

2024:PHHC:078424-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

301

CRA-D-6-DB-2012
Date of Decision: 31.05.2024

Sukhdev Singh and others ...Appellants
Versus
State of Haryana ... Respondent

CORAM : HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. K.P.S. Virk, Advocate with
Mr. Parvesh Malik, Advocate
for the appellants.

Mr. Munish Sharma, DAG, Haryana.

Mr. S.S. Dinarpur, Advocate with
Mr. Rohit Singh, Advocate, for the complainant.

N.S.SHEKHAWAT, J.

1. By way of the present appeal, Sukhdev Singh father-in-law, Gurpreet Kaur mother-in-law, Ramandeep Kaur sister-in-law (Sali) and Kamaljeet Kaur wife of Manjeet Singh, since deceased (all appellants) have assailed the impugned judgment dated 14.11.2011 and order dated 19.11.2011 passed by the Sessions Judge, Panipat, whereby, the present appellants have been convicted for the commission of offence under Section 302 IPC read with Section 34 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/- each alongwith default stipulation.
2. As per the case set up by the prosecution, in the night

intervening of 11.11.2009, a V.T. *Rukka* was received in the Police Post Tehsil Camp, Panipat that Manjeet Singh son of Sahab Singh resident of New Ramesh Nagar Tehsil Camp, Panipat, was admitted in General Hospital, Panipat, due to burn injuries and he had been referred to P.G.I.M.S., Rohtak and the Investigating Officer may be sent for investigation. Next morning, Satbir Singh, ASI, went to P.G.I.M.S., Rohtak and after taking the opinion from the doctor, he had recorded the statement of Manjeet Singh, injured. After recording the statement of injured, he sent *Rukka* Ex.PM to the Police Station City Panipat and on the basis of the said *Rukka*, FIR Ex.PA/1 was recorded by Mahabir Singh SI. The statement of injured Manjeet Singh, injured, has been reproduced below:-

“Statement of Manjeet Singh son of Sahab Singh Caste Ramgarhiya Sikh resident of New Ramesh Nagar, Tehsil Camp. Panipat aged about 25 years.

Stated that I am resident of aforesaid address and I am running lathe machine. My marriage took place with Kanwaljeet Kaur daughter of Sukhdev Singh Caste Ramgarhiya Sikh resident of New Ramesh Nagar, Tehsil Camp Panipat, at about 2 ½ years ago. Dispute between us was going on since last many days. My father-in-law, oftenly said to me that I should get one plot transferred, and deposited Rs. 50,000/- in the name of his daughter. During this dispute a daughter was born. Now because of this dispute my wife Kanwaljeet Kaur had gone to her house from five-six days, Yesterday on dated 11.11.09 at 9.00 p.m. my wife sent a message to come and to take her back. I had gone to my in-laws house, there my father-

in-law Sukhdev Singh caught hold of me from behind and my mother-in-law Gurpreet Kaur sprinkled kerosene oil and my wife Kanwaljeet Kaur brought a match box and my sister-in-law Ramandeep Kaur set me on fire. They burnt me mercilessly, due to which my whole body was burnt. My in-laws burnt me with intention to kill me. Legal action may be taken against them. Statement got recorded to you, heard and is correct.

*Attested
Sd/-(In English)
Satbir Singh, ASI,
P.P.Tehsil Camp, Panipat.
Dated 12.11.2009.”*

*Sd/-(in English)
Manjeet Singh.*

3. During the course of investigation, Manjeet Singh expired on 15.11.2009 and offence under Section 302 IPC was added in the present case. After completion of usual investigation, the report under Section 173 Cr.P.C., was submitted by Suresh Kumar, Inspector, the then SHO of Police Station City Panipat and after examining the documents appended with the challan, the appellants/accused were ordered to be charged for committing the offence under Section 302/34 IPC, to which, they pleaded not guilty and claimed that they may be tried.

4. In order to prove the allegations against the present appellants/accused, the prosecution had placed reliance on the testimonies of 15 witnesses. The prosecution examined PW1 Mahabir Singh SI, who had recorded the formal FIR Ex.PA/1 after receipt of the *Rukka* from ASI Satbir Singh. The prosecution further examined

Constable Navrattan, who had delivered the special reports in the present case. EHC Jagbir Singh, Draftsman, was examined as PW3, who had prepared the scaled site plan Ex.PB with correct marginal notes. As per him, Point 'A' was shown in the site plan Ex.PB near the main gate of the house, where the deceased had received burn injuries. There is a *Pucca* street near the said gate. The incident took place at a distance of 1½ feet inside the main gate. The Investigating Officer had not shown him any other place in the said house except Point 'A'. He admitted that the said house was surrounded by the residential houses. The statement of PW4 HC Jasmer Singh, Draftsman, was formal in nature. The prosecution further examined PW5 Dr. Shalander Rana, Medical Officer, who had conducted the MLR of Manjeet Singh at 09.30 p.m. on 11.11.2009. Manjeet Singh was accompanied by his father Sahab Singh. He stated that the patient had the alleged history of burn at 09.00 p.m. on 11.11.2009 at New Ramesh Nagar, Tehsil Camp. The patient was conscious, oriented and the BP was 100/60 M.M.H.G. Approximately 80% to 90% burns were there and the patient was referred to P.G.I.M.S., Rohtak after giving him initial treatment. In his cross-examination, he stated as under:-

“On the same day at about 10.45 P.M., I medico legally examined Ramandeep daughter of Sukhdev Singh, aged 18 years accused present in the Court accompanied by Harvinder Singh, her brother with alleged history of burn at 9.00 p.m. on 11.11.2009 at Ramesh Nagar in

house. Patient was conscious, well oriented, vital stable. On examination, I found burn marks on right forearm, Bulla (Challa) present. The patient was having superficial burns on her right thigh lateral side. Approximate burns were 10%. The patient was advised surgeon opinion. Ex. DA is the photocopy of the original MLR, which I have brought today.

On the same day at about 10.45 p.m., I also medico legally examined Sukhdev Singh son of Inder Singh, accused present in the Court aged 42 years, who himself came for medico legal examination with alleged history of burn on 11.11.2009 at 9.00 p.m. at New Ramesh Nagar, Panipat. Patient was conscious, well oriented and vital stable. On examination, I found that the patient was having burn marks on right forearm:-

- 1. 4 x 3 cm.*
- 2. 2 x 1 cm.*

Approximate burn 2 to 3%. Surgeon opinion was advised. First aid was given. Ex. DB is the photocopy of the MLR, original of which I have brought today.

I had not taken into possession the burnt clothes worn by the deceased at the time of medico legal examination. I had not given the type, description or colour of the clothes worn by the deceased. I had also not noted whether the deceased was wearing cotton clothes or synthetic clothes. It is correct that the synthetic clothes are more inflammable. The patient Manjeet Singh remained in the hospital for about 10-15 minutes only. My duty hours were from 8.00 p.m. to 8.00 a.m. on that day. Just after fifteen minutes after my referral, the patient was shifted to P.G.I.M.S., Rohtak. The patient was taken in a private vehicle. The burn injuries on the

person of Sukhdev Singh and Amandeep Kaur could be caused in the process of extinguishing the fire on the person of deceased Manjeet Singh. It is correct that when the skin is peeled in the case of Manjeet Singh, it could be possible in the process of extinguishing the fire. I cannot say if the patient remained in the hospital for about 3 hours and not for the period stated by me”.

5. The prosecution examined Dr. B.K. Rai as PW6, who had conducted the postmortem on the dead body of Manjeet Singh on 15.11.2009. As per him, the cause of death was burn and its complications and the burn injuries were antemortem in nature and sufficient to cause death in the present case. The prosecution further examined PW7 Darshan Singh, who was related to Manjeet Singh, since deceased. He had identified the dead body of Manjeet Singh. He remained with Manjeet Singh since 09.00 p.m. on 11.11.2009. In his cross-examination, he stated that Manjeet Singh was referred to P.G.I.M.S., Rohtak only after 15 minutes' stay in the General Hospital, Panipat. They started from the General Hospital Panipat at about 09.30/09.45 p.m., for Rohtak and they reached there within 2 ½ hours. They had not seen Sukhdev Singh and his daughter Ramandeep Kaur, in the General Hospital Panipat. They came to know in the Court only about the burn injuries suffered by the accused while extinguishing the fire on the person of the deceased. The prosecution further examined PW8 Geeta Rani, a neighbourer. As per her, at about 08.30/8.45 p.m. on 11.11.2009, she was present in her house and heard the cries of children outside her house. She saw

that Sukhdev Singh accused was extinguishing the fire on the person of Manjeet Singh, since deceased with a blanket. Manjeet Singh was son-in-law of Sukhdev Singh accused. Ramandeep Kaur, accused, present in the Court was coming out from her house after applying Colgate on her burn injuries. In her cross-examination, she stated that she had not seen where and how Manjeet Singh received burn injuries. She stated before the police that she did not know whether he himself had put on fire or otherwise. There were other houses also in their locality. Kanwaljeet Kaur had been residing at her parental house for the last 04/05 days prior to the occurrence. Kanwaljeet Kaur and Manjeet Singh were not having good relations since their marriage. Number of persons had gathered at the spot, but she could not tell the names of other persons. The prosecution further examined PW9 Ravinder son of Jai Parkash. On 11.11.2009, he met Manjeet Singh son of Sahab Singh. He dropped Manjeet Singh at the turning of the street, leading towards the house of his in-laws and he returned to his house. When he dropped him, he was in normal mental condition and was not under the influence of liquor. After some time, he was informed that Manjeet Singh was set on fire. He brought Amar Panch, Sandeep and Pardeep in his vehicle to General Hospital Panipat. He did not know whether Manjeet Singh set himself on fire or he was set on fire by someone else. In his cross-examination, he admitted that previously Manjeet Singh was a taxi driver and he left that work and was without job. He was his friend. He had never told

him about his family affairs. The house of Manjeet Singh was at a distance of about 700/800 feet from his house. The house of Manjeet Singh was at a distance of 650/700 feet from the house of his in-laws. There are 15/20 houses between the house of Amar Singh Panch and house of in-laws of Manjeet Singh.

6. The prosecution further examined PW10 Sahab Singh, father of Manjeet Singh. On 11.11.2009, he was present in his house and his son Manjeet Singh came out in a burning condition and his fire was already extinguished. He told him that his in-laws had burnt him. He brought his son to General Hospital, Panipat, from where, he was referred to P.G.I.M.S., Rohtak. On 12.11.2009, the police came at P.G.I.M.S., Rohtak. Firstly, the police recorded the statement of his son Manjeet Singh and, thereafter, he handed over the burnt clothes to the police. The smell of kerosene was present in the clothes. In his cross-examination, he stated that his statement was recorded by the police in P.G.I.M.S., Rohtak on 12.11.2009 and 15.11.2009. He was confronted with his statement, when he stated that his son had come to the house having burn injuries and told him that his in-laws had burnt him. He was duly confronted with his statement Ex.DD in this regard. He stated that previously his son Manjeet Singh was a taxi driver. He used to do the turner job with him at the time of the occurrence. His daughter-in-law Kanwaljeet Kaur, the accused present in the Court had gone to her parental house for the last 5/6 days. She had gone happily and not due to any quarrel between her

and them. He admitted that his son had gone 2/3 times during last 5/6 days to bring her back, but she refused to come with him. Kanwaljeet Kaur, had also given birth to a female child, which was aged about 2½ years. Manjeet Singh remained in the General Hospital Panipat for 15/20 minutes. Darshan Singh was also with them in General Hospital, Panipat. They left for Rohtak at about 09.30/10.00 p.m. in an ambulance. He did not see the accused in the General Hospital Panipat on that day. Darshan Singh and 08/10 other persons had accompanied him to P.G.I.M.S., Rohtak in the night of 11.11.2009. They had not informed the police about the occurrence before leaving Panipat as they had no time. Manjeet Singh was admitted in general ward of P.G.I.M.S., Rohtak and he remained admitted there till 5/6 p.m. on 12.11.2009. Since the time he was admitted in the hospital, one of them used to remain present on the bed side of Manjeet Singh. There was a police post attached to the P.G.I.M.S., Rohtak and they had not informed the police of the said police post. The police had arrived in the P.G.I.M.S., Rohtak at about 12.00 noon and they firstly recorded the statement of his son. The statement of Manjeet Singh was recorded at noon time. His statement was also recorded at about 02.00 p.m. on 12.11.2009. He remained with his son Manjeet Singh till 15.11.2009 except on one occasion, when he came to Panipat. The prosecution further examined PW11 Ram Pal Sub-Inspector, who conducted investigation initially in the present case. In his cross-examination, he stated that he had not come to know after the

arrest of Sukhdev Singh accused that he had received burn injuries while extinguishing the fire of Manjeet Singh. However, he had come to know that Ramandeep Kaur accused had received burn injuries while extinguishing the fire on the person of Manjeet Singh and she was medically examined. Ramandeep Kaur and Sukhdev Singh had moved an application on 11.11.2009 to the S.P. Panipat, informing him that they had received burn injuries while extinguishing the fire of Manjeet Singh. The application was not on police file but he had made a report on the said application and sent it back to S.P. Office. He had investigated the case on the line as to how Ramandeep Kaur and Sukhdev Singh received injuries in the occurrence. He admitted that Dr. Neelam Arya, SSA Scene of Crime FSL Haryana, Madhuban had visited the spot alongwith him. On the spot, no peculiar smell of any inflammable could be observed in the house and no stain of any inflammable etc., could be available on the floor and wall etc. and also no bottle, cane and matchbox could be found at the spot. There was evidence of burning of clothes, bed sheet etc., inside the room of the house. The beddings and other clothes lying on the spot in the same condition, when he visited the spot. He did not make any efforts nor advised ASI Satbir Singh to get the dying declaration of the deceased recorded. On 27.01.2010, he recorded the statement of ASI Satbir Singh. He had inquired from him as to why the statement of deceased was not recorded by a Magistrate or in the presence of the doctor or in the presence of two respectable witnesses. He admitted

that in his opinion, it was necessary to observe the said Rules for recording the statement of a person in a serious condition.

7. The statement of PW12 Constable Jai Bhagwan was formal in nature. The prosecution examined PW13 Dr. Tapan Singh Chauhan, before whom, the police officials moved an application Ex.PN to know whether Manjeet Singh was fit to make the statement or not. On this, he opined Ex.PL/1 that the patient was fit to make the statement. In his cross-examination, he stated that Manjeet Singh (since deceased) was admitted on 11.11.2009 by Dr. Gulshan Garg and the cause of death was septicemia and burns. The condition of patient was serious and he had observed 80% to 90% burns. The Investigating Officer, who had come to him for seeking his opinion whether patient Manjeet Singh was fit to make statement, he had inquired from him about the condition of patient. He had told him that the condition of patient was serious. There was a police post attached with the P.G.I.M.S., Rohtak. He admitted that as per the practice whenever the relative or the Investigating Officer so requires that the statement of the patient be recorded by the Judicial Magistrate, they would call for the said Magistrate to record his statement. In the present case, neither the relative of the deceased nor the Investigating Officer requested them to call the Judicial Magistrate to record the dying declaration of the patient. The Investigating Officer did not request him to attest the statement of Manjeet Singh after recording the same. The prosecution further examined PW14 ASI Satbir Singh,

who had recorded the statement of Manjeet Singh Ex.PM and sent *Rukka* to the police. He also remained associated with the investigation, which was conducted by SI Ram Pal. In his cross-examination, he stated that he had received V.T. message at about 10.30 p.m. on 11.11.2009. He had inspected the spot on 11.11.2009. He informed SI Ram Pal about the receipt of V.T. message and, thereafter, he proceeded to P.G.I.M.S., Rohtak. He reached P.G.I.M.S., Rohtak at about 12.00 noon on 12.11.2009. He had not inquired in P.G.I.M.S., Rohtak about the doctor, who had given treatment to Manjeet Singh. Sahab Singh, father of Manjeet Singh met him in the hospital at about 2.00 p.m. One or two more persons were there alongwith Sahab Singh in P.G.I.M.S., Rohtak. He also inquired from Dr. Tapan Singh Chauhan about the condition of the patient whether he was in serious condition or not and Dr. Tapan Singh Chauhan told him that he was not in a serious condition. He did not ask the doctor to attest the statement of the patient after recording the same. He further stated that seeing the condition of the patient, he did not think it necessary to get the statement recorded by a Magistrate. He was well aware of the legal proposition as envisaged under the Police Rules and the High Court Rules and Orders that the statement of such patient should have been recorded by the Magistrate or that it should be attested by two independent witnesses or the doctor concerned. He stated that since his condition was not serious, so he did not feel it necessary to get the statement recorded by a

Magistrate. He did not know whether Sukhdev Singh and Ramandeep Kaur received received burn injuries in this case and they were also admitted in General Hospital, Panipat. The prosecution further examined Shiv Kumar as PW15, whose testimony was formal in nature.

8. After conclusion of the prosecution evidence, the statements of the accused were recorded under Section 313 Cr.P.C. In his defence, appellant No.1 Sukhdev Singh stated as under:-

“We are innocent and we have been falsely implicated in this case. My daughter Kanwaljeet Kaur was harassed and tortured by Sahab Singh, her husband Manjeet Singh and other family members as they were greedy persons. Manjeet Singh deceased was without job and used to take drinks and his behaviour was also not good towards my daughter. Moreover, on 6.11.2009, a few days prior to the occurrence, his father Sahab Singh PW had divested Manjeet Singh from his property and published the same news in Punjab Kesari in its issue dated 7.11.2009. Five-six days prior to the occurrence, my daughter Kanwaljeet Kaur alongwith her newly born daughter came to my house. During this period Manjeet Singh deceased visited our house 2-3 times and pressurized my daughter to accompany him to his house, but my daughter refused to accompany him for the reasons stated above. Manjeet Singh was thus under stress and mental depression. On the night of 11.11.2009, Manjeet Singh after himself putting fire on his clothes entered in the bed room of our house and I and my daughter Ramandeep Kaur extinguished fire on

his person and thereafter with the help of neighbours, we got him admitted in General Hospital, Panipat and his father Sahab Singh was also informed, who also reached in the hospital. I and my daughter Ramandeep Kaur were also medico legally examined. Sahab Singh PW with the connivance of Satbir Singh Assistant Sub Inspector maneuvered to fabricate false statement of the deceased in order to falsely involve us in this false case. The deceased had committed suicide.”

The other appellants also adopted the above stand, as stated by Sukhdev Singh accused and stated that they were innocent in the present case.

9. In their defence, the appellants examined Dr. Neelam Arya, Senior Scientific Assistant, Forensic Science Laboratory Madhuban as DW1, who had visited the scene of crime in the present case and had minutely examined the physical evidence related to crime on 13.11.2009 and made observation on the spot and also gave advice to the Investigating Officer. She prepared a detailed report Ex.DF. In her cross-examination, she stated that she was not aware as to whether the Investigating Officer had made compliance as per her advice or not. She had made the following observations and given following advice to the Investigating Officer, as per her report Ex.DF:-

OBSERVATIONS:

1. The spot of occurrence was the Manjeet's (deceased's) in-laws house, located at New Ramesh Nagar, Tehsil Camp, Panipat.

2. After entering in the house, there was a room, in which a bed, sofa, central table, TV and other house hold articles were lying

3. Bedding (chadder, gadda, blanket, Pillow etc) lying on the bed, were found partially brunt as it was said that after getting fire the deceased came in this room.

4. Near the bed, there was a cemented self built in the adjacent wall, the books wrapped in newspaper were lying on the self and were found partially brunt from the outer side.

5 Brunt/partially brunt particles were found stick here and there on the articles in the room.

6. A remote (of T.V.) was also found lying on the bed with battery cover open and brunt/partially brunt particles were stick on it.

7. Brunt/partially particles were also found stick on the wall just adjacent to the bed.

8. Some brunt/partially brunt clothes pieces/particles were found stick on the main entry stair case in front vertical position and some smoke poattern was also observed at the same position.

No any peculiar smell of any inflammable could be observed in the house and no of inflammable etc could be observed on the floor and wall etc.

10. No any bottle, cane, match box could be found on the spot.

ADVISE TO I.O:-

IO was informed of the observations at the spot.

IO was advised to get the spot photographed.

IO was further advised to send the collected brunt partially brunt clothes/particles from the spot and cloths of deceased (handed over by the doctor), to FSL(H) for

the presence of inflammable material, if any”.

10. Learned counsel for the appellants vehemently argued that in the present case, the occurrence had taken place at about 09.00 p.m. on 11.11.2009. However, the statement of Manjeet Singh (since deceased) was recorded at 1.30 p.m on 12.11.2009 after a long and unexplained delay. He further submitted that even PW10 Sahab Singh admitted that he or some one else of his family used to remain on the bed side of the deceased, while he was admitted in P.G.I.M.S., Rohtak. He further submitted that he remained with his son from his house till his death on 15.11.2009 except on one occasion, when he came to Panipat. Consequently, Sahab Singh and other family members had ample opportunity to tutor Manjeet Singh, since deceased, to falsely involve the appellants in the present case. Even otherwise, Manjeet Singh, since deceased was jobless and was disinherited by his father. Apart from that he had gone to the house of the appellants several times in those 5/6 days as his wife Kanwaljeet Kaur, appellant No. 4 had refused to accompany him. Thus, he was also unhappy with the appellants and falsely involve them in the present case. Still further, it is also apparent from the treatment record of Manjeet Singh that his condition was serious and this fact was told to his father on 12.11.2009 itself. Even, ASI Satbir Singh was told by Dr. Tapan Singh Chauhan that the condition of Manjeet Singh was serious, still, ASI Satbir Singh made no efforts to call the Magistrate or a doctor or some respectables to get the dying declaration recorded

in the present case. Moreover, even the alleged dying declaration was not even attested by the doctor, who had declared Manjeet Singh fit in the present case. Thus, such a dying declaration was surrounded by suspicious circumstances and no reliance could be placed on the same. Apart from that, the appellants had no reason to set Manjeet Singh on fire. PW10 Sahab Singh, his father had already admitted that his daughter-in-law Kanwaljeet Kaur appellant No.4 had gone to parental house happily and not due to any quarrel. Apart from that, Kanwaljeet Kaur was having a new born baby in her lap and she had no reason to set her own husband on fire in the present case. Apart from that, Dr. Neelam Arya, DW1 had prepared an independent report, according to which, there was no peculiar smell of any of inflammable could be observed in the house and there was no stain of inflammable substance on the floor or the walls. There was no bottle, cane or matchbox at the spot. Apart from that, in the present case, Sukhdev Singh and Ramandeep Kaur, appellants No. 1 and 3 had also suffered burn injuries, which were admitted by PW5 Dr. Shalander Rana and they tried to extinguish the fire as Manjeet Singh sat himself on fire in their house. Thus, the appellants were liable to be acquitted by this Court.

11. On the other hand, learned State counsel submitted that in the present case, the case of the prosecution rests on the dying declaration made by Manjeet Singh, since deceased. Since there was a family dispute between them, accused/appellants had set Manjeet

Singh on fire. Learned State counsel further submitted that the dying declaration made by Manjeet Singh could not be discarded on the ground that it was not recorded by the Magistrate or some doctor or independent witness. In fact, ASI Satbir Singh was not aware of the procedure and the prosecution cannot be made to suffer on the ground of negligence on the part of the Investigating Officer. He further contended that Sukhdev Singh and Ramandeep Kumar had suffered injuries after setting Manjeet Singh on fire. Thus, the impugned judgment is liable to be upheld by this Court.

12. We have heard the learned counsel for the parties at length and have perused the trial Court record carefully.

13. In the present case, the main question, which emerges for consideration by this Court is as to whether it would be safe to base the judgment of conviction in the present case on the basis of the dying declaration made by Manjeet Singh, since deceased and the other evidence adduced by the prosecution. We have to examine the worth of the dying declaration in the present case as the dying declaration is neither a deposition in Court nor is made on oath nor in the presence of accused nor it is tested by cross-examination. It is always treated as exception to the general rule against the admissibility of hearsay evidence. Rather the admissibility of dying declaration is founded on the principles of necessity. To hold the dying declaration reliable, a finding has to be arrived at by the Court as to the satisfaction that the deceased was in a fit state of mind and

capable of making a statement at the relevant time and whether the statement was free from any kind of tutoring/external influence. Such statement should not only be free from doubts, but the Court also has to ascertain as to whether the maker of the statement was in a fit mental condition and it was so certified by the doctor also. Such dying declaration, if recorded by a Magistrate, doctor or some respectable carries more evidentiary value.

14. While discussing the relevance of a dying declaration, the Hon'ble Supreme Court in the matter of ***Smt. Laxmi Vs. Om Parkash and others, 2001(3) R.C.R. (Criminal) 358: 2001 AIR (Supreme Court) 2383*** has held as follows:-

*“30. A dying declaration made to a police officer is admissible in evidence, however, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or the police officer later on relied on as dying declarations. In ***Munnu Raja and another v. The State of Madhya Pradesh, AIR 1976 Supreme Court 2199***, this Court observed - "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 be encouraged". The dying declaration recorded by the investigating officer in the presence of the doctor and some of the friends and relations of the deceased was excluded from consideration as failure to requisition the services of a Magistrate for recording the dying declaration was not explained. In **Dalip Singh v. State of Punjab, AIR 1979 Supreme Court 1173** this Court has permitted dying declaration recorded by investigating officer being admitted in evidence and considered on proof 'that better and more reliable methods of recording dying declaration of injured person' were not feasible for want of time or facility available. It was held that a dying declaration in a murder case, though could not be rejected on the ground that it was recorded by a police officer as the deceased was in a critical condition and no other person could be available in the village to record the dying declaration yet the dying declaration was left out of consideration as it contained a statement which was a bit doubtful".*

15. Still further, the Hon'ble Supreme Court in the matter of **Jayamma and another Vs. State of Karnataka** and its connected case titled as **Lachma s/o Chandyanika and another Vs. State of Karnataka, 2021(3) R.C.R. (Criminal) 50: 2021 AIR (Suprem Court) 2399** has summed up the law relating to the admissibility and credibility of a dying declaration in a criminal case and held as follows:-

"14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the

sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

*A. In **P.V. Radhakrishna. v. State of Karnataka, (2003) 6 SCC 443**, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.*

*B. In **Chacko v. State of Kerala, (2003) 1 SCC 112**, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient*

conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer, made before the court for the first time, in any manner improve the prosecution case.

*C. In **Sham Shankar Kankaria v. State of Maharashtra, (2006) 13 SCC 165**, it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in **Paniben v. State of Gujarat, (1992) 2 SCC 474** wherein this Court summed up several previous judgments governing dying declaration, the Court in **Sham Shankar Kankaria (Supra)** reiterated::*

*"(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See **Munnu Raja v. State of M.P. [(1976) 3 SCC 104]**);*

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See **State of U.P. v. Ram Sagar Yadav [(1985) 1 SCC 552 and Ramawati Devi v. State of Bihar [(1983) 1 SCC 211]**);*

*(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. (See **K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]**);*

(iv) *Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See **Rasheed Beg v. State of M.P. [(1974) 4 SCC 264]**);*

(v) *Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See **Kake Singh v. State of M.P. [1981 Supp SCC 25]**);*

(vi) *A dying declaration which suffers from infirmity cannot form the basis of conviction. (See **Ram Manorath v. State of U.P. [(1981) 2 SCC 654]**);*

(vii) *Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See **State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]**);*

(viii) *Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See **Surajdeo Ojha v. State of Bihar [1980 Supp SCC 769]**);*

(ix) *Normally the court in order to satisfy whether the 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 the dying declaration, the medical opinion cannot prevail. (See **Nanhau Ram v. State of M.P. [1988 Supp SCC 152]**);*

(x) *Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See **State of U.P. v. Madan Mohan [(1989) 3 SCC 390]**);*

(xi) *Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying*

declaration could be held to be trustworthy and reliable, it has to be accepted. (See Mohanlal Gangaram Gehani v. State of Maharashtra [(1982) 1 SCC 700])”.

16. There is no dispute that when a dying declaration has been recorded in accordance with law and offers a complete picture of the correctness of the occurrence, the Court can rely upon it as the solitary piece of evidence to convict the accused in a criminal trial. It is equally settled that a dying declaration is an exception to the general rule against the admissibility of hearsay evidence under Section 32 of the Indian Evidence Act 1872. However, if the Court comes to the conclusion that the dying declaration is made by the maker of the statement under some external influence or he was tutored or such statement was infected by any motive or malice, it can certainly be rejected by the Courts. Keeping in view the settled principles of law, now we proceed to examine the reliability of the dying declaration made by Manjeet Singh, since deceased, before ASI Satbir Singh PW14. In the present case as per the admitted case of the prosecution the alleged occurrence had taken place at about 09.00 p.m. on 11.11.2009 and the police was immediately informed. However, the statement of Manjeet Singh was recorded at about 1.30 p.m. on 12.11.2009 in P.G.I.M.S., Rohtak. Before the statement of Manjeet Singh could be recorded an opinion was sought from Dr. Tapan Singh Chauhan, PW13 by moving an application Ex.PL11 with regard to the fitness of Manjeet Singh and he had declared the injured fit to make the statement. He had also informed PW14 ASI Satbir

Singh that the condition of the patient was serious, but, in the present case instead of calling any Magistrate, doctor or any other respectable, ASI Satbir Singh proceeded to record the statement of Manjeet Singh (since deceased). Even, he was aware of the fact that as per the law, he was required to call a Magistrate, still he ignored the mandate of law. Apart from that, from a perusal of statement Ex.PM, it is apparent that the said statement was not even attested by a doctor. Even there is no note at the end of the statement that during the course of recording the statement of Manjeet Singh, he remained in a fit and proper state of mind and there is no attestation by the doctor in this regard. Apart from that, in the present case, the statement of PW10 Sahab Singh was recorded by the trial Court and he clearly stated that since 09.00 p.m. on 11.11.2009, either he or any other person from his family remained with Manjeet Singh (since deceased) and in the considered opinion of the Court, there is a possibility that Manjeet Singh had presented a tutored version before ASI Satbir Singh or ASI Satbir Singh had recorded the statement of Manjeet Singh under the influence of Sahab Singh PW10 and his other family members.

17. Before proceeding any further, we would highlight the following facts, which emerge from the evidence before the trial Court and raise serious questions on the admissibility as well as reliability of dying declaration by Manjeet Singh:-

(A) As per the version, the alleged occurrence had taken

place at 09.00 p.m. on 11.11.2009. In the present case, the prosecution examined PW3 EHC Jagbir Singh, Draftsman, who had prepared the scaled site plan Ex.PB with correct marginal notes. In the scaled site plan, he had shown Point “A”, where the occurrence had taken place. Point “A” was near the main gate of the house, where the deceased had received burn injuries. The incident took place at a distance of 1½ feet inside the main gate and there was a *pucca* street near the said gate. He also admitted that the said house was surrounded by residential houses. In fact, in the present case, four family members are facing prosecution for setting Manjeet Singh on fire. It is highly improbable that they would set Manjeet Singh on fire at Point “A”, which is situated at the main gate of the house adjoining to a pucca street in a thickly populated area. Even, the house of Manjeet Singh was admittedly situated at a distance of about 650/700 feet from the place of the occurrence. Thus, the occurrence was clearly visible from the street and it is highly unbelievable that the appellants would set their own son-in-law on fire in full public view, when three of the accused are ladies including his own wife.

(B) Still further, in the present case, the prosecution had examined Sahab Singh, father of Manjeet Singh, since deceased as PW10. As per the prosecution, Kanwaljeet Kaur

appellant No. 4 was married to deceased about 3 ½ years ago. She had gone to her parental house for the last about 5/6 days and she had gone happily and not due to any quarrel between them and her. He also admitted that his son Manjeet Singh had gone 2/3 times during this period of 5/6 days prior to the occurrence to bring her back but she refused to come alongwith him. Apart from that Kanwaljeet Kaur appellant No. 4 had a newly born female child, which was born out of the wedlock between her and Manjit Singh. Thus, it is highly improbable that Kanwaljeet Kaur and her family members would set Manjeet Singh, their own son-in-law on fire, when there was no serious dispute between the parties and motive to commit the crime is clearly absent in the present case.

(C) The prosecution further examined PW8 Geeta Rani, an independent witness, who had witnessed the occurrence in the present case. As per her, at about 08.30/08.45 p.m. on 11.11.2009, she heard cries of the children and come out of her house. She saw that Sukhdev Singh appellant No. 1 was extinguishing the fire on the person of Manjeet Singh with a blanket. Even, Ramandeep Kaur, appellant No. 3 was coming out of her house after applying Colgate on her burns. She further admitted that there was other houses in their locality. Kanwaljeet Kaur was residing in her parental house for the last 4/5 days prior to the occurrence. Kanwaljeet Kaur

and Manjeet Singh were not having good relations. She admitted that Sukhdev Singh and Ramandeep Kaur were present at the spot. Thus, even Geeta Rani PW8 an independent witness had not supported the case of the prosecution and from her testimony, it is clear that Sukhdev Singh and Ramandeep Kaur tried to extinguish the fire on the person of Manjeet Singh and she had completely supported the version of the defence in the present case.

(D) In the present case, the prosecution had examined PW5 Dr. Shalander Rana, who stated that at 10.45 p.m. on 11.11.2009, he had examined Ramandeep Kaur, appellant No. 3 with the alleged history of burns. He found that the patient was having 10% burns in the present case and he proved his original MLR Ex.DD. At the same time, he medico legally examined Sukhdev Singh appellant No. 1 and found that the patient was having burn marks on the right forearm and has suffered 2 to 3 % burns on his hands. The doctor clearly stated that the burn injuries on the person of Sukhdev Singh and Ramandeep Kaur could be caused in the process of extinguishing the fire on the person of Manjeet Singh, since deceased. He admitted that when the skin is peeled in case of Manjeet Singh, it could be possible in the process of extinguishing the fire. Thus, from the evidence of PW5 Dr. Shalander Rana, it is evident that Sukhdev Singh

and Ramandeep Kaur had tried to extinguish the fire on the person of Manjeet Singh. This fact is also corroborated by the testimony of PW8 Geeta Rani as well.

(E) Even otherwise, the version of the alleged dying declaration of Manjeet Singh is highly unbelievable. Admittedly, Manjeet Singh had suffered 80% to 90% of the burn injuries. From a perusal of his statement/alleged dying declaration, it is apparent that he tried to assign specific roles to all the appellants. As per him, Sukhdev Singh had caught hold of him from behind and his mother-in-law Gurpreet Kaur, appellant No. 2 had sprinkled kerosene oil on him. His wife Kanwaljeet Kaur appellant No. 4 brought a matchstick and his sister-in-law Ramandeep Kaur appellant No. 3 set him on fire. From a reading of the said statement itself, it is evident that he assigned specific roles to all the accused. Further, it is highly improbable that Sukhdev Singh, father-in-law would catch hold of him from behind, when kerosene oil was being sprinkled on him by Gurpreet Kaur. Still further, if an accused is catching hold of a victim and another accused is trying to sprinkle kerosene oil on the victim, even the first accused is likely to catch fire. Still further, even the version as mentioned in the dying declaration Ex.PM, does not inspire confidence as it seems to be a tutored statement and a futile attempt has been made to

rope in all the family members of his wife, with whom, he was apparently annoyed. Apart from that, the said statement has not been even attested by a doctor i.e. PW13 Dr. Tapan Singh Chauhan, who had given a fitness certificate about the medical condition of Manjeet Singh, since deceased.

(F) Still further, the dying declaration was recorded by ASI Satbir Singh PW14. He stated in his statement that he had not asked the doctor to attest the statement of Manjeet Singh, after recording the same. He had inquired from Dr. Tapan Singh Chauhan PW13 about the medical condition of the patient whether he was in a serious condition or not and he was told that he was not in a serious condition. Apparently, PW14 ASI Satbir Singh was making a false statement before the trial Court. PW13 Dr. Tapan Singh Chauhan had clearly stated that he had told the concerned police official that the condition of patient was serious. Even otherwise, Manjeet Singh had suffered 80% to 90% burns and the statement of PW14 ASI Satbir Singh is liable to be disbelieved on this ground. Apart from that, he stated that seeing the condition of the patient, he thought it necessary not to call a Magistrate for recording the statement. In the same breath, he admitted that he was well aware of the legal proposition as envisaged under the Police Rules and the High Court Rules and Orders that the statement of such patient should have been recorded

by the Magistrate or that it should be attested by two independent witnesses or the doctor concerned. Thus, this court has reasons to believe that PW14 ASI Satbir Singh had apparently colluded with the complainant side and either he recorded the statement of Manjeet Singh, since deceased, on his own under the influence of the complainant side or Manjeet Singh had made a tutored statement.

(G) Still further, in the present case, after suffering the injuries, Manjeet Singh was taken to General Hospital, Panipat for treatment. The prosecution had examined PW5 Dr. Shalander Rana, Medical Officer, General Hospital, Panipat. In his deposition, he stated that the patient had alleged history of burns at 09.00 p.m. on 11.11.2009 at New Ramesh Nagar, Tehsil Camp Panipat. As per him, the patient was conscious and oriented and his BP was 100/60 M.M.H.G. He was accompanied by his father Sahab Singh. In fact, Dr. Shalander Rana is only an independent witness, but was also first to record the history of crime in the present case. On that day, injured Manjeet Singh was conscious and oriented, who was admittedly accompanied by his father Sahab Singh and both of them might have disclosed the history to the doctor. None of them stated that Manjeet Singh was set on fire in his matrimonial home by his wife and her other family members. Had there been any

such case, they would have definitely got it recorded before PW5 Dr. Shalander Rana.

(H) Still further, in the present case, the accused had examined Dr. Neelam Arya, Senior Scientific Assistant, Forensic Science Laboratory Madhuban as DW1, who prepared a report on the spot and made certain observations and gave advise to the Investigating Officer as follows:-

OBSERVATIONS:

- 1. The spot of occurrence was the Manjeet's (deceased's) in-laws house, located at New Ramesh Nagar, Tehsil Camp, Panipat.*
- 2. After entering in the house, there was a room, in which a bed, sofa, central table, TV and other house hold articles were lying*
- 3. Bedding (chadder, gadda, blanket, Pillow etc) lying on the bed, were found partially brunt as it was said that after getting fire the deceased came in this room.*
- 4. Near the bed, there was a cemented self built in the adjacent wall, the books wrapped in newspaper were lying on the self and were found partially brunt from the outer side.*
- 5 Brunt/partially brunt particles were found stick here and there on the articles in the room.*
- 6. A remote (of T.V.) was also found lying on the bed with battery cover open and brunt/partially brunt particles were stick on it.*
- 7. Brunt/partially particles were also found stick on the wall just adjacent to the bed.*
- 8. Some brunt/partially brunt clothes pieces/particles were found stick on the main entry stair case in front*

vertical position and some smoke pattern was also observed at the same position.

No any peculiar smell of any inflammable could be observed in the house and no of inflammable etc could be observed on the floor and wall etc.

10. No any bottle, cane, match box could be found on the spot.

ADVISE TO I.O:-

IO was informed of the observations at the spot.

IO was advised to get the spot photographed.

IO was further advised to send the collected burnt partially burnt clothes/particles from the spot and cloths of deceased (handed over by the doctor), to FSL(H) for the presence of inflammable material, if any.

From her testimony and report also, it is apparent that no peculiar smell of any inflammable could be observed in the home and no stains of any inflammable etc., could be observed on the floor and wall etc. Even no bottle, cane and matchbox could be found on the spot. Even, the arrangement of various articles in the house clearly suggested that Manjeet Singh had come in the house drenched in kerosene oil and had set himself on fire to commit the suicide.

(I) In the present case the marriage between Kanwaljeet Kaur and Manjeet Singh, since deceased, had proved to be failure and all efforts of restoring and re-establishing the matrimonial home had failed to leading utter frustration in the mind of Manjeet Singh. Apart from

that, PW9 Ravinder also stated that Manjeet Singh was his friend. Earlier, Manjeet Singh was a taxi driver, but he had left that work and without his job. Thus, Manjeet Singh, since deceased probably felt convinced in his mind that he had no other escape except to finish himself, which course would also enable him avenging his grievance and settling scores with the accused, whom he thought were responsible for spoiling his life and leading him into immense misery. Thus, the possibility of his committing a suicide and implicating the accused cannot be ruled out in the facts and circumstances of the case as available on record.”

18. Still further, the police in every matter is always expected to conduct the investigation in a fair and impartial manner. The Investigating Officer is always expected to take into account the version of the complainant as well as defence set up by the accused and after consideration of both the version, he is supposed to arrive at a just and fair conclusion. In the present case, the investigation was initially conducted by SI Ram Pal, who stated in his testimony that he had come to know that Ramandeep Kaur accused had received burn injuries while extinguishing fire on the person of Manjeet Singh and he was medically examined. He did not come to know after the arrest of Sukhdev Singh, accused that he had received burn injuries, while extinguishing the fire of Manjeet Singh. Even Ramandeep Kaur

and Sukhdev Singh had given an application on 11.11.2009 to S.P. Panipat informing him that they had received burn injuries while extinguishing the fire of Manjeet Singh. He admitted that he had made a report on the said application and sent it back to S.P. Office, Panipat. He had investigated the case on the line as to how Ramandeep Kaur and Sukhdev Singh had received burn injuries in the occurrence. This clearly shows that he neither paid any heed to the case of the accused nor he had taken into account the report Ex.DF prepared by Dr. Neelam Arya, Senior Scientific Assistant, Forensic Science Laboratory, Madhuban and admittedly the investigation conducted by him was loopsided and unfair and is liable to be rejected by this Court.

19. Apart from that, even from the testimonies of PW14 ASI Satbir Singh, it is apparent that even though he had sufficient opportunity to call a Magistrate to get the statement of Manjeet Singh recorded and he was well aware of the settled law in this regard. Still, he preferred not to call a Magistrate to get the statement of Manjeet Singh recorded. Apart from that, PW13 Dr. Tapan Singh Chauhan clearly stated that there was a police post attached with P.G.I.M.S., Rohtak and as per the practice, whenever the relatives or the Investigating Officer so require that the statement of patient should be recorded by a Judicial Magistrate, they call for the said Magistrate to record his statement. In the present case, neither the relatives of the deceased nor the Investigating Officer of the case requested them to

call the Judicial Magistrate to record the dying declaration of the patient. Even, the IO did not request him to attest the statement of Manjeet Singh after recording the statement. In fact, the trial Court wrongly observed that it was a case of negligence on the part of the Investigating Officer rather it is a case where the investigation from the very inception was tainted and can never be termed as lack of knowledge on the part of ASI Satbir Singh or any other police officer.

20. In view of the above discussion and the law laid down by the Hon'ble Supreme Court, we find no hesitation to hold that the findings recorded by the trial Court are legally unsustainable. The trial Court had not appreciated the prosecution evidence on correct perspective and impugned judgment dated 14.11.2011 and order dated 19.11.2011 passed by the Sessions Judge, Panipat, are liable to be set-aside and the appeal is allowed.

21. As a consequence, the appellants are ordered to be acquitted of the charge. The bail bonds and surety bonds of the convicts are ordered to be discharged. The convicts if in custody, and, if not required in any other case, are directed to be forthwith released from prison. Release warrants be accordingly prepared. Fine amount, if any, deposited by the accused be forthwith refunded to them, but in accordance with law.

22. All pending applications, if any, are disposed of, accordingly.

- 23. The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.
- 24. Records of the Court below be sent back.
- 25. All concerned may be intimated.

(GURVINDER SINGH GILL)
JUDGE

31.05.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No