

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

(1) CRA-D-1074-DB of 2017

Nishan Singh

.... Appellant

Versus

State of Haryana

..... Respondent

(2) CRA-D-1089-DB of 2017 (O&M)

Hoshiar Singh and others

.... Appellants

Versus

State of Haryana

..... Respondent

Reserved on : 12.07.2019

Date of decision : 17.07.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Abhishek Chautala, Advocate,
for the appellant in CRA-D-1074-DB of 2017.

Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellants in CRA-D-1089-DB of 2017.

Mrs. Shubhra Singh, Addl. A.G., Haryana.

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in both these appeals, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 04.10.2017 and order dated 07.10.2017, rendered by learned Additional Sessions Judge, Sirsa. Appellants Nishan Singh son of Mahender Singh, Hoshiar Singh, Amrik Singh, Surjit Singh, Hira Singh and Sukhdev Singh along with co-accused Nishan Singh son of Sohan Singh, Balwant Singh, Gurcharan Singh, Lavdeep Singh and Surender Singh were charged with and tried for the offences punishable under Sections 148, 341, 216 and 302 read with Section 149 IPC. Vide the impugned judgment and order, the appellants were convicted and sentenced as under :-

<i>Offence under Section</i>	<i>Sentence</i>
148 IPC	Rigorous imprisonment for a period of one year and to pay fine of ₹ 1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.
341 read with section 149 IPC	Simple imprisonment for a period of one month and to pay fine of ₹ 500/- each and in default of payment of fine, to further undergo simple for a period of seven days.
U/s 302 read with section 149 IPC	Imprisonment for life and to pay fine of ₹ 25,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year.

The substantive sentences of imprisonment were ordered to run concurrently.

3. Co-accused Nishan Singh son of Sohan Singh was declared proclaimed offender during trial. Co-accused Balwant Singh, Gurcharan Singh, Lavdeep Singh and Surender Singh were acquitted of the charge framed against them.

4. The case of the prosecution, in a nutshell, is that on 23.11.2012,

a telephonic message was received by ASI Narender Singh from MHC Ellenabad regarding referring of injured Richhpal Singh alias Kala son of Gurbachan Singh to General Hospital, Sirsa. He came to know that Richhpal Singh was admitted in Sarvodya Hospital, Hisar. He went to Sarvodya Hospital, Hisar. Richhpal Singh was declared unfit to make statement. One Binder Kaur wife of Richhpal Singh was present in the hospital. She submitted an application against Nishan Singh son of Sohan Singh, Amrik Khod, Hoshiar Singh sons of Randhir Singh Khod, Surjit Singh son of Madan Singh Khod, Nishan Singh son of Mahender Singh, Sukhdev Singh and Hira Singh sons of Bakhshish Singh and three-four other persons, with the assertions that on 23.11.2012, she along with her husband Richhpal Singh alias Kala Singh was going on motor cycle from Gurudwara Mamera Road. At 2 O' Clock in the day time, when they reached in front of the Bus Stand, accused Nishan Singh son of Sohan Singh, Hira Singh son of Bakhshish Singh and Nishan Singh son of Mahender Singh came out from a 'Nohra' situated near the Bus Stand. They stopped the motor cycle. They took Richhpal Singh inside the 'Nohra'. Nishan Singh resident of Harnia inflicted kick blow on the stomach of Richhpal Singh. Hira Singh inflicted 'lathi' blow on the right leg of Richhpal Singh. Nishan Singh resident of Shekhu Khera also gave 'lathi' blow on the ribs of her husband. Thereafter, her husband Richhpal Singh collapsed. The other assailants also came. They started thrashing her husband with 'lathis' and 'dandas'. She raised alarm. Sulakhan Singh, brother-in-law of the complainant, who used to work in the Bus Stand, and one Kuldeep Kaur wife of Gurbhej Singh, neighbourer of the said 'Nohra', came on the spot.

They saved Richhpal Singh from the clutches of the assailants. In the meantime, her son Ranjit Singh came on the spot. The accused ran away from the spot. Her son Ranjit Singh took his father to General Hospital, Ellenabad, from where he was referred to General Hospital, Sirsa. However, he was taken to Sarvodya Hospital, Hisar. The motive attributed was that Amrik Singh Khod Bhuratwala had forcibly occupied the land of Gurudwara and Richhpal Singh wanted to get constructed Gurudwara on the said land. MLR of the injured was obtained. FIR under Sections 148, 149, 323, 341 and 506 IPC was registered. Injured Richhpal Singh was declared unfit to make statement on 24.11.2012 and 27.11.2012. The injured was also operated upon. Thereafter, Sections 307 and 325 IPC were added. Richhpal Singh was declared fit to make statement on 05.12.2012. The Investigating Officer recorded his statement under Section 161 Cr.P.C. He named other accused, namely Mahender Singh, Gurbhej, Gurmukh Singh and Amrik Singh. He succumbed to his injuries on 31.12.2012 at Max Hospital, Gurgaon. Offence under Section 302 IPC was added. The body was sent for post mortem examination. The post mortem examination was conducted by Dr. Ripin.

5. Accused Nishan Singh son of Sohan Singh, Nishan Singh son of Mahender Singh, Amrik Singh, Hoshiar Singh, Surjit Singh and Hira Singh were charge sheeted for the offences punishable under Sections 148, 341 and 302 read with Section 149 IPC. Accused Gurcharan Singh, Balwant Singh, Surender alias Savinder and Lavdeep Singh were charged sheeted for the offence punishable under Section 216 IPC.

6. The prosecution initially examined eleven witnesses, namely

Sulakhan Singh as PW.1, Binder Kaur as PW.2, Narender Singh ASI as PW.3, Parmod as PW.4, Dr. Ripin as PW.5, Dr. Sachin as PW.6, Dr. Suresh as PW.7, EHC Amrik Singh as PW.8, EASI Ramesh Kumar as PW.9, HC Rajesh Kumar as PW.10 and ASI Krishan Kumar as PW.11. The prosecution thereafter submitted supplementary challan against accused Sukhdev Singh on 23.09.2014. It was amalgamated with the main challan. The charge was re-framed against accused Gurcharan Singh, Balwant Singh alias Banta, Surender alias Savinder and Lavdeep Singh for offence punishable under Section 216 IPC and against the remaining accused for offences punishable under Sections 148, 341, 302 read with Section 149 IPC vide order dated 10.10.2014. Thereafter, the prosecution was asked to produce evidence.

7. The prosecution examined as many as twenty five witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated.

8. The appellants were convicted and sentenced, as noticed herein-above. Hence, these appeals.

9. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

10. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

11. PW.1 Kuldeep Kaur testified that on 23.11.2012, she was present in her house. At about 2.00 PM, she heard the noise of quarrel going

on. She came out of her house. Richhpal Singh was lying injured in front of her house. His wife was also lying unconscious. She noticed some persons with muffled faces running away from the spot. She could not identify them. The accused were not those persons who ran away from the spot. After some time, Sulakhan Singh - younger brother of Richhpal Singh and Ranjit Singh son of Richhpal Singh also reached there. They took Richhpal Singh to hospital. She did not accompany them. She was declared hostile and was cross-examined by the learned Public Prosecutor. She denied the contents of statement Ex.PA. According to her, she had not made the statement. She denied the suggestion that she was deposing falsely due to compromise with the accused with the intervention of the village Panchayat.

12. PW.3 Binder Kaur is the wife of deceased Richhpal Singh. According to her, on 23.11.2012, she along with her husband Richhpal Singh was coming from Gurudwara towards their house at about 2.00 PM. When they reached near Bus Stand Ellenabad, several unknown persons stopped their motor cycle. Her husband was pulled down from the motor cycle. He was inflicted injuries. He was taken inside a 'Nohra'. Other persons also joined them. He was inflicted more injuries with 'lathis' and 'kapas'. He collapsed. She raised alarm. She tried to rescue her husband. The accused ran away from the spot. She and her son took her husband to PHC Ellenabad by arranging a vehicle. After conducting MLR, her husband was referred to General Hospital, Sirsa for further treatment. However, they took her husband to Sarvodya Hospital, Hisar. The accused were not the persons who caused injuries to her husband. She was declared hostile and was cross-examined by learned Public Prosecutor. She admitted her

signatures on application, Ex.PB. Volunteered that application Ex.PB was submitted by her relatives and on asking of her relatives, she signed the same at point A. The contents of application Ex.PB were not read over to her. The names of the accused and the role assigned to them was got recorded by her relatives. She was earlier examined as a witness in this case. She made statement, Ex.PC, in the court, under the pressure of the police and the persons connected with the Gurudwara. The statement made by her for second time was true and without any pressure from any point. In her cross-examination by the learned defence counsel, she admitted that she could not read Ex.PB, as it was in Hindi. No body had read over the contents of the same to her. Her husband was conscious when they took him to PHC Ellenabad, and also on his way from Ellenabad to Sirsa. On her inquiries, he also told that he could not identify the persons who had inflicted injuries to him.

13. PW.4 Sulakhan Singh deposed that he was present at a tea shop near Ellenabad Bus Stand on 23.11.2012 at about 2.00 PM. In the meantime, several persons inflicted injuries with their respective weapons to his brother Richhpal Singh. The assailants fled away from the spot. The accused were not the same persons, who had caused injuries to his brother Richhpal Singh. He was also declared hostile and was cross-examined by the learned Public Prosecutor. He denied the contents of statement, Ex.PD. He was already examined as a witness in this case. He made statement, Ex.PE, in the court. Volunteered stated that his statement in the court was made under the pressure of the police and the persons connected with the Gurudwara. The statement made by him as PW.4 in the court on that day

was true and without any pressure from any point. He denied the suggestion that he was deposing falsely due to compromise with the accused outside the court with the intervention of village Panchayat.

14. PW.6 EHC Krishan Kumar deposed that accused Hira Singh made a disclosure statement on 03.01.2013. He got recovered one 'bamboo lathi'. In his cross-examination, he deposed that no independent witness was joined at the time of effecting recovery, neither they called any independent witness to join investigation.

15. PW.7 Inspector Vikram Singh deposed that he arrested accused Nishan Singh son of Sohan Singh and Hira Singh on 01.01.2013. They were interrogated. They made disclosure statements, Ex.PH and Ex.PJ, qua the weapons used by them at the time of occurrence. In his cross-examination, he deposed that no recovery was effected from accused Nishan Singh son of Sohan Singh in his presence.

16. PW.12 Maha Singh deposed that he was posted as Inspector/SHO at Police Station Ellenabad on 02.01.2013. He interrogated accused Nishan Singh son of Sohan Singh and Hira Singh on 04.01.2013. They made disclosure statements, Ex.PN and Ex.PQ. Accused Amrik Singh and Nishan Singh son of Mahender Singh also made disclosure statements, Ex.PR and Ex.PS. Accused Nishan Singh son of Mahender got recovered one vehicle bearing registration No. PB 65R-0126. He also produced one 'lathi' from the said vehicle. He also recorded statement of Ranjit Singh son of Richhpal Singh on 07.01.2013. Binder Kaur handed over clothes of deceased, including vest, *kurta*, Sweater and handkerchief to him on 11.01.2013. In his cross-examination, he admitted that no recovery was

effected from accused Nishan Singh son of Sohan Singh and Hira Singh. He also admitted that during investigation, some of the accused were found innocent.

17. PW.13 HC Jasbir Singh deposed that accused Sukhdev Singh was interrogated. He made disclosure statement Ex.PY/2. Accused Sukhdev Singh got recovered one handle of hand pump from his house constructed in field.

18. PW.17 Dr. Parmod Sharma deposed that he medico legally examined Richhpal Singh. Ex.PW.17/A is the MLR prepared in this regard. He sent ruqa Ex.PW.17/B. He referred Richhpal Singh to General Hospital, Sirsa. He tendered his evidence by way of affidavit Ex.PW.17/C. According to the contents of the affidavit, he noticed the following injuries on the person of Richhpal Singh :-

- (1) Swelling with tenderness on upper 1/3rd of right leg below knee and knee. Tenderness was present, movements were restricted.
- (2) Abrasion on right ankle, tenderness was present, movements were restricted.
- (3) Abrasion on anterior aspect of left ankle 1 x 1 cm. Clotted blood was present.
- (4) Abrasion on left wrist 2 x 1 cm. Clotted blood was present, tenderness was present.

All the above injuries were kept under observation and kind of weapon was blunt. In his cross-examination, he deposed that the patient was conscious and oriented. His vitals were within normal limits. He admitted that except the four injuries described by him in the MLR, the patient did not complain of tenderness, pain and injury on any other part of his body.

19. PW.19 Dr. Suresh Chhabra deposed that Richhpal Singh was admitted in their hospital on 12.12.2012. He was treated and operated by him. He succumbed to injuries on 31.12.2012. He died of severe septicemia following polytrauma and multiple surgeries with shock and MODS. During treatment, X-ray and CT Scan examination of the patient was conducted. He tendered his evidence by way of affidavit Ex.PW.19/A. In his affidavit, he deposed that he was called in emergency to examine a patient, namely Richhpal Singh, on 12.12.2012. He was diagnosed with multiple injuries. He underwent laparotomy with spleenactomy. The patient was on ventilatory support. His general condition was grave. On 14.12.2012, in the early morning, the patient had tachycardia followed by severe bradichardia and unrecordable BP. In his cross-examination, he admitted that he had not seen the MLR. The patient was suffering from severe septicemia at the time of admission to Max Hospital.

20. PW.20 ASI Narender Singh is the Investigating Officer. He deposed that he reached General Hospital, Sirsa on 23.11.2012. He moved application Ex.PW.20/A seeking opinion of the Medical Officer whether injured was fit to make the statement or not. The Medical Officer, vide endorsement Ex.PW.20/B, reported that the patient was not admitted at General Hospital, Sirsa. Thereafter, he returned back to Police Station Ellenabad. The SHO informed him at about 9.00 PM that Richhpal Singh had been admitted at Sarvodya Hospital. He reached Sarvodya Hospital and moved application Ex.PW.20/C to Medical Officer. The Medical Officer, vide endorsement Ex.PW.20/D, declared injured unfit to make statement. On the intervening night of 23/24.11.2012, Binder Kaur submitted an

application Ex.PB to him, on the basis of which FIR Ex.PW.18/A was recorded. He submitted application Ex.PW.20/C seeking opinion of Medical Officer regarding fitness or otherwise condition of injured Richhpal Singh on 24.11.2012 and 27.11.2012. The Medical Officer, vide his opinions, Ex.PW.20/J and Ex.PW.20/K, declared injured unfit to make statement. On 03.12.2012, he submitted application Ex.PW.20/M to Medical Officer, CHC Ellenabad, seeking opinion regarding nature of injury. The injury was declared grievous by the doctor. On 05.12.2012, he submitted application Ex.PW.20/N to Medical Officer, Sarvodya Hospital, seeking opinion regarding nature of injury. The injury on the person of Richhpal Singh was declared dangerous to life by the doctor. Section 307 IPC was added. On the same day, injured Richhpal Singh was declared fit to make statement vide opinion Ex.PW.20/P. He recorded the statement of Richhpal Singh under Section 161 Cr.P.C., vide Ex.PW.20/Q. He also recorded statement of Ranjit Singh under Section 161 Cr.P.C. The accused were arrested by him. The recoveries were effected. In cross-examination, he deposed that he did not meet deceased Richhpal Singh after 05.12.2012. Since it was not his purpose to record a dying declaration, he did not deem it fit to have the statement of Richhpal Singh deceased recorded by some Magistrate or Gazetted Officer. He admitted that Bus Stand, Ellenabad was sensitive point and there was permanent deployment of police there. The police officials were on duty at the spot on 23.11.2012. He categorically admitted in his cross-examination that he did not know the name of the doctor, who had appended his signatures on the endorsements Ex.PW.20/J, Ex.PW.20/K and Ex.PW.20/P. He recorded the statement Ex.PW.20/Q at about 1.00 PM. He

did not call the doctor on duty to remain present at the time of recording of statement Ex.PW.20/Q, to ensure that Richhpal Singh was fit to make statement throughout the making of statement. Volunteered stated that Richhpal Singh remained conscious throughout the statement. He also admitted that the doctor had not given the time when he declared Richhpal Singh fit to make statement vide endorsement Ex.PW.20/P. He did not prepare any seizure memo in respect of X-ray, CEDT, NCCT Head, USG, CECT chest mentioned by him in Ex.PW.20/M.

21. PW.21 Dr. Ripin along with Dr. Raj Kumar and Dr. Vivek conducted post mortem examination on the body of Richhpal Singh on 01.01.2013. He tendered his evidence by way of affidavit Ex.PW.21/E. They found following injuries on the person of the deceased :-

- (1) Old surgical wound of 1 x 1 cm (tracheostomy) present on the lower end of neck anteriorly. On dissection, the wound connecting to the trachea with oozing of serous coloured fluid and granulation tissue present in surrounding.
- (2) Open infected wound of 5 x 4 cms lateral side of left lower chest, foul smelling with visible underlying necrotic tissue. Serous fluid oozing out. Wound connecting to the chest cavity left. On f/d, there was fracture of 9th, 10th & 11th rib present with hard callus formation.
- (3) Open infected wound of 22 x 2 cms over left subcostal region in horizontal direction. Foul smelling with visible necrotic tissue underlying surgical sutures present in the abdominal wall. Signs of surgical repair present of diaphragm. On f/d, there was surgical repair of stomach and small intestine. Multiple adhesions in peritoneal

cavity & pleural cavity present.

- (4) Open infected wound of 10 x 6 cms present over epigastric area of abdomen, foul smelling with necrotic tissue underlying visible. ON f/d signs of surgical repair and surgical sutures in situ present.
- (5) Old infracted wound of 16 cms foul smelling with surgical sutures present over lower midline anterior abdomen. On f/d signs of surgical repair present.
- (6) 2 small surgical wounds of 1 x 1 cms each present on the left lower abdomen with serous fluid oozing. On f/d there was wound extending to peritoneal cavity.
- (7) One surgical wound of 1 x 1 cm present on right lower abdomen with serous fluid oozing & extending to peritoneal cavity.
- (8) Healed scar of 12 cms present on the lateral aspect of lower 1/3rd of right thigh. On dissection, metallic implant in situ present.
- (9) Healed scar mark of 9 cms on medial aspect of right leg & ankle. On dissection, there was metallic implant in situ present on lower tibia & fibula. Healed scar mark of 7.5 cms present on lateral aspect of fibula region. On dissection, there was metallic implant in situ present.
- (10) Healed scar of 10 cms present on the anterior aspect of lower left forearm & wrist. On dissection, metallic implant of anterior aspect of distal radius present.

The cause of death was shock due to septicemia which was due to infections of the wounds which were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. In his cross-examination, he admitted that injury No.8 on the post mortem report did not correspond to any injury on the MLR. Injury No.3 on the MLR did not correspond to any injury mentioned in the post mortem report. The metallic implants at injuries

No.8, 9 and 10 must have been implanted after causing surgical wounds. The surgical wounds caused to install the metallic implants at injuries No.8, 9 and 10 had healed in a healthy manner. No infection supervened during the process of healing of injuries No.8, 9 and 10. He admitted that injuries No. (i) to (vii) on the post mortem report and the affidavit did not find mention in the MLR. He also admitted that injuries No. (i) to (vii) were surgical wounds caused in relation to the alleged fracture of ribs and the alleged surgical removal of spleen of the deceased. He specifically admitted that infections in wounds (i) to (vii) resulted in septicemia which caused the death of the deceased. According to him, it was possible that the infections in wounds (i) to (vii) developed on account of lack of skill and negligence on the part of attending doctors.

22. PW.22 Anil Kumar deposed that accused Sukhdev Singh was arrested from Tibbi Adda in the area of Ellenabad on 07.09.2014. He made disclosure statements Ex.PY and Ex.PY/2 on 08.09.2014. He got recovered one handle of hand pump from a room of tubewell in his field. In his cross-examination, he admitted that no independent person was asked to join the investigation at the place of recovery.

23. PW.23 ASI Krishan Kumar deposed that accused Nishan Singh son of Sohan Singh and Hira Singh were interrogated on 04.01.2013. They made disclosure statements Ex.PN and Ex.PQ. Accused Amrik Singh and Nishan Singh son of Mahender Singh were interrogated on 06.01.2013. They made disclosure statements Ex.PR and Ex.PS. Binder Kaur had produced clothes of the deceased before SHO Maha Singh on 11.01.2013.

24. PW.24 Dr. B.L. Bagri, Medical Officer, Sarvodya Multi

Speciality Hospital, Hisar, deposed that he had not brought the summoned original treatment file of Richhpal Singh, as the same was missing from their record. He placed on record writing Ex.PW.24/A, signed by the Administrator of their hospital. He was not acquainted with the handwriting and signatures of Dr. Sachin Lohra.

25. PW.25 Dr. Umesh Kalra testified that patient Richhpal Singh was admitted in Emergency of their hospital i.e. Sarvodya Hospital, Hisar, on 23.11.2012. He was examined by Dr. Sachin Lohra and Dr. Raj Singh in Emergency and was operated by both of them on 23.11.2012, 30.11.2012, 06.12.2012 and 08.12.2012. Patient was critical. They had not received original treatment file from Dr. Sachin Lohra. In his cross-examination, he admitted that a writ petition was filed against Sarvodya Hospital, in which files of Sarvodya Hospital were taken and examined in PGIMS, Rohtak.

26. The precise case of the prosecution was that on 23.11.2012 at about 2.00 PM, PW.3 Binder Kaur was going with her husband Richhpal Singh on motor cycle. They were waylaid by the appellants. Richhpal Singh was given beatings and was thereafter taken to hospital. He died on 31.12.2012.

27. PW.3 Binder Kaur, when appeared in the court, deposed that her husband Richhpal Singh was taken inside the 'Nohra' and before that he was inflicted injuries. He also inflicted injuries in the 'Nohra'. He collapsed. The assailants ran away from the spot. The accused present in the court were not the same persons, who caused injuries to her husband. She was declared hostile and was cross-examined by the learned Public Prosecutor.

The FIR was registered on the basis of application Ex.PB submitted by her

to the police. She denied the contents of application Ex.PB, though admitted her signatures thereon. In her earlier statement, Ex.PC, recorded in the court before re-framing of charge, she had supported the case of the prosecution, but when she appeared as PW.3, when her statement was recorded for the second time, she deposed that she made the statement, Ex.PC, under the pressure of the police. The statement made by her in the court was true and without any pressure from any point.

28. Similarly, PW.1 Kuldeep Kaur testified that she came out of her house on 23.11.2012 at about 2.00 PM, after hearing noise. Binder Kaur and her husband Richhpal Singh were lying unconscious. She saw some persons with muffled faces running away from the spot. She could not identify them. The accused present in the court were not those persons who were running away. She was also declared hostile and was cross-examined by the learned Public Prosecutor. In her cross-examination by learned Public Prosecutor, she denied the contents of her statement Ex.PA. According to her, she never gave this statement.

29. PW.4 Sulakhan Singh deposed that the accused present in the court were not those persons who had caused injuries to his brother Richhpal Singh. He was also declared hostile and was cross-examined by the learned Public Prosecutor. He denied the contents of statement Ex.PD. His statement was also recorded in the court vide Ex.PE, before the re-framing of charge. According to him, the statement was under pressure of the police, but the statement made by him on that day as PW.4 was true.

30. Learned trial court has relied upon the FIR, Ex.PW.18/A, and statement of deceased Richhpal Singh, Ex.PW.20/Q, recorded under Section

161 Cr.P.C., to convict the appellants. According to PW.20 ASI Narender Singh, Richhpal Singh was declared unfit to make statement on 24.11.2012 and 27.11.2012. He submitted an application, Ex.PW.20/M, on 03.12.2012 to Medical Officer, CHC Ellenabad, seeking opinion regarding nature of injury. The injury was declared grievous by the doctor. On 05.12.2012, he submitted application, Ex.PW.20/N, to Medical Officer Sarvodya Hospital, seeking opinion regarding nature of injury. The injury was declared dangerous to life, on the basis of which offence under Section 307 IPC was added. On the same day, injured Richhpal Singh was declared fit to make statement by the doctor vide opinion Ex.PW.20/A. Thereafter, he recorded statement of injured under Section 161 Cr.P.C., vide Ex.PW.20/Q. In his cross-examination, PW.20 ASI Narender Singh could not name the doctor who had appended his signatures on endorsements Ex.PW.20/J, Ex.PW.20/K and Ex.PW.20/P. Similarly, according to him, the endorsement Ex.PW.20/E was made by the doctor present in the Duty Room, but he did not know his name. He recorded statement Ex.PW.20/Q at about 1.00 PM. He had categorically deposed that he did not call the doctor on duty to remain present at the time of recording statement Ex.PW.20/Q. He also admitted that the doctor had not given the time when he declared Richhpal Singh fit to make statement vide endorsement Ex.PW.20/P. He also did not obtain the signatures of Richhpal Singh or of any doctor or other person as a witness to the statement made by him. He also did not record supplementary statement of Binder Kaur, Sulakhan Singh and Kuldeep Kaur, after 05.12.2012. He never met Richhpal Singh after 05.12.2012. Richhpal Singh died on 31.12.2012. He also did not get the statement of Richhpal Singh recorded by

some Magistrate or Gazetted Officer, as per his own version. It was necessary for the prosecution to prove the name of the doctor, who had given the opinion that the deceased was fit to make statement on 05.12.2012. The Investigating Officer had sufficient time to get the statement of the deceased recorded between 05.12.2012 and 31.12.2012 from some Magistrate or Gazetted Officer. It casts doubt on the statement, Ex.PW.20/Q.

31. In **Gulab Singh V. State of U.P., 2004 Criminal Law Journal 946**, a Division Bench of the Allahabad High Court has held that statement of deceased recorded by Investigating Officer and corroborated by ocular witness and medical evidence amounts to dying declaration and is reliable. The Division Bench has held as under :-

“13. In instant case the doctor has stated that injury No. 1 of Satya Narain Singh was such that in the night of 26/27-7-1980 when he was lodging, F.I.R. he could be in senses and it could be otherwise also but the statement of Satya Narain Singh was recorded by the investigating officer who was present at the police station and Satya Narain Singh had stated the circumstances in which appellant Gulab Singh was intending for getting his name mutated in the landed property. Satya Narain Singh also stated that when he along with Smt. Babuni was going to her residence and reached near mango tree of Habib Sai, the appellant and three others used insulting language against him and said that Satya Narain Singh was enjoying life and appellant his grandson and other family members, were facing

hardships. Therefore, he had to face consequences and he fired at him. If Satya Narain Singh and Smt. Babuni have stated that they saw Gulab Singh causing firearm injuries from a close range, this fact is worthy to be relied on because in post mortem examination report blackening and charring was found present around the wound. When Smt. Babuni was cross examined, she has stated that the fire was made by Gulab Singh from a distance of 8 or 10 steps. She is an illiterate lady of 60 years of age and it is not expected that she would have clear idea of measurements in steps, therefore, the distance which appears from the post mortem examination report and what has been stated by Smt. Babuni is consistent and it is clear that Satya Narain Singh was alive when he lodged F.I.R. and his statement under Section 161, Cr.P.C. was recorded just thereafter by the investigating officer at the police station. If Satya Narain Singh would not have been alive, he would not have put his signature on F.I.R. and he would not have narrated the motive and circumstances in which the injury was caused by the appellant. Since blackening and charring were present around the injury resulting into death of Satya Narain Singh, therefore, injury was caused from close range, Even though it was night, Satya Narain Singh and Smt. Babuni were able to recognise the real culprit. The appellant had challenged the victim with insulting utterances before actual firing. Therefore, Satya Narain Singh had full

opportunity to recognise the appellant.

14. This is the occurrence which did take place in same family. Satya Narain Singh would not lodge the F.I. R. against his grandson unless he had really fired at him. Smt. Babuni who is an old widow lady cannot pick up courage to make false statement against Gulab Singh unless he really caused firearm injuries. Three witnesses PW. 2 Dhelaroo, P.W. 3 Dukhi and P.W. 4 Basant Singh are residents of the same village. They do not want to incur displeasure of the appellant or his family members. If they have not supported the prosecution story and they have stated that they reached the spot after injury was caused to Satya Narain Singh , it does not mean that P.W. 1 Smt. Babuni is telling lie. Since the condition of Satya Narain Singh was serious, he was advised to be immediately, carried to P.H.C. Rudrapur, when from he was advised to be sent to district hospital, Deoria. In such circumstance, if there was no sufficient opportunity to call for the Magistrate or doctor at the police station in the night the dying declaration of Satya Narain Singh cannot be disbelieved. In view of the law laid down in the above cited rulings, the motive, the circumstances and challenge which was made prior to fire was opened, show that there was sufficient reason and opportunity for Satya Narain Singh to be able to recognise the appellant and P.W. 1 Smt. Babuni was also able to recognize the real culprit, who is appellant in this case. Since Smt. Babuni did not recognize other three accused persons against whom F.I.R.

was lodged by Satya Narain Singh, therefore, the statement of Smt. Babuni and statement of Satya Narain Singh was not taken to be sufficient to prove the guilt against other three accused of the crime. But since Gulab Singh had fired from close range after making challenge, therefore, injured and Smt. Babuni had sufficient occasion to see as to who had caused firearm injury.

15. x x x x x x x x x

16. *In the instant case the statement of Satya Narain Singh is worthy to be relied on. It amounts to dying declaration. It has been corroborated by the statement of P.W. 1 Smt. Babuni, the statement of the investigating officer, the Constables and his statement is consistent with the post mortem examination report. There is motive to cause firearm injury and no person would falsely involve his own family member unless he is really the culprit and caused the injury. Therefore, we fully subscribe to the view expressed by learned Sessions Judge, who held Gulab Singh guilty under Section 302, *I.P.C.* and sentenced him with life imprisonment.”*

32. Their Lordships of the Supreme Court in **Rafique alias Rauf and others Vs. State of Uttar Pradesh, (2013) 12 Supreme Court Cases 121**, have laid down the principles, extent of reliance that can be placed upon statement under Section 161 Cr.P.C., and the manner or procedure to be followed for recording a dying declaration, as under :-

“19. In this context when we make reference to the statutory provisions concerning the extent of reliance that can be placed upon the dying

*declaration and also the implication of Section 162 (2) Cr.P.C. vis-à-vis Section 32 (1) of the Evidence Act, 1872, we feel that it will be appropriate to make a reference to the decision of this Court reported in **Khushal Rao v. State of Bombay**, AIR 1958 SC 22. Justice Sinha speaking for the Bench after making further reference to a Full Bench decision of the High Court of Madras headed by Sir Lionel Leach, C.J., a decision of the Judicial Committee of the Privy Council and 'Phipson on Evidence' – 9th Ed., formulated certain principles to be applied to place any reliance upon such statements. We feel that the substance of the principles stated in the Full Bench decision and the Judicial Committee of the Privy Council and the author Phipson's view point on accepting a statement as dying declaration can also be noted in order to understand the principles ultimately laid down by this Court in paragraph 16.*

20. *The Full Bench of the Madras High Court in **Guruswami Tevar - ILR 1940 Mad 158** at page 170 (AIR 1940 Mad 196 at p.200) in its unanimous opinion stated that no hard and fast rule can be laid down as to when a dying declaration should be accepted, except stating that each case must be decided in the light of its own facts and other circumstances. What all the Court has to ultimately conclude is whether the Court is convinced of the truthfulness of the statement, notwithstanding that there was no corroboration in the true sense. The thrust was to the position that the Court must be fully*

*convinced of the truth of the statement and that it should not give any scope for suspicion as to its credibility. This Court noted that the High Court of Patna and Nagpur also expressed the same view in the decisions reported in **Mohamad Arif v. Emperor, AIR 1941 Pat. 409** and **Gulabrao Krishnaje vs. Emperor – AIR 1945 Nag. 153.***

21. *The Judicial Committee of the Privy Council while dealing with a case, which went from Ceylon, which was based on an analogous provision to Section 32 (1) of the Indian Evidence Act, took the view that apart from the evidence of the deceased the other evidence was not sufficient to warrant a conviction. It was, however, held that in that case when the statement of the deceased was received and believed as it evidently was by the jury it was clear and unmistakable in its effect and thereby, the conviction was fully justified and was inevitable. The Judicial Committee noted that the factum of a murderous attack, though resulted in the cutting of the throat and the victim was not in a position to speak but yet by mere signs she was able to convey what she intended to speak out, and the said evidence was brought within the four corners of the concept of dying declaration, which formed the sole basis ultimately for the Court to convict the accused, which was also confirmed by the Supreme Court of Ceylon, as well as by the Judicial Committee of the Privy Council.*

22. *The author Phipson in his 9th Ed., of the book on Evidence made the following*

observations:

*".....The deceased then signed a statement implicating the prisoner, but which was not elicited by question and answer, and died on March 20. It was objected that being begun in that form, it was inadmissible:- Held (1) the questions and answers as to his state of mind were no part of the dying declaration; (2) that even if they were, they only affected its weight, not its admissibility; and (3) that the declaration was sufficient, without other evidence, for conviction **R. v. Fitzpatrick, (1910) 46 Ir. L.T. 173.**"*

23. *After considering the above legal principles, this Court has set down the following six tests to be applied for relying upon a material statement as a dying declaration (**Khushal Rao case**) :*

"16. On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot

be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence; (5) that a dying declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the facts stated had not been impaired at the time he was making the statement, by circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record

of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.” (Emphasis supplied)

24. We also wish to add that as on date, there is no statutory prescription as to in what manner or the procedure to be followed for recording a dying declaration to fall within the four corners of Section 32 (1) of the Evidence Act. The presence of Magistrate; certification of the doctor as to the mental or the physical status of the person making the declaration, were all developed by judicial pronouncements. As has been repeatedly stated in various decisions, it will have to be found out whether in the facts and circumstances of any case the reliance placed upon by the prosecution on a statement alleged to have been made by the deceased prior to his death can be accepted as a dying declaration, will depend upon the facts and circumstances that existed at the time of making the statement. In that case it would mainly depend upon the date and time vis-à-vis the occurrence when the statement was alleged to have been made, the place at which it was made, the person to whom the said statement was made, the sequence of events, which led the person concerned to make the statement, the physical and mental condition of the person who made the statement, the cogency with which any such statement was made, the attending circumstances, whether throw any suspicion as to the factum of the statement said to have been made or any other

factor existing in order to contradict the statement said to have been made as claimed by the prosecution, the nexus of the person who made the statement to the alleged crime and the parties involved in the crime, the circumstance which made the person to come forward with the statement and last but not the least, whether the said statement fully support the case of the prosecution.

25. *In this context, we can also make a reference to a decision of this Court reported in **Cherlopalli Cheliminabi Saheb v. State of A.P., (2003) 2 SCC 571**, where it was held that it was not absolutely mandatory that in every case a dying declaration should be recorded only by a Magistrate. The said position was reiterated in **Dhan Singh v. State of Haryana - (2010) 12 SCC 277** wherein, it was held that neither Section 32 of the Evidence Act nor Section 162 (2) of the Cr.P.C., mandate that the dying declaration has to be recorded by a designated or particular person and that it was only by virtue of the development of law and the guidelines settled by the judicial pronouncements that it is normally accepted that such declaration would be recorded by a Magistrate or by a doctor to eliminate the chances of any doubt or false implication by the prosecution in the course of investigation.*

26. *In a recent decision of this Court reported in **Sri Bhagwan v. State of U.P., 2012 (11) SCALE 734**, to which one of us was a party, dealt with more or less an identical situation and*

held as under in paragraphs 21 and 22:

“21. As far as the implication of 162 (2) of Cr.P.C. is concerned, as a proposition of law, unlike the excepted circumstances under which 161 statement could be relied upon, as rightly contended by learned senior counsel for the respondent, once the said statement though recorded under Section 161 Cr.P.C. assumes the character of dying declaration falling within the four corners of Section 32 (1) of Evidence Act, then whatever credence that would apply to a declaration governed by Section 32 (1) should automatically deemed to apply in all force to such a statement though was once recorded under Section 161 Cr.P.C. The above statement of law would result in a position that a purported recorded statement under Section 161 of a victim having regard to the subsequent event of the death of the person making the statement who was a victim would enable the prosecuting authority to rely upon the said statement having regard to the nature and content of the said statement as one of dying declaration as deeming it and falling under Section 32 (1) of Evidence Act and thereby commend all the credence that would be applicable to a dying declaration recorded and claimed as such.

22. Keeping the above principle in mind, it can be stated without any scope

for contradiction that when we examine the claim made on the statement recorded by PW-4 of the deceased by applying Section 162 (2), we have no hesitation in holding that the said statement as relied upon by the trial Court as an acceptable dying declaration in all force was perfectly justified. We say so because no other conflicting circumstance was either pointed out or demonstrated before the trial Court or the High Court or before us in order to exclude the said document from being relied upon as a dying declaration of the deceased. We reiterate that having regard to the manner in which the said statement was recorded at the time when the crime was registered originally under Section 326 IPC within the shortest time possible within which it could be recorded by PW-4 in order to provide proper medical treatment to the deceased by sending him to the hospital, with no other intention pointed out at the instance of the appellant to discredit contents of the said statement, we hold that the reliance placed upon the said statement as the dying declaration of the deceased was perfectly justified. Having regard to our above conclusion, the said submission of the learned counsel for the appellant also stands rejected.”

In the present case, statement Ex.PW.20/Q is not corroborated either by ocular or by medical evidence, though recorded under Section 161 Cr.P.C.

33. The cause of death, as mentioned in the post mortem report, was shock due to septicemia which was due to infections of the wounds which were ante-mortem in nature and were sufficient to cause death in ordinary course of nature. PW.17 Dr. Parmod Sharma, Medical Officer, CHC Ellenabad, medico legally examined Richhpal Singh on 23.11.2012. He proved MLR Ex.PW.17/A. He tendered his evidence by filing affidavit Ex.PW.17/C. He noticed only four injuries on the body of Richhpal Singh. In his cross-examination, he categorically deposed that the patient was conscious and oriented. His vitals were within normal limits. Except four injuries, described by him in the MLR, the patient did not complain of tenderness, pain and injury on any other part of his body. PW.19 Dr. Suresh Chhabra deposed that Richhpal Singh died of severe septicemia following polytrauma and multiple surgeries. He led his evidence by filing affidavit Ex.PW.19/A. Richhpal Singh was operated by him. PW.21 Dr. Ripin, in his cross-examination, as noticed hereinabove, admitted that no infection supervened during the process of healing of injuries No.8, 9 and 10. Injuries No. (i) to (vii) mentioned in the post mortem report were not mentioned in the MLR. He also admitted that injuries No. (i) to (vii) were surgical wounds. He also admitted that infections in wounds (i) to (vii) resulted in septicemia which caused the death of the deceased.

34. The case of the prosecution is that Richhpal Singh was taken to Sarvodya Hospital, Hisar. PW.24 Dr. B.L. Bagri from Sarvodya Hospital, Hisar, categorically admitted in his examination-in-chief that the record pertaining to treatment of Richhpal Singh was missing from their record. PW.25 Dr. Umesh Kalra from the said hospital deposed that Richhpal Singh

was admitted in their hospital with polytrauma on 23.11.2012. He was examined by Dr. Sachin Lohra. In his examination-in-chief, he deposed that the original treatment record was obtained by Dr. Sachin Lohra from their hospital when his statement was recorded in this case as he was visiting surgeon to their hospital. They had not received original treatment file from him. Now, Dr. Sachin Lohra had left the country. In his cross-examination, he deposed that he had no record with him at the time of making deposition in the court that on which date, time and year Dr. Sachin Lohra visited their hospital. He had no document to prove that Dr. Sachin Lohra had obtained original record of Richhpal Singh from Sarvodya Hospital. He had no record which could prove that he deposited the same in the hospital. All the documents which were exhibited and marked were neither prepared nor signed by him. He admitted that a writ petition was filed against Sarvodya Hospital, in which files of Sarvodya Hospital were taken and examined in PGIMS, Rohtak. It has come on record that at the time of admission in the hospital on 23.11.2012, Richhpal Singh had only four injuries on his body. Patient did not mention any other injury. Thereafter, he remained in Sarvodya Hospital, Hisar, where he ultimately succumbed to his injuries on 31.12.2012. Majority of the injuries were surgical wounds. PW.21 Dr. Ripin also admitted that injuries No.9 and 10 mentioned in the post mortem report respectively correspond to injuries No.2 and 4 on the MLR. Injury No.8 mentioned in the post mortem report did not correspond to any injury in the MLR. Injury No.1 in the MLR may correspond to injury No.9 on the post mortem report. Injury No.3 in the MLR did not correspond to any injury mentioned in the post mortem report. The Investigating Officer also did not

take into possession medical record. PW.21 Dr. Ripin also admitted that injuries No. (i) to (vii) mentioned in the post mortem report did not find mention in the MLR.

35. The fact of the matter is that the prosecution case has not been supported by the wife of the deceased, i.e. PW.3 Binder Kaur, as well as by PW.1 Kuldeep Kaur and PW.4 Sulakhan Singh, brother of the deceased. According to PW.3 Binder Kaur and PW.4 Sulakhan Singh, their previous statements Ex.PC and Ex.PE, respectively, were recorded under the pressure of the police. The trial court has wrongly considered statement Ex.PW.20/Q as dying declaration, without being corroborated by any other evidence. The name of the doctor, who had given the opinion regarding the fitness of Richhpal Singh to make statement, has not been mentioned. The Investigating Officer did not call the doctor at the time of recording statement Ex.PW.20/Q. He also admitted that the doctor had not given time when Richhpal Singh was declared fit to make statement vide Ex.PW.20/P. He could get the statement of Richhpal Singh recorded before a Magistrate or Gazetted Officer between 05.12.2012 and 31.12.2012. He never met Richhpal Singh after 05.12.2012.

36. In **Adevappa Nagappa Anagolkar V. State of Karnataka, 1998 Criminal Law Journal 584**, a Division Bench of the Karnataka High Court has held that mental and physical condition of declarant has to be proved by positive evidence. Same cannot be discharged by merely producing a certificate. Certificate of doctor stating condition of declarant must be substantiated. The Division Bench has held as under :-

“3. The learned Advocate pointed out to us

that the dying declaration is in a cyclostyled form and that this is not the best way to record dying declaration. Though it is well settled law that a dying declaration should preferably be in question and answer form and that as far as possible the exact words used by the injured must be reproduced, it is certainly not desirable for cyclostyled forms to be prepared as has happened in the present case because it reduced the entire operation to a mechanical exercise and there is plenty of scope for malpractices particularly in situation where certain parts of the form may be left unfilled. It is therefore much safer to keep the dying declaration short, concise and to the point and to write out the questions and answers that have been elicited. The more serious challenge presented by Mr. Patil is with regard to the all important aspect of whether or not the patient was in a position to make a dying declaration either at the point of time when the police are supposed to have recorded the complaint statement and later on that night when the dying declaration was recorded by PW 8. Learned advocate has pointed out to us, and with some justification, that the Casualty Medical Officer certified on an initial examination that Laxmi had suffered 90% burns but he relies on the post mortem note wherein the doctor has pointed out that the burns were to the extent of 98% and that they were not superficial but that the burns were deep in several areas. He submits that in such a traumatic situation the doctors would obviously give the patient heavy dose of pain killers apart

from other forms of medication and it was therefore imperative for the doctor who certified that she was conscious and was in a position to make the statement, to have substantiated this statement before the trial Court. This is an argument of considerable significance because Mr. Patil is right when he submits that the maker of the dying declaration is not available for cross-examination, the person who recorded the dying declaration is an independent officer who will maintain that it is correctly recorded and the all important aspect as to what was the mental and physical condition of the patient has got to be proved by the prosecution through positive evidence which burden of proof in serious cases where the accused is facing a death sentence or a life imprisonment sentence cannot be discharged by merely producing a certificate. It is most necessary in cases of this type, that the doctor who certifies the condition of the patient must substantiate that position because once that evidence comes, it lends an air of total authenticity to the dying declaration. Conversely, where that evidence is not forthcoming, the defence loses the most valuable right of being able to establish that either because of the pain and injuries or the effect of the medication that the patient may not have been in either a fit mental or physical condition to cogently understand questions put and to give correct answers thereto. The learned S.P.P. has submitted that a certificate issued by a responsible doctor of a hospital must be

presumed to be correct and furthermore, that the officer who has recorded the dying declaration and who has given evidence must be believed when he states that the patient was conscious and was in a position to make a statement. As regards the first of the submissions we are afraid that it may be difficult in cases of such seriousness to impose the level of trust and confidence in the doctors which the learned S.P.P. requests us to do, as the experience in a large number of instances has been otherwise. It is therefore a rule of prudence that the certificates must be substantiated. Also, in this case Mr. Patil has drawn our attention to one other serious defect namely that the certificate from the doctor is separately issued and has not been endorsed on the dying declaration itself. His submission is that there is no guarantee that the certificate in question was in fact simultaneously issued which is an absolute necessity. As regards the second submission canvassed by the learned S.P.P. in this regard namely that the evidence of the officer who recorded the dying declaration is sufficient to establish that the deponent was in a fit mental and physical condition to make a statement, we need to clarify here that a Govt. officer or a police officer who casually comes to the hospital puts questions and takes down answers is certainly not the authority to be able to authoritatively conclusively indicate the exact condition of the patient. The fact that the person was in a position to hear something and give replies does not indicate that the person's

physical and mental faculties were in such a condition as to be able to provide absolutely true and correct answers. Since this Court had occasion to deal with the law and procedure relating to dying declaration. We would like to lay down that as a rule of caution it would be desirable that specific instructions are issued by the Home Dept. to the concerned police authorities that in all cases where a dying declaration is being recorded, similar to cases in which statements under Section 164, Cr.P.C. are recorded, the authority concerned should make an effort to satisfy himself that the maker of the statement has not been influenced, tutored or induced to say something which is not correct. If this precaution is taken and if for instance a note is made as to who was present in the hospital during the time preceding the recording of the dying declaration, it would inspire a lot of confidence in the mind of the Court that the declaration is fair and correct.”

37. In **Bhasker V. State of A.P., 2005 Criminal Law Journal 48**, a Division Bench of the Andhra Pradesh High Court has held that when the doctor who appended signature on dying declaration was not examined, was not in conformity with law. The Division Bench has held as under :-

“21. The learned Public Prosecutor argued that the signature of the doctor itself amounts to the certification and hence there is no need for separate certificate, and the evidence of the Magistrate has to be looked into with reference to the signature as that of the certification, and the evidence of the Magistrate and the dying

declaration has to be given its credence. But for the reasons best known to the prosecution the said doctor was not examined. The Apex Court in a latest judgment in P.V. Radha Krishna v. State of Karnataka, 2003 SCC (Cri) 1679 : 2003 Cri. L. J. 3717 has held that the dying declaration has also to be proved like the other evidence. But, in the case on hand it is to be noted that the doctor who has appended his signature to the dying declaration – Ex.P-4 and who has translated the dying declaration into Telugu has not been examined and the learned Magistrate purely depended on the version of the doctor to note down Ex.P-4. Hence the non-examination of the doctor is fatal to the prosecution. There is another circumstance to disbelieve the dying declaration. The Magistrate who has recorded the dying declaration deposed that he has obtained the certificate of the doctor and also the endorsement, but there is no certificate of the doctor. Therefore, we are of the opinion that Ex.P-4 need not be given any evidentiary value. It is pertinent to note that a reading of Ex.P-4 goes to show that the deceased deposed that her husband, mother-in-law, Thannu, two small children were present and her mother-in-law asked her husband to pour kerosene on her and set fire and her body was got burnt by her mother-in-law through her husband. Thus, the dying declaration of the deceased goes contrary to the evidence of P.W.2 who deposed that he has seen the accused setting fire to the saree of the deceased in the verandah and as such, in view of

the above contradictions, the evidence of P.W.2 also has no credence and evidentiary value and has to be discarded. However, in the background of the evidence, the trial Court came to the conclusion that it was the accused that poured kerosene on his wife and set her on fire. But, in view of the discrepancy in the evidence of P.Ws 1 and 2 with regard to the place of occurrence, we hold that the prosecution has failed to prove the place of occurrence of the incident and, therefore, the evidence of P.Ws 1 and 2 has to be discarded. There is discrepancy in the evidence of the learned Magistrate with regard to the obtaining of certificate by the doctor and the said certificate is not filed and hence, his evidence has no credibility and that we have no hesitation to observe that the recording of the dying declaration itself is against the rules framed under Criminal Rules of Practice. Rule 33 of Criminal Rules of Practice and Circular Orders, 1990, reads as follows :

“(1) While recording a Dying Declaration, the Magistrate shall keep in view the fact that the object of such declaration is to get from the declarant the cause of death or the circumstances of the transaction which resulted in death.

(2) Before taking down the declaration, the Magistrate shall disclose his identity and also ask the declarant whether he is mentally capable of making a declaration. He should also put simple questions to elicit answer from the declarant with a view to knowing his state of mind and should record the questions and answers, signs and

gestures, together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.

(3) The declaration should be taken down in the words of the declarant as far as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.

(4) After the statement is recorded, it shall be read over to the declarant and his signature obtained thereof, if possible, and then the Magistrate shall sign the statement.”

2. In this case, the learned Magistrate has not followed the procedure contemplated under Rule 33 of Criminal Rules of Practice while recording the dying declaration and hence, we are bound to observe that there is utter violation of Rule 33 of Criminal Rules of Practice and Circular Orders, 1990.”

38. Their Lordships of the Supreme Court in **Ranjit Singh and others V. State of Punjab, (2006) 13 Supreme Court Cases 130**, have held that conviction can be recorded on the basis of dying declaration alone, if the same is wholly reliable. Their Lordships have further held that in the event of suspicion as regards correctness or otherwise of the dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence. Their Lordships have held as under :-

“13. It is now well settled that conviction can be recorded on the basis of a dying declaration

alone, if the same is wholly reliable, but in the event there exists any suspicion as regards correctness or otherwise of the dying declaration, the courts in arriving at the judgment of conviction shall look for some corroborating evidence. It is also well known that in a case where inconsistencies in the dying declarations, in relation to the active role played by one or the other accused persons, exist, the court shall lean more towards the first dying declaration than the second one.”

39. In *Sher Singh and another V. State of Punjab, (2008) 4 Supreme Court Cases 265*, their Lordships of the Supreme Court have held that it is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Their Lordships have held as under :-

“16. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased

was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise."

40. In **Atbir V. Government of NCT of Delhi, (2010) 9 Supreme Court Cases 1**, their Lordships of the Supreme Court have summarised the salient principles governing the dying declaration as under :-

"14. It is true that in the case on hand, conviction under Section 302 was based solely on the dying declaration made by Sonu @ Savita and recorded by Investigating Officer in the presence of a Doctor. Since we have already narrated the case of prosecution which led to

three deaths, eliminating the second wife and the children of one Jaswant Singh, there is no need to traverse the same once again. This Court in a series of decisions enumerated and analyzed that while recording the dying declaration, factors such as mental condition of the maker, alertness of mind and memory, evidentiary value etc. have to be taken into account.

15. In **Munnu Raja v. State of M.P., (1976) 3 SCC 104**, this Court held :-

"6.....It is well settled that though a dying declaration must be approached with caution for the reason that the maker of the statement cannot be subject to cross-examination, there is neither a rule of law nor a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated...."

It is true that in the same decision, it was held, since the Investigating Officers are naturally interested in the success of the investigation and the practice of the Investigating Officer himself recording a dying declaration during the course of an investigation ought not to have been encouraged.

16. In **Paras Yadav v. State of Bihar, (1999) 2 SCC 126**, this Court held that lapse on the part of the Investigation Officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. This Court further held that a statement of the deceased recorded by a police officer in a

routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement.

17. *The effect of dying declaration not recorded by the Magistrate was considered and reiterated in **Balbir Singh v. State of Punjab, (2006) 12 SCC 283**. Para 23 of the said judgment is relevant which reads as under :*

*"23. However, in **State of Karnataka v. Shariff, (2003) 2 SCC 473**, this Court categorically held that there was no requirement of law that a dying declaration must necessarily be made before a Magistrate. This Court therein noted its earlier decision in **Ram Bihari Yadav v. State of Bihar, (1998) 4 SCC 517**, wherein it was also held that the dying declaration need not be in the form of questions and answers. (See also **Laxman v. State of Maharashtra, (2002) 6 SCC 710**.)"*

It is clear that merely because the dying declaration was not recorded by the Magistrate, by itself cannot be a ground to reject the whole prosecution case. It also clarified that where the declaration is wholly inconsistent or contradictory statements are made or if it appears from the records that the dying declaration is not reliable, a question may arise

as to why the Magistrate was not called for, but ordinarily the same may not be insisted upon. This Court further held that the statement of the injured, in event of her death may also be treated as FIR.

*18. In **State of Rajasthan v. Wakteng, (2007) 14 SCC 550**, the view in **Balbir Singh's case** has been reiterated. The following conclusions are relevant which read as under:*

"14. Though conviction can be based solely on the dying declaration, without any corroboration the same should not be suffering from any infirmity.

15. While great solemnity and sanctity is attached to the words of a dying man because a person on the verge of death is not likely to tell lie or to concoct a case so as to implicate an innocent person but the court has to be careful to ensure that the statement was not the result of either tutoring, prompting or a product of the imagination. It is, therefore, essential that the court must be satisfied that the deceased was in a fit state of mind to make the statement, had clear capacity to observe and identify the assailant and that he was making the statement without any influence or rancour. Once the court is satisfied that the dying declaration is true and voluntary it is sufficient for the purpose of conviction."

*19. In **Bijoy Das v. State of W.B., (2008) 4 SCC 511**, this Court after quoting various earlier*

decisions, reiterated the same position.

20. In **Muthu Kutty v. State, (2005) 9 SCC 113**, the following discussion and the ultimate conclusion are relevant which read as under :

"14. This is a case where the basis of conviction of the accused is the dying declaration. The situation in which a person is on the deathbed is so solemn and serene when he is dying that the grave position in which he is placed, is the reason in law to accept veracity of his statement. It is for this reason that the requirements of oath and cross-examination are dispensed with. Besides, should the dying declaration be excluded it will result in miscarriage of justice because the victim being generally the only eyewitness in a serious crime, the exclusion of the statement would leave the court without a scrap of evidence.

15. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross- examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the court also insists that the dying declaration should be of such a nature as to inspire full confidence of the court in its correctness. The court has to be on guard that the statement of the deceased was not as a result of either tutoring, or prompting or a product of imagination. The court must be further satisfied that the deceased

was in a fit state of mind after a clear opportunity to observe and identify the assailant. Once the court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence."

21. *The same view has been reiterated by a three Judge Bench decision of this Court in **Panneerselvam v. Stae of T.N., (2008) 17 SCC 190**, and also the principles governing the dying declaration as summed up in **Paniben v. State of Gujarat, (1992) 2 SCC 474**.*

22. *The analysis of the above decisions clearly shows that :*

(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an

absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”

41. Accordingly, both the appeals are allowed. The impugned judgment dated 04.10.2017 and order dated 07.10.2017, rendered by the

learned trial court, convicting and sentencing appellants Nishan Singh son of Mahender Singh, Hoshiar Singh, Amrik Singh, Surjit Singh, Hira Singh and Sukhdev Singh are set aside. The appellants are acquitted of all the charges framed against them. They are in custody. Their release warrants be prepared forthwith.

(**RAJIV SHARMA**)
JUDGE

July 17, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes