* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.08.2026
Pronounced on: 28.10.2026
Uploaded on: 28.10.2026

\# **CNR No. DLHC010099682004**

\+ **CRL.A. 709/2004**

SHASHI KUMAR NAIR P.K. .....Appellant

Through: Mr.Sudhir Kumar Roy, Adv. along with appellant in person.

versus

STATE .....Respondent

Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp./SHO Rakesh Kumar, and SI Mahendra, P.S. Vasant Vihar.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. The present appeal has been preferred by the appellant, *Shashi Kumar Nair P. K.*, challenging the order of conviction dated 30.07.2004 and the order on sentence dated 31.07.2004, passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as 'Trial Court') in Sessions Case No. 22/2000, arising out of FIR No. 120/2000 registered at Police Station - Vasant Vihar, convicting the appellant of the offences punishable under Sections 302 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), and sentencing him to undergo Life Imprisonment and to pay a fine of

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Rs.1,000/-, in default of payment of which, to further undergo Rigorous Imprisonment for one month for the offence under Section 302 of the IPC, and; to undergo Rigorous Imprisonment for one year for offence under Section 323 of the IPC, both sentences to run concurrently and the benefit of Section 428 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') to be also extended to the appellant.

CASE OF THE PROSECUTION:

2. The case of the prosecution is that on 23.04.2000 at about 10:20 PM, a call was received from Safdarjung Hospital that one Suresh Chand (hereinafter referred to as the 'deceased') had been admitted in the hospital after receiving injuries in a quarrel at Hotel Vasant Continental. This was recorded in DD No. 25-A (Ex. PW-4A). On receipt of the said DD, SI Rajesh Maurya (PW-17), along with Ct. Anand (PW-15), reached Safdarjung Hospital and found the deceased admitted there. The deceased was declared unfit to make a statement *vide* an endorsement (Ex. PW-17/A) made by the doctor on an application made by the IO to record his statement (Ex. PW-17/B). PW-1/*Bhagmal Singh*, a co-worker of the deceased, was also present at the hospital, and his statement was recorded.

3. As per the statement of PW-1 (Ex.PW-1/A), he was working as a casual worker at Hotel Vasant Continental. On 23.04.2000, there was a marriage function in the lawn of the hotel and a stall had been affixed near the road to serve cold drinks etc. At about 8:45 PM, while he was working at the stall along with other waiters, he saw his co-

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worker, the appellant herein, talking to a guest, and asked him to first finish his work. On this, the appellant became furious and attacked PW-1 with the ice-pick that was in his hand. PW-1 caught hold of the appellant's hand to save himself, but the ice-pick still touched him. The appellant thereafter tried to run away, and PW-1 called out to the deceased for help. When the deceased tried to stop the appellant, the appellant inflicted the ice-pick blow on the *stomach* of the deceased and ran into the hotel. The deceased fell to the ground. PW-1 attended to him and took him on one side and made him lie. He then went to the hotel and informed the entire facts to *Rajinder Bansal*/PW-3, the Food and Beverages Manager in the hotel. He alongwith other staff of the hotel thereafter brought the deceased to Safdarjung Hospital.

4. It is further the case of the prosecution that SI Rajesh Maurya (PW-17) made an endorsement on the statement of PW-1 and sent a *rukka* through Ct. Anand to the police station for registration of the FIR, which was originally registered under Sections 307/323 of the IPC.

5. SI Rajesh Maurya (PW-17) further investigated the matter and recorded the statement of PW-3/*Rajinder Prasad Bansal,* the Food & Beverage Manager. He went to the spot along with the complainant, prepared a site plan (Ex. PW-17/C), and took photographs. The shirt of the deceased, already preserved, was seized *vide* Seizure Memo dated 24.04.2000 (Ex. PW-8/A). The appellant was handed over by *Onkar Singh*/PW-6, Security Supervisor, along with the weapon of offence, the ice-pick, which was seized (Ex. PW-1/D). The appellant was arrested.

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6. The deceased unfortunately passed away on the intervening night of 23/24.04.2000, and therefore, Section 307 of the IPC was substituted with Section 302 of the IPC. Further investigation was taken up by Inspector M.S. Shekhawat, Addl. SHO (PW-5).

7. On 24.04.2000, the post-mortem examination was conducted, and statements of witnesses were recorded.

8. The investigation was then handed over to Insp. Suresh Daggar, then SHO of Police Station Vasant Vihar, (PW-16), on 01.05.2000. He obtained the post-mortem report (Ex. PW-2/A) and the subsequent opinion on the weapon of offence (Ex. PW-2/C). A scaled site plan was prepared (Ex. PW-12/A), and the exhibits were sent to the CFSL; which were exhibited from Ex. PW-16/C to 16/E.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT:

9. Charge-sheet was filed and, *vide* order dated 23.10.2000 passed by the learned Trial Court, Charges under Sections 302/323 of the IPC were framed against the appellant, to which he pleaded not guilty and claimed trial.

10. To prove its case, the prosecution examined 17 witnesses, including the injured eyewitness PW1/*Bhagmal Singh.*

11. The statement of the appellant was recorded under Section 313 of the Cr.P.C., wherein he denied the allegations levelled against him and stated that he was on duty at the poolside of the hotel at the relevant time as he was deputed for a double shift.

12. The appellant examined one witness in his defence, that is, Mr. Devi Dayal Garg (DW-1), the brother of the girl whose marriage

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ceremony took place on the fateful day, that is, 23.04.2000, at the hotel.

