI Pritam Singh (PW9) with him on 29.10.2008. The case property is mentioned as one parcel, one empty petrol plastic bottle and a box of match-sticks sealed with seal bearing impression 'PS'. Besides, one parcel containing pieces of clothes of the dead body, i.e. one burnt blue colour 'salwar', one burnt blue colour shirt, one burnt grey colour underwear sealed with seal bearing impression 'PS'. So long as the said items remained in his custody, neither did he tamper with them nor did he allow anybody else to do so. HC Kamaljit Singh (PW2), however, does not state that these were later handed over to anyone for taking them to the FSL, which means that these items were not sent to the FSL for forensic examination for ascertaining whether these were burnt with petrol. Dr. Raj Kumar (PW11), who initially examined Avtar Kaur, does not make any mention of petrol smell emanating from her person or from the clothes that she was wearing and were recovered. Even Dr. Puneet Pasricha (PW10) to whom Avtar Kaur was taken for treating her for burn injuries and he did treat her but he (PW10) does not make a mention of any petrol smell emanating from the person or clothes of Avtar Kaur. The postmortem examination on the dead body of Avtar Kaur was conducted by Dr. Parminder Kaur, Medical Officer (PW6) on 04.11.2008 after about five days of the incident that occurred on 29.10.2008; however, she in her deposition in Court or in the

postmortem report Ex.PE does not make a mention of any smell of petrol emanating from the dead body of Avtar Kaur. In the circumstances, there is no scientific evidence from the Forensic Science Laboratory or medical evidence on record from which it can be said with definiteness that the burns injuries on the person of Avtar Kaur were caused by use of petrol.

Baljinder Kaur (PW4), who according to the prosecution was an eyewitness in the case, did not support the prosecution case. She rather stated that she was told by other persons that her mother had gone inside the shop to extinguish the fire. By the time, she (PW4) reached the spot, the fire had already been extinguished by other persons. She found burn injuries on her mother and she took her to the hospital. The appellant it is stated was a driver by profession and he was away in connection with his work.

The statement Ex.PB of Avtar Kaur, it is to be noticed, had been recorded by ASI Pritam Singh (PW9) on the date of the incident i.e. 29.10.2008. There is no explanation as to why he did not get her statement recorded from an Executive or a Judicial Magistrate especially when Avtar Kaur was in her senses till she died on 04.11.2008. Avtar Kaur in her statement Ex.PB inter alia stated that her daughter Baljinder Kaur (PW4) was running a general and grocery store in the village. She (Avtar Kaur) was sitting with her daughter (Baljinder Kaur) on the date of the incident when the appellant is stated to have come with a petrol bottle and addressed her as to whether she was transferring the property in her name and on her refusal, he sprinkled petrol and set her on fire. The prosecution has not brought on record as to how much and what kind of property was possessed by Avtar Kaur which the appellant was said to be pressing for its transfer in his favour.

The appellant in his defence on 04.02.2010, tendered in evidence a certified copy of order dated 09.01.1999 passed in HMA Case No.5/2008 (sic. - No.5/1998) titled 'Jaswant Singh v. Avtar Kaur'. The said order was passed by the learned District Judge, Jalandhar. It shows that Avtar Kaur wife of Jaswant Singh filed an application under Section 24 of the Hindu Marriage Act, 1955 for the grant of litigation expenses to the tune of Rs.10,000/- and also maintenance *pendente lite* at the rate of Rs.10,000/- per month. She *inter alia* pleaded that she was not possessed of sufficient means either to fight the litigation or maintain herself while Jaswant Singh was earning Rs.1.00 lac per month from industries and was an income tax payee. It was specified that he even owned a Mahendra Jeep, Maruti Car and movable property worth more than Rs.5.00 lacs excluding gold and other ornaments worth more than Rs.10.00 lacs lying in the locker in his name. Jaswant Singh in his reply to the application denied that his monthly income was Rs.1.00 lac or was in possession of the property as mentioned and asserted. He stated that his monthly income was merely Rs.2,000/-. The learned District Judge, Jalandhar, insofar as the quantum of income was concerned, held that it could not be said that he earned Rs.2,000/- per month as was pleaded by him in the reply that was filed. Rather it was a case where it may reasonably be said that he was quite well off and was in a position to pay litigation expenses and maintenance *pendente lite*. The reasoning given for the same was that in the petition filed by him under Section 11 of the Hindu Marriage Act, 1955, he himself had alleged that when the respondent (Avtar Kaur) said that she would not allow him to go to the factory where he had joint business with his children, he told her that he had no other source of income except from joint

business with his children. Therefore, it was said that it did not lie in his mouth to say that he had no factory or business. Keeping in view the fact that Jaswant Singh owned a factory along with his children, his monthly income for the purpose of disposal of the application for maintenance, it was held, may fairly be taken at Rs.10,000/-. Accordingly, Rs.5,000/- was awarded towards litigation expenses while Rs.3,000/- per month from the date of the application towards maintenance *pendente lite*. Therefore, it cannot be said that Avtar Kaur was having such property which could be transferred in favour of the appellant and in case she did not do so, it would impel him to commit her murder. In the circumstances, the motive for committing the murder cannot be said to be made out. Even otherwise, the property was in the name of Jaswant Singh (PW5), the husband of Avtar Kaur (deceased) and there was litigation between them.

Another factor which is noticed is that the original vernacular statement Ex.PB of Avtar Kaur recorded by ASI Pritam Singh (PW9) shows that it has *inter alia* been recorded therein that Ranjit Singh son of Bakhshish Singh, resident of Nangal Salempur, came with a bottle filled with petrol and he addressed Avtar Kaur as to whether she was getting her entire property transferred in his name or not. Then she is stated to have replied that as yet she and her father-in-law were alive and till then the property would not be put on his name. A close perusal of the original statement Ex.PB recorded in vernacular in fact mentions that as yet she and his father, i.e. the appellant's father, were alive and till then the property would not be put in his name. However, the word 'sauhra', i.e. 'father-in-law', has been put later before the word 'baap', i.e. 'father' in the original vernacular statement Ex.PB wherein it

is recorded; “mein kiha ki aje mein tey tera sauhra baap jeondaey haan odhan tak assin jaidad tere naam nahin karwani” [“I said that as yet she and his father in-law were alive and till then the property would not be put on his name”]. The vernacular word 'sauhra', i.e. father-in-law, has been put later. This is also evident from the fact the vernacular word 'sauhra' by itself depicts and means father-in-law and there was no need to write 'sauhra baap'. This aspect is also evident from the fact that in case there was litigation between Avtar Kaur and her husband Jaswant Singh (PW5), then Ranjit Singh (appellant) would not be assertive enough for his father-in-laws' property being put on his name and that also by Avtar Kaur. Another circumstance which may be noticed is that Baljinder Kaur (PW4), who is the wife of the appellant, is not the daughter from the loins of Jaswant Singh (PW5) and she is the daughter of Avtar Kaur from her first husband Harbhajan Singh which is stated by Baljinder Kaur (PW4) herself in her cross-examination by learned counsel for the appellant. Therefore, Baljinder Kaur (PW4) would not have that much of a claim to the property of Jaswant Singh (PW5) and this is more so for the reason that there was litigation between her mother Avtar Kaur (deceased) and Jaswant Singh (PW5). Besides, ASI Pritam Singh (PW9), in his cross-examination, stated that he himself did not make any investigation in order to ascertain if Avtar Kaur was the owner of any property. He (PW9) did not know if litigation was going on between her and her husband Jaswant Singh (PW5). He (PW9) did not even inquire if they were living separate from each other. It was also stated by Avtar Kaur that the shop was on rent. Therefore, the question whether Avtar Kaur had any property and whether she was in a position to transfer any property of her husband Jaswant Singh

(PW5) in favour of the appellant has not been brought on record. This makes the motive for the appellant to commit the murder to be untenable.

The statement Ex.PB of Avtar Kaur (deceased) can be taken to be a dying declaration and it would not cease to be so on the mere fact that Avtar Kaur died after about five days of her making the statement. What is of essence for the admissibility of such a statement *inter alia* is that the statement was made by a person who could not be found or was dead and thus incapable of giving evidence, besides, it must be of relevant facts as to the cause of death or the circumstances of the transaction resulting in death. In the present case, however, there is only the statement Ex.PB of Avtar Kaur which can be taken as a dying declaration in which she inculcates the appellant and apart from that there is no other evidence. The statement Ex.PB has been recorded by the investigating officer ASI Pritam Singh (PW9).

In Dalip Singh v. State of Punjab, AIR 1979 SC 1173, it was said that although a dying declaration recorded by a police officer during the course of investigation is admissible under Section 32 of the Evidence Act in view of the exception provided in sub-section (2) of Section 162 Cr.P.C., it was better to leave such dying declaration out of consideration until and unless the prosecution satisfies the Court as to why it was not recorded by a Magistrate or by a doctor. The practice of the investigating officer himself recording a dying declaration during the course of investigation ought not to be encouraged. This, it was said, was not to suggest that such dying declarations were always untrustworthy, but what had to be emphasized was that better and more reliable methods of recording a dying declaration of an injured person should be taken recourse to and the one recorded by the police

officer may be relied upon if there was no time or facility available to the prosecution for adopting any better method.

In the present case, there is no explanation whatsoever by the prosecution for adopting other methods for recording the statement of Avtar Kaur, especially when she was alive from the date of incident, i.e. 29.10.2008 till 04.11.2008 when she died. Baljinder Kaur (PW4), in her cross-examination stated that on the same day, i.e. 29.10.2008, she had removed Avtar Kaur to Pasricha Hospital in the evening at about 4:00/5:00 p.m. She had remained unconscious in that hospital and she regained her conscious on the next day. It is stated as correct that thereafter she remained conscious till her death. The police had been visiting the hospital daily. She herself and Jaswant Singh (PW5) stayed with Avtar Kaur throughout and had not gone to their house. Therefore, when Avtar Kaur was conscious till her death and she had suffered 85% burn injuries, there was no reason whatsoever and neither has any been given by the prosecution for not getting her statement recorded by a Magistrate, may be Executive or Judicial. The statement Ex.PB has also otherwise been tampered with by putting the word 'sauhra' before the word 'baap' so as to give it a twist as if the appellant was demanding the property of not only his mother-in-law, i.e. Avtar Kaur (deceased) but also of his father-in-law Jaswant Singh (PW5). This may have been put for the reason that if Avtar Kaur is not shown to be possessing any property in her name then the case would be made out from the fact that the property of Jaswant Singh had been claimed. In the circumstances, the statement Ex.PB of Avtar Kaur if it is taken as a dying declaration is not liable to be acted upon as it is not only the sole statement inculcating the appellant but is otherwise suspicious.

In Paniben (Smt.) v. State of Gujarat, AIR 1992 SC 1817 (at page 1821), Hon'ble the Supreme Court summed up the principles governing the dying declaration as under:-

- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P., (1976) 2 SCR 764 : AIR 1976 SC 2199).
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).
- (iii) This Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P., (1974) 4 SCC 264 : AIR 1974 SC 332).
- (v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., AIR 1982 SC 1021).

- (vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P., 1981 SCC (Criminal) 581).
- (vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu, AIR 1981 SC 617).
- (viii) Equally, merely because it is a brief statement, it is not (sic. - to) be discarded. On the contrary, the shortness itself guarantees truth. Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505).
- (ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P., AIR 1988 SC 912).
- (x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan, AIR 1989 SC 1519)."

The above parameters when applied to the statement Ex.PB made by Avtar Kaur (deceased) would evidently show that it has to be shown that the dying declaration was true and voluntary, it was not the result of

tutoring, prompting or imagination and the deceased had the opportunity to observe the identity of the assailant and was fit to make the declaration. However, in case the dying declaration was suspicious, it was not to be acted upon without corroborative evidence. Besides, the dying declaration which suffers from infirmity cannot form the basis of conviction.

In the present case, as already noticed, the dying declaration is suspicious, besides, it is without corroboration and it also suffers from infirmity inasmuch as the property which Avtar Kaur states the appellant was wanting it to be transferred in his name is not ascertained and it is not shown whether she had any property. Therefore, the judgment and order passed by the learned Sessions Judge, Jalandhar are un-sustainable and are liable to be set aside and the appellant is liable to be acquitted.

Accordingly, the appeal is allowed and the judgment and order dated 09.03.2010 passed by the learned Sessions Judge, Jalandhar are set aside and the appellant is acquitted of the offences for which he was charged.

(S.S. Saron)
Judge

(Amol Rattan Singh)
Judge

01.10.2015
Ramesh/A.Kaundal

This is one of some cases received by me from my learned brother on 06.01.2018. It is being signed by me even now, despite him having demitted office after 'retirement', the detailed judgment being in consonance with what was pronounced by us in Court when his Lordship was very much holding office.

Thus, the detailed judgment in fact giving effect to what was pronounced, it would be unfair, in my opinion, to put the matter up for rehearing, especially in view of what has been held first by the Privy Council in **Firm Gokal Chand Jagan Nath v. Firm Nand Ram Das-Atma Ram** AIR 1938 PC 292 and subsequently by the Supreme Court in **Surendra Singh and others v. State of Uttar Pradesh** AIR 1954 SC 194 and **Iqbal Ismail Sodawala v. The State of Maharashtra and others** (1975) 3 SCC 140.

In *Firm Gokal Chand*, it was held by their Lordships as follows:-

“A further point was raised by the appellants. They urged that the judgment of the High Court appealed from was not a valid judgment because it failed to comply with Order 41, Rule 31, Civil Procedure Code. The relevant facts on this issue are that the hearing in the High Court was before two Judges, Harrison and Agha Haider JJ., and was actually delivered by the former Judge, the latter agreeing. The judgment was delivered on 22nd February 1933, but Harrison J. went on leave before signing the judgment, which was signed by Agha Haider J., the Deputy Registrar appending a note that Harrison J. had gone on leave before signing the judgment he delivered. Order 41, Rule 31 requires that the judgment of the Appellate Court shall be in writing and shall state various matters, and “shall at the time that it is pronounced be signed and dated by the Judges or by

the Judges concurring therein.”

8. The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the Rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The Rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required; to comply with for that object. No doubt in practice Judge do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the Court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by Sections 99 and 108. Civil Procedure Code section 99 provides that no decree shall be reversed or substantially varied nor shall any case be remanded in appeal on account of any error, defect or irregularity in any proceedings in the suit not affecting the merits of the case or the jurisdiction of the Court. That Section comes in the part dealing with appeals from original decrees. But Section 108 applies the same provision to appeals from appellate decrees and it is always in the discretion of the Board to apply the principle on appeal to His Majesty in Council. In their Lordships' judgment the defect here was an irregularity not affecting the merits of the case or the jurisdiction of the Court, and is no ground for setting aside the decree.”

That of course was a matter pertaining to a civil case, but the judgment in Surendra Singh was in the case of a criminal appeal before the

Allahabad High Court. In that case, after having signed the draft of a judgment that had been reserved and sending it to the other member of the Division Bench, the hon'ble Judge who had sent the draft (Bhargava, J.) unfortunately died before the judgment was pronounced.

In such a situation, their Lordships of the Supreme Court held that the judgment subsequently pronounced by Kidwai, J. could not be held to be a valid judgment and therefore the death sentence upheld in the case of one of the appellants and the sentences for lesser periods for different offence in respect of the other appellants, could not be held to be operative and that hence, the appeals would have to be reheard by the High Court. Thus, in that case the judgment was never actually pronounced by Bhargava, J. before he died and what was signed and sent by him to Kidwai, J. was a draft judgment. Therefore, it was held that it could not be presumed that Bhargava, J., (had he remained alive), could not have changed his mind before pronouncing the judgment.

In the present case the judgment having been duly pronounced in Court, to the effect that the appeal of the appellant is allowed, the situation as existed in *Surendra Singhs'* case (supra) is not applicable.

In *Sodawalas'* case (supra), it was not a judgment in appeal that was in question but the judgment of the trial Court itself, which had been pronounced in Court but had not been delivered after signature and transcription, to the accused.

Referring to the judgment in *Surendra Singhs'* case as also to *Firm Gokal Chand*, it was held that the learned Sessions Judge not appending his signatures to the judgment at the time it was pronounced, due to it not having been transcribed, was a procedural irregularity which

would not vitiate the conviction of the accused.

In the present case, though there is no issue of any transcription from one language to another, but nonetheless, the judgment drafted by my learned brother being, to repeat, in elaboration of and giving reasoning for what was pronounced in Court, in my opinion, it would be appropriate to issue the judgment formally even now, though a very long time has elapsed since its pronouncement.

It needs to be noticed here that in Vinod Kumar Singh v. Banaras Hindu University and others (1988) 1 SCC 80, it was held by the Supreme Court that a judgment which has been pronounced but not signed, can be even modified, if there are adequate reasons for the same, in which situation, the matter should be placed for further consideration, upon notice to parties.

That situation does not arise in the present case as the detailed judgment is not different from the order pronounced in Court on 01.10.2015.

Consequently, I agree with the judgment of my learned brother S.S. Saron, J.

(AMOL RATTAN SINGH)
JUDGE

January 16, 2018
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