FINDINGS OF THE LEARNED TRIAL COURT:

13. The learned Trial Court, relying primarily on the testimony of *Bhagmal Singh*/PW-1, *Rajinder Bansal*/PW-3, *Onkar Singh*/PW-6, and *Ramesh Bhati*/PW-7, coupled with the medical evidence of *Dr. Arvind Thergaonkar*/PW-2, held that the injury inflicted on the deceased was on a vital part of the body (the chest) and was sufficient in the ordinary course of nature to cause death, and that the case accordingly fell within Clause '3' of Section 300 of the IPC. It further held that, once the ingredients of Clause '3' stood proved, the onus shifted to the appellant to bring his case within one of the Exceptions to Section 300 IPC, which onus the appellant failed to discharge.

14. The learned Trial Court held that there was no delay in recording the FIR. The learned Trial Court further held that non-examination of any independent witness was not fatal to the prosecution. The learned Trial Court further held that the prosecution has been able to prove that the ice-pick was with the appellant and was recovered from him by PW3/*Rajinder Bansal,* who in turn handed it over to PW6/*Onkar Singh.*

15. The learned Trial Court also found that statement of PW-7/*Ramesh Bhati,* Security Inspector in the hotel, of the appellant having made an extra-judicial confession to him, to be reliable. It also found that the deceased had made a dying declaration to PW-3/*Rajinder Bansal*.

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16. On the discrepancy that the report of the Forensic Science Laboratory (FSL) did not record any entry mark corresponding to the ice-pick on the left side of the shirt worn by the deceased, the learned Trial Court accepted the explanation of the learned APP that the buttons of the shirt may have been open, given it was summer season, and held that this discrepancy did not cause material prejudice to the appellant.

17. The learned Trial Court also placed reliance on PW-2/*Dr. Arvind Theragaonkar,* who conducted autopsy on the body of the deceased and had also deposed that penetrating injury mentioned in the postmortem could have been caused with the ice-pick.

18. The learned Trial Court also held that the prosecution had proved that the appellant caused simple hurt to *Bhagmal Singh*/PW-1, which was corroborated by his MLC (Ex.PW-14/A).

19. Based on the above findings, the learned Trial Court convicted the appellant of offence under Sections 302/323 of the IPC and sentenced him as mentioned above.

20. Aggrieved by the order of conviction and sentence, the appellant has preferred the present appeal.

21. This Court, *vide* Order dated 20.07.2005, had suspended the sentence of the appellant during the pendency of the present appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

22. The learned counsel for the appellant submits that the impugned judgment is based on surmises and conjectures, and that there is no

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legally admissible evidence on record to sustain the conviction of the appellant.

23. The learned counsel for the appellant submits that the appellant's defence throughout has been that he was not present at the place of occurrence, and that on the relevant evening he was on duty at the poolside of the hotel. He submits that his duty at the poolside had commenced at about 8:00 PM; that at about 8:52 PM, a co-worker had asked him the time; and that shortly thereafter, at about 9:00 PM, he was informed that there was a call for him in the security room, and when he went there, *Rajinder Bansal*/PW-3 detained him there.

24. The learned counsel for the appellant submits as per the medical evidence of PW-1, there was only an abrasion on his stomach. Thus, the record suffers from material contradictions on the very site of the injury said to have been caused to him, which was described by the witness at different stages of his testimony, as being on the stomach, the lower chest, and the right hand. He submits that PW-1, being the sole witness to the actual assault, and his account of the manner of assault being intrinsically inconsistent, does not inspire confidence and should have been rejected by the learned Trial Court.

25. The learned counsel for the appellant further submits that although PW-1 claimed that between 100 to 200 guests were present at the function, and there were other casual worker also said to be present at the function, none of them were examined by the prosecution to corroborate his version. Thus, the prosecution's failure to examine any independent public witness is a material infirmity.

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26. As regards PW-3/*Rajender Bansal* and *Onkar Singh*/PW-6, he submits that both are members of the management of the hotel and are, to that extent, interested witnesses concerned with protecting the institutional interest of the hotel. He submits that PW-3 admitted that he had not noticed any blood stain on the ice-pick, and that there was no complaint from any guest regarding a quarrel. He submits that PW-6 stated that the ice-pick was not recovered directly from the appellant, but was handed to him by a person accompanying PW-3, and that PW-6 had not himself seen the deceased in an injured condition, nor was he aware of any prior complaint against the appellant's conduct.

27. The learned counsel submits that the statement of *Ramesh Bhati*/PW-7 came to be recorded after a delay of approximately 45 days, rendering his version unreliable. He submits that PW-7's account of the manner in which the deceased was taken to hospital; including who accompanied him to the taxi stand and thereafter to the hospital, does not match the versions of PW-3 and PW-6 on the same events, and that there are, in particular, contradictions as to whether PW-6 had any role in bringing the deceased to the taxi stand, bearing in mind that PW-6 has denied any such role. He submits that there is a contradiction as to whether the deceased was first taken to Holy Angel Hospital before being brought to the Safdarjung Hospital, and that this aspect finds no reflection in the prosecution's case or any supporting documents.

28. The learned counsel further submits that PW-7's claim that the deceased was conscious while being shifted to the hospital and had

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identified the appellant as his assailant, is contrary to the medical evidence on record. He submits that as per the medical evidence, the injury having involved the heart/lungs, approximately 1.5 litres of blood could have accumulated within 15-20 minutes, and the deceased could not, in these circumstances, have remained fully conscious so as to give a reliable account of the assault. He submits that the alleged extra-judicial confession and the dying declaration being uncorroborated by any other witnesses, therefore inspire no confidence.

29. He submits that the FSL report did not find any blood stain on the ice-pick, nor any corresponding cut or hole on the shirt worn by the deceased, and that no evidence of blood was found at the place of the alleged incident. He submits that the presence of an ice-pick with a worker engaged to serve guests was not, by itself, unusual, as it was commonly used while serving drinks, and that the FSL evidence does not connect the ice-pick with the injury said to have caused death.

30. He submits that the ice-pick was never recovered from the appellant by the investigating agency, but was handed to PW-6 by a person accompanying PW-3, and that there are contradictions as to who was in possession of the ice-pick, and where it was kept, before it finally found its way to the police.

31. On the investigation, he submits that the scene of the incident was inspected only at about 1:30–1:35 AM, without any proper crime-team investigation; that despite the incident having occurred during a function at a five-star hotel, no CCTV footage was collected or

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produced in evidence; and that photographs of the scene were not exhibited.

32. He submits that the timing of the incident, as alleged by the prosecution, is itself doubtful. In this regard, reliance was placed on the testimony of DW-1, who stated that the wedding procession (*baraat*) reached the hotel/main entrance only at about 9:30 to 10:00 PM. He submits that if the *baraat* had not reached the relevant location by 8:45 PM, the prosecution's case as to the timing and location of the incident becomes doubtful. He submits that there are contradictions as to who supplied the liquor at the function, and who was authorized to handle it. He submits that the prosecution has produced no convincing document establishing that the alleged wedding function was in fact being held at that place and time.

33. He submits that there was no documentary record of the exact duty timing of the appellant on the date of the incident, and that PW-1 himself admitted that casual workers did not have fixed duty hours and could be assigned different shifts depending on the function.

34. He submits that the appellant did not receive adequate legal representation at trial, in that the counsel who then represented him had difficulty understanding the Hindi language, as a result of which certain material questions were not put to the prosecution witnesses in their cross-examination.

35. He submits that the prosecution has failed to prove any motive or intention on the part of the appellant to cause the death of the deceased, and that in the absence of any motive, and given that the

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alleged assault involved a single blow, the ingredients of Section 302 of the IPC are not made out.

36. In conclusion, the learned counsel for the appellant submits that the prosecution's case rests principally on the testimony of PW-1, which is internally contradictory and is not corroborated by independent evidence; that the recovery of the weapon, the medical sequence and the timing of the incident, are each attended with doubt; and that the appellant is entitled to the benefit of reasonable doubt and to acquittal.

SUBMISSIONS ON BEHALF OF THE STATE:

37. Per *contra,* the learned APP for the State, Mr. Aman Usman, opposed the appeal and submitted that the impugned judgment does not warrant any interference.

38. He submits that the presence of *Bhagmal Singh*/PW-1 at the spot, and indeed the presence of the appellant himself, has never been challenged by the defence. He submits that in response to Question No. 20 in the statement of the accused recorded under Section 313 of the Cr.P.C., the appellant did not deny his presence at the spot; and furthermore, this position was never put to PW-1 or to *Rajinder Bansal*/PW-3 or to *Onkar Singh*/PW-6 or to *Ramesh Bhati*/PW-7, while they were cross-examined, and no consistent defence of not being present at the scene was put to any of the prosecution witnesses.

39. He further submits that PW-1 identified the ice-pick in court and attributed it to the appellant as the weapon used by him, and that

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there is no challenge either to the recovery of the weapon from the appellant or his presence at the scene.

40. The learned APP submits that as far as the submission of the learned counsel for the appellant that the coat worn by the deceased was not seized, is without merit as the same is irrelevant to the case of the prosecution, which is based on the eye-witness account.

41. The learned APP took the Court through the testimony of PW-1, submitting that it furnishes a clear and continuous account of the incident: that PW-1 saw the appellant talking to a guest; that several guests were complaining about the service; that PW-1 was himself serving soft drinks, being unable to tolerate the smell of alcohol; that he saw the appellant give a blow to the deceased on the left side of his chest. Subsequently, the appellant ran away with the ice-pick in his hand; and that no one came to the rescue of the deceased, given the large number of persons present, all being engaged in the function. No suggestion was put to PW-1 in cross-examination, nor was any defence taken of any enmity between PW-1 and the appellant, and that a witness would have no reason to concoct a false story so as to falsely implicate the accused.

42. On the medical evidence, it was submitted that the injury, once caused, would have been internal in nature, and that PW-2, in his cross-examination, stated that there would not necessarily be any external bleeding. It was further submitted that, it being summer season, it is probable that two to three buttons of the shirt were unbuttoned by the deceased and that the injury was inflicted in that

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very area, accounting for the absence of any corresponding mark of entry of the ice-pick on the shirt.

43. Furthermore, he submits that the MLC of PW-1 (Ex.PW-14/A) establishes his presence at the scene and him being injured by the appellant.

44. To sum up, the learned APP submits that the presence of PW-1 and of the appellant at the spot being undisputed, the recovery of the weapon being unchallenged, and the ocular account of PW-1 standing corroborated by the medical evidence and unshaken in cross-examination, the findings of the learned Trial Court are well-founded, and the appeal is liable to be dismissed.

ANALYSIS & FINDINGS:

45. We have considered the submissions made by the learned counsels for the parties and have perused the record.

46. From the above submissions, it would be evident that the case of the prosecution stands on the testimony of PW-1/*Bhagmal Singh*, who is said to be the eyewitness to the offence committed by the appellant. In his testimony, he states that he was working as a casual labour in the hotel and on the fateful day, was posted at the Hill View Apartment, which is at a distance of about 100 meters from the hotel. Stalls had been put up near the apartment as there was a marriage function. PW-1/*Bhagmal Singh*, the deceased, the appellant, and two others were also working as casual labour in the function. At about 8:45 P.M., the appellant was talking with some guests, upon which,

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PW-1/*Bhagmal Singh* told the appellant not to talk and instead do his duty. Upon hearing this, the appellant attacked PW-1/*Bhagmal Singh* with an ice-pick, as a result of which he sustained an injury on the lower part of his chest and on his right hand. The deceased came to help PW-1/*Bhagmal Singh*, but the appellant attacked him also with the ice-pick on his chest, as a result of which the deceased fell down and became unconscious. As PW-1/*Bhagmal Singh* was looking after the deceased, the appellant ran away to the hotel.

47. PW-1/*Bhagmal Singh* states that he then left for the banquet office of the hotel, where he found PW-3/Rajinder Bansal and one Sharma ji present. He told them about the incident. The appellant was handed over to the Security Officer, PW-6/*Onkar Singh* by PW-3/*Rajinder Bansal*. The deceased was taken to Safdarjung Hospital by PW-3/*Rajinder Bansal* and Sharma ji '*by a jeep*'. He also accompanied them to the hospital, where the police met him and he gave his statement (Ex.PW-1/A). He also accompanied the police to the spot and showed them the place of the incident. He states that the clothes of the deceased, that is, his 'coat' and the pants, were given to the police by the doctor. The appellant, who was present with the Security Officer in the hotel, was arrested. The ice-pick was also produced by the Security Officer to the police.

48. In his cross-examination, he states that apart from himself, the deceased and the appellant, there were two or four boys from the Tent House present at the spot. There were also 100-200 persons near the stall at the time of the incident. He states that when he scolded the appellant to carry out the service quickly rather than talking to the

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guests, the appellant attacked him on the stomach. To save himself, he turned a bit, whereafter the appellant attacked him on his hand with the same ice-pick. He states that none of the guests came to his rescue. He saw the appellant inflicting the blow on the chest of the deceased with the ice-pick. He states that the outer clothes of the deceased were not stained with blood. He states that none of the guests gathered at the spot as they were busy at the party. Even the workers and other casual workers engaged for the evening did not come to the spot.

49. He further states that he rushed to the officers in the hotel and came back with them to the spot where the deceased was lying. Even at that time, no one had gathered around the deceased, and everyone was busy at the party.

50. He states that he had rushed to the office of Mr. Suresh (*sic Rajinder*) Bansal, Manager, Food and Beverages, which was near the car park. The appellant was already present in the office of Shri Surinder (*sic Rajinder*) Bansal and also had the ice-pick in his hand. He did not see if there was blood on the ice-pick or not. He states that before he had gone to the office of Mr. Bansal, he had gone to the pool side, where another party was being held and officers from the hotel were present at that site. The appellant was also there. From the pool side, the officers, the appellant, and he himself came to the site office. He states that he had narrated the incident at the pool side and then again in the office. He states that there were no other workers standing near the hotel officials and the appellant at the pool side. From the site office, they took the appellant to the Security Officer and handed him over to the Security Officer. The appellant never tried to abscond.

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51. From the above testimony of PW-1/*Bhagmal Singh*, there are two or three glaring questions which remain unanswered. The first being that though PW-1/*Bhagmal Singh* maintains that apart from himself, the deceased, and the appellant, there were other workers and even 100-200 guests, not even one of them is claimed to have seen the incident; came to help the deceased; or even noticed the incident. This version of PW-1/*Bhagmal Singh* does not inspire confidence at all.

52. In ***Vadivelu Thevar v. State of Madras***, 1957 SCC OnLine SC 13, the Supreme Court held that though conviction can be based even on the testimony of a single eyewitness, there being no necessity in law to have multiple witnesses to bring home the charge against the accused, at the same time, the testimony of such witness should be tested with caution and if the same is found by a court to be entirely reliable, there is no legal impediment to convict the accused on such testimony; where such testimony is found to be wholly unreliable, the Court equally has no difficulty in disregarding such testimony; it is only where the testimony is neither wholly reliable nor wholly unreliable, that the Court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial. We quote from the judgment as under:

> *"17. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act, has categorically laid it down that "no particular number of witnesses shall, in any case, be required for the proof of any fact". The legislature determined, as long ago as 1872, presumably after due consideration*

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of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's Law of Evidence — 9th Edn., at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in Section 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the

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quality and not with the quantity of the evidence necessary for proving or disproving a fact.

18. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.
(2) Wholly unreliable.
(3)Neither wholly reliable nor wholly unreliable.

In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.

19. There is another danger in insisting on plurality of witnesses. Irrespective of the quality of the oral evidence of a single witness, if courts were to insist on plurality of witnesses in proof of any fact, they will be indirectly encouraging subornation of witnesses. Situations may arise and do arise where only a single person is available to give evidence in support of a disputed fact. The court naturally has to weigh carefully such a testimony and if it is satisfied that the evidence is reliable and free from all taints which tend to render oral testimony open to suspicion, it becomes its duty to act upon such testimony. The law reports contain many precedents where the court had to depend and act upon the testimony of a single witness in support of the prosecution. There are exceptions to this rule, for example, in cases of sexual offences or of the testimony of an approver; both these are cases in which the oral testimony is, by its very nature, suspect, being that of a participator in

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> *crime. But, where there are no such exceptional reasons operating, it becomes the duty of the court to convict, if it is satisfied that the testimony of a single witness is entirely reliable. We have therefore, no reasons to refuse to act upon the testimony of the first witness, which is the only reliable evidence in support of the prosecution."*

53. In ***Joseph v. State of Kerala***, (2003) 1 SCC 465, the Court reiterated the above principles, and held that where there is a sole witness to the incident, the testimony of such witness has to be accepted with an amount of caution and after testing it on the touchstone of evidence tendered by other witnesses or evidence as recorded. It was held that while it is permissible for a Court to record and sustain a conviction on the evidence of a solitary eyewitness, however, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable, in tune with probabilities, and inspires implicit confidence; where the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even where the witness is an injured witness, and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, it would be unsafe to convict the accused on his sole testimony. We quote from the judgment as under:

> *"13. To our mind, it appears that the High Court did not follow the aforesaid standard but went on to analyse evidence as if the material before them was given for the first time and not in appeal. Section 134 of the Indian Evidence Act provides that no particular number of witnesses shall in any case be required for the proof of any fact and, therefore, it is permissible for a court to*

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record and sustain a conviction on the evidence of a solitary eyewitness. But, at the same time, such a course can be adopted only if the evidence tendered by such witness is cogent, reliable and in tune with probabilities and inspires implicit confidence. By this standard, when the prosecution case rests mainly on the sole testimony of an eyewitness, it should be wholly reliable. Even though such witness is an injured witness and his presence may not be seriously doubted, when his evidence is in conflict with other evidence, the view taken by the trial court that it would be unsafe to convict the accused on his sole testimony cannot be stated to be unreasonable."

54. As we are finding the version of the incident given by PW-1/*Bhagmal Singh* a little unnatural, we would test his testimony against the one given by the other witnesses to find if the same stands corroborated or not.

55. PW-3/*Mr.Rajinder Bansal*, Assistant Food and Beverages Manager at Vasant Continental Hotel, in his examination-in-chief, had stated that on 23.04.2000 at about 8:45 or 9 P.M., he along with S. S. Sharma was present at the pool side where a party was going on. The appellant was seen coming from the main entrance of the pool side and came where they were standing. At that time, he was somewhat nervous. There was an ice-pick in the hand of the appellant which he was trying to conceal by placing his hand behind. They were told by the appellant that a quarrel had taken place near the Hill View Apartment on the road where there was an assembly point of a *Baarat.* In the meantime, PW-1/*Bhagmal Singh* came running from the same gate and told them that the appellant had caused the injuries to the

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deceased with the ice-pick and that the deceased had become unconscious. They handed over the appellant to the Security Officer-*Onkar Singh*/PW-6 in his office. Furthermore, they hired an Ambassador taxi and reached the spot where the deceased was lying and the deceased was taken to the hospital. He states that in the taxi he alongwith Mr.Sharma, PW-1/*Bhagmal Singh* and other casual labour were present, and took the deceased to Safdarjung Hospital.

56. In his cross-examination, he stated that the appellant had been working from a long time in the hotel as a casual worker and there had been no complaint regarding the appellant before. He also did not recall having seen any blood stains on the ice-pick which was in the hand of the appellant when he came to the pool side. Importantly, he states that when PW-1/*Bhagmal Singh* had come and stated that the appellant had stabbed the deceased, the appellant denied it, but since the appellant had the ice-pick in his hand, they assumed in the negative and handed him over to the security. He admitted that there was no report made by any person, other than PW1/*Bhagmal Singh,* regarding the incident. He states that at the place of the incident, he saw the deceased lying and uttering the words '*mar diya'*. He states that he did not find anyone else near the deceased. He states that even after the death of the deceased, he did not make inquiry about the incident nor any complaint regarding any quarrel was received from the guests.

57. Therefore, PW-3/*Mr.Rajinder Bansal* has based his entire testimony of the involvement of the appellant in the crime on the say-so of PW-1, whose testimony we have discussed above. He has also

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admitted that apart from PW-1, no other person reported the incident to him.

58. The next important witness to prove the chain of circumstances is PW-6/*Onkar Singh*, Security Supervisor at Vasant Continental Hotel. In his examination-in-chief, he states that on 23.04.2000, he was on duty as Security Supervisor from 9 P.M. to 7:30 A.M. At about 9:15 P.M., PW-3/*Rajinder Bansal* brought the appellant in the Security Control Room and produced an ice-pick. He states that it was PW-3/*Rajinder Bansal* who told him that the appellant had caused injuries to the deceased with this ice-pick and that he should keep the appellant in the control room with him in his custody. He states that later, the police came to the Security Control Room, and he produced the appellant as well as the ice-pick to the police.

59. In his cross-examination, he stated that there was nothing in the hand of the appellant and that the ice-pick was in the hand of the person who was with PW-3/*Rajinder Bansal,* who was another casual worker and whose name he did not remember. It was that person who had given the ice-pick to him. He states that on the day of the incident he had not seen the deceased in his injured condition. He states that, to his knowledge, there had been no complaints about the conduct of the appellant.

60. From the above testimony, it is apparent that again, apart from the version of PW-1/*Bhagmal Singh,* there is no other witness to the offence. This is inspite of the fact that the offence has been alleged to have been committed in a function where there were many persons, including the other workers working for the hotel, present. It is also

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evident that the appellant is supposed to have not run away after inflicting injury on PW-1/*Bhagmal Singh* and the deceased, but come to the pool side and thereafter voluntarily accompanied PW-1/*Bhagmal Singh* and PW-3/*Rajinder Bansal* to the office of PW-6, and thereafter remained there till the arrival of the police, making no attempt to run away after committing the offence. This conduct of the appellant also raises a doubt on the version of the above witnesses.

61. Another important witness in this regard is PW-17/*SI Rajesh Maurya*, the original IO of the case. PW-17/*SI Rajesh Maurya* was posted at P.S. Vasant Vihar on 23.04.2000. He states that on that day at 10:20 P.M., an information was received from Safdarjung Hospital that the deceased, a temporary staff of Vasant Continental Hotel, had been admitted in the said hospital in an injured condition. He had moved an application before the Chief Medical Officer (Ex.PW-17/B) seeking permission to record the statement of the deceased, but he was declared as unfit for giving statement by the doctor *vide* his endorsement (Ex.PW-17/A). PW-1/*Bhagmal Singh*, the employee of Vasant Continental Hotel, who was conversant with the incident, met him and his statement was recorded (Ex.PW-1/A). He further recorded the statement of PW-3/*Rajinder Bansal*. From the hospital, PW-15/*Ct. Anand Singh*, PW-1/Bhagmal Singh, and he went to the scene of the crime on the night between 23-24.04.2000. Thereafter, they went to the security office of the said hotel where PW-6/*Onkar Singh*, the Security Supervisor met them and produced the appellant with an ice-pick. He further recorded the statement of PW-6/*Onkar Singh*. He

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states that the appellant led them to the place of occurrence and a Pointing-Out memo was prepared (Ex.PW-17/E).

62. In his cross-examination, he stated that at the hospital, PW-1/*Bhagmal Singh* and PW-3/*Rajinder Bansal* were present on the night of the incident. From the hospital, he had reached the scene of the crime with PW-15/*Ct. Anand Singh* and PW-1/*Bhagmal Singh* at about 1:30 A.M. He states that no one was present at that time at the scene of the crime. When they went to the Security Officer- PW-6/*Onkar Singh*, he handed over an ice-pick which he stated that he had received from PW-3/*Rajinder Bansal*. On the day of the incident, apart from PW-6/*Onkar Singh*, PW-3/*Rajinder Bansal* and PW-1/*Bhagmal Singh*, no one else was available for the questioning. He further stated that there were no blood stains at the scene of the crime.

63. Curiously, the appellant produced Mr. Devi Dayal Garg (DW-1), the brother of the girl who was getting married at the Hotel on the said eventful evening. He states that he had reached the Hotel at about 7 P.M. and left at 5 A.M. the next day. He further states that the *baraat* had reached the spot at about 7 to 7:30 P.M. and to the main gate of the Hotel at approximately 9:30 to 10 P.M. He states that while he was there, he did not get to know about any incident having taken place. With all the commotion as has been described by PW-1/*Bhagmal Singh*, PW-3/*Rajinder Bansal*, PW-6/*Onkar Singh* and PW-7/*Ramesh Bhati,* it is not conceivable that no independent person has witnessed or even heard about any incident taking place at the function.

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64. We shall now move on to the testimony of PW-7/*Mr.Ramesh Bhati*, Security Inspector at Vasant Continental Hotel. In his examination-in-chief, he stated that the appellant, PW-1/*Bhagmal Singh* and the deceased were on duty in a function with respect to the assembly point of a marriage, which was going on outside the hotel building. At about 9 or 9:15 P.M., PW-6/*Onkar Singh* called him in the Security Control Room where the appellant was made to sit. When he asked the appellant as to what had happened, the appellant told him that he had done a wrong and had caused injury to the deceased. He states that the deceased was taken to Safdarjung Hospital in a taxi by himself, PW-1/*Bhagmal Singh*, PW-3/*Rajinder Bansal*, and Mr.Subodh Bhat. He states that when he asked the deceased, who was conscious at that time, as to how he had sustained the injuries, the deceased told him that there was an altercation between PW-1/*Bhagmal Singh* and the appellant and that he tried to intervene and at that time, the appellant hit him with an ice-pick on the left side of his chest.

65. PW-7 is therefore, being set up by the prosecution, not only as a witness to whom the appellant made an extra-judicial confession, but also as a witness to whom the deceased made a dying declaration.

66. As far as the extra-judicial confession is concerned, the appellant is supposed to have made the same to PW-7/*Mr.Ramesh Bhati* in the room of Onkar Singh (PW-6). Interestingly, PW-6/*Onkar Singh*, does not mention in his testimony about PW-7/*Ramesh Bhati* coming to his room or the appellant making any such extra-judicial

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confession to him. The version of the extra-judicial confession being made to PW-7/*Mr.Ramesh Bhati* is, therefore, doubtful.

67. In ***Ramanand @ Nandlal Bharti v. State of Uttar Pradesh***, (2023) 16 SCC 510, it was held that an extra-judicial confession, by its very nature, is rather a weak type of evidence and requires appreciation with a great deal of care and caution. Where the extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance. The court generally looks for an independent reliable corroboration before placing any reliance upon an extra-judicial confession. We quote from the Judgment as under:

> *"90. Considering the admissibility and evidentiary value of extra judicial confession, after referring to various judgments, in Sahadevan and Another v. State of Tamil Nadu, (2012) 6 SCC 403, this Court held as under:-*
>
> *"15.1. In Balwinder Singh v. State of Punjab [1995 Supp (4) SCC 259: 1996 SCC (Cri) 59] this Court stated the principle that: (SC p. 265, para 10)*
>
> *"10. An extra-judicial confession by its very nature is rather a weak type of evidence and requires appreciation with a great deal of care and caution.*
>
> *Where an extra-judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance."*
>
> *xxxx*
>
> *15.4. While explaining the dimensions of the principles governing the admissibility and evidentiary value of an extra-judicial confession, this Court in State of Rajasthan v. Raja Ram [(2003) 8 SCC 180: 2003 SCC (Cri)*

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1965] stated the principle that: (SCC p. 192, para 19)

"19. An extra-judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made."

The Court further expressed the view that: (SCC p. 192, para 19)

"19. ... Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive of attributing an untruthful statement to the accused...."

xxxx

15.6. Accepting the admissibility of the extra-judicial confession, the Court in Sansar Chand v. State of Rajasthan [(2010) 10 SCC 604: (2011) 1 SCC (Cri) 79] held that: (SCCp. 611, paras 29-30)

"29. There is no absolute rule that an extra-judicial confession can never be the basis of a conviction, although ordinarily an extra-judicial confession should be corroborated by some other material. [Vide Thimma and Thimma Raju v. State of Mysore [(1970) 2 SCC 105: 1970 SCC (Cri) 320], Mulk Raj v. State of U.P. [AIR 1959 SC 902: 1959 Cri LJ 1219], Sivakumar v. State [(2006) 1 SCC 714: (2006)1 SCC (Cri) 470] (SCC paras 40 and 41 : AIR paras 41 and 42), Shiva Karam Payaswami Tewari v. State of Maharashtra |(2009) 11 SCC 262 : (2009) 3 SCC (Cri)1320] and Mohd. Azad v. State of W.B. [(2008) 15 SCC 449: (2009) 3 SCC (Cri) 1082]."""

[Emphasis supplied]

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> *91. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In Madan Gopal Kakkad v. Naval Dubey and Another, (1992) 3 SCC 204, this Court after referring to Piara Singh and Others v. State of Punjab, (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.*
>
> *92. The sum and substance of the aforesaid is that an extra judicial confession by its very nature is rather a weak type of evidence and requires appreciation with great deal of care and caution. Where an extra judicial confession is surrounded by suspicious circumstances, its credibility becomes doubtful and it loses its importance like the case in hand. The Courts generally look for an independent reliable corroboration before placing any reliance upon an extra judicial confession."*

68. As noted hereinabove, PW-7/*Ramesh Bhati* has also been set up as a person to whom the deceased made a dying declaration while he was being taken to a hospital in a taxi. Hereagain, curiously no other witness has spoken about the presence of PW-7/*Ramesh Bhati*, while the deceased was being taken in a taxi to the Safdarjung Hospital. In his cross-examination, PW-7/*Ramesh Bhati* states that he was instructed by PW-6/*Onkar Singh* to go to Safdarjung Hospital along with the deceased and others. We have already observed that PW-6/*Onkar Singh* has not even spoken of the presence of PW-7/*Ramesh*

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Bhati, leave alone directing him to go to the taxi stand. Curiously, again, neither PW-1/*Bhagmal Singh* nor PW-3/*Rajinder Bansal* has stated that PW-7/*Ramesh Bhati* had accompanied them along with the deceased while taking the deceased to the hospital or that the deceased had made any such dying declaration.

69. Another reason for not relying upon the alleged dying declaration is the medical opinion of PW-2/*Dr.Arvind Thergaonkar*, the Chief Medical Officer at Safdarjung Hospital, who had conducted the post-mortem on the body of the deceased on 24.04.2000 on the request of Additional SHO, *Mr.M. S. Shekhawat*/PW-5. In his cross-examination, he stated that since the injury was to the lung and to the left ventrical of the heart, it would take a maximum of 15 to 20 minutes to accumulate about 1.5 litres of blood in the chest cavity. In such a situation for the deceased to have made a dying declaration to PW-7/*Ramesh Bhati* appears to be very doubtful.

70. While it is settled law that dying declaration can be made the sole basis of conviction, the court has to scrutinize the dying declaration carefully and in case it is found to be suspicious, it should not be acted upon without corroborative evidence. The law applicable to a dying declaration has been explained by the Supreme Court in ***Irfan @ Naka v. State of Uttar Pradesh***, 2023 SCC OnLine SC 1060, wherein it has been held that though the juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every motive to falsehood is silenced and the man is induced by the most powerful consideration to speak only the truth, notwithstanding the

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same, great caution must be exercised in considering the weight to be given to such evidence, on account of the existence of many circumstances which may affect its truth. Since the accused has no power of cross-examination, the Courts insist that a dying declaration should be of such a nature as to inspire full confidence of the Court in its truthfulness and correctness. The Court should be on guard to see that the statement of the deceased was not a result of tutoring, prompting, or a product of imagination. The Court further held that though there is no hard and fast rule for determining when a dying declaration should be accepted, the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the statement. The Court also laid down certain factors that can be considered by the Court while weighing a dying declaration. We quote from the judgment as under:

> *"43. The juristic theory regarding the acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason, the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist*

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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, however, should always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. [See : Laxman v. State of Maharashtra, (2002) 6 SCC 710]

xxx

60. *Since time immemorial, despite a general consensus of presuming that the dying declaration is true, they have not been stricto-sensu accepted, rather the general course of action has been that judge decides whether the essentials of a dying declaration are met and if it can be admissible, once done, it is upon the duty of the court to see the extent to which the dying declaration is entitled to credit.*

61. *In India too, a similar pattern is followed, where the Courts are first required to satisfy themselves that the dying declaration in question is reliable and truthful before placing any reliance upon it. Thus, dying declaration while carrying a presumption of being true must be wholly reliable and inspire confidence. Where there is any suspicion over the veracity of the same or the evidence on record shows that the dying declaration is not true it will only be considered as a piece of evidence but cannot be the basis for conviction alone.*

62. *There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:—*

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of

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First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?

(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

64. *It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material*

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available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful."

71. In ***Sanjay Kumar Sharma v. State of Bihar & Ors.***, 2026 INSC 223, the Supreme Court reiterated that while a dying declaration is a very important specie of evidence, capable of proving the crime and identifying the accused, for reliance, it should inspire confidence of the Court as to its credibility. The Court should be satisfied that the statement is made by the deceased without any prompting, tutoring or coercion. If there is even an iota of suspicion, the Court has to look for corroboration. It was held that a dying declaration recorded by a Judicial Magistrate adds credence since they are trained to record such declarations. We quote from the judgment as under:

"13. From a conspectus of the above decisions, it is clear: That, a dying declaration is a very important species of evidence capable of proving the crime proper and identifying the accused, an exception to hearsay having been provided by Section 32 of the Indian Evidence Act. That, a dying declaration, for reliance should inspire confidence in the Court as to its credibility. That, the Court should be satisfied it is made by the deceased without any prompting or tutoring or coercion or is a mere figment of imagination. That, then conviction can be based solely on the dying declaration and there is no requirement of any corroboration. That, it can be reduced to writing or can be

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oral, as testified by reliable witnesses. That, it can be one or numerous and if more than one; exculpatory and inculpatory, it is for the Court to find out which is believable. That, it can be a lengthy one or a short one, so far as the crime is spoken of and identification of the perpetrator comes through. That, it can be a single narrative or in a question and answer form. That, it can either have a history of the rancour between the perpetrator and the victim or can be merely the brief statement of the incident. That, the capacity of the injured to make the statement, both physical and mental, need not be necessarily certified by a doctor and would rest again on the satisfaction of the Court on an analysis of the testimony of the various witnesses and the other evidence coming forth in trial. That, if the Court is satisfied of the fit state of mind of the injured from the evidence on record, a contrary medical opinion or an absence of it will be inconsequential. That, it can be made before a Magistrate; Executive or Judicial, a Doctor, a Police Officer, a relative or a third party whose presence is not doubtful. That, the desire of the declarant to live, through the truth despite fear of imminent death cannot be easily brushed aside. The decisions also caution us that if the statement is doubtful then one or more of the above aspects could result in the dying declaration being eschewed completely; based on the facts of each case.

14. *As a corollary, it also has to observed: That, if there is an iota of suspicion the Court has to look for corroboration. That, the medical certification as to the physical and mental state always aids in arriving at a satisfaction. That, in the wake of multiple grievous injuries or a higher percentage of burns, the declaration could be in question and answer form, lending more credence as actually spoken of by the injured as opposed to a long drawn out narrative, which could be mistook as supplied by interested related*

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parties. That, a dying declaration recorded by the Judicial Magistrate, adds credence since they are trained to record such declarations. That, as far as possible, the recording is to be done in the presence of the Doctor and definitely not in the presence of numerous bystanders; which could lead to a defence being raised of prompting and tutoring. That, the veracity of the declaration has to come forth from the attendant circumstances as brought out in evidence."

72. In ***Sabbita Satyavathi v. Bandala Srinivasarao & Ors.***, (2004) 10 SCC 620, the Supreme Court observed that as the deceased had sustained incised injuries to the left lung and the heart, he would have become unconscious almost immediately, casting serious doubt on whether the deceased could have made any dying declaration thereafter. We quote from the judgment as under:

"21. There is yet another reason which casts a serious suspicion on the second dying declaration. According to the Medical Officer, PW-13, the injured was brought to the hospital at about 8.45 p.m. and was alive for about 1-20 minutes thereafter. She started the treatment of the injured in right earnest and 5 or 6 minutes thereafter she recorded the statement of the deceased which took about 10 to 15 minutes. According to her, at 9.15 p.m. the patient started gasping for breath and became unconscious. The picture that we get is that as soon as the Medical Officer completed recording his statement the injured became unconscious. He is said to have ultimately died at about 10.10 p.m. The respondents have contended that the presence of large number of political personalities at the hospital, having regard to the fact that the deceased was also a person well-known in the locality makes it doubtful whether the statement was

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correctly recorded or recorded at all. In fact, it is contended that having regard to the injuries sustained by the deceased, he would not have been in a position to make any statement even if he was alive. He must have become unconscious soon after suffering the injuries and there was no question of his either making a statement before PW-1 or before the Medical Officer. There is substance in the argument advanced on behalf of A-1 and A-2. PW-13 admitted that death of the deceased was due to injuries to vital organs such as heart and left lung. We find from the post-mortem report that the left lung had suffered incised injuries at two places. Apart from the injuries to the left lung, it was also found that one of the injuries caused on the left side of the chest had pierced the body to such an extent that the ventricle of the heart also suffered an incised injury over the anterior aspect. It appears from the post-mortem report that the same stab injury caused damage to the left lung as also to the heart. This only indicates that the stab injuries were caused to the deceased with such great force that they not only fractured one of his ribs but also entered the thoracic cavity and injured the left lung and the ventricle of the heart. With such injuries, we entertain serious doubts as to whether the injured could have given two dying declarations as alleged by the prosecution, one at about 7.00 p.m. and the other at about 8.45-9.00 p.m. This is also supported by the medical evidence on record in as much as PW-13 has herself stated that if such an injury is caused to the heart, the injured would become unconscious immediately. It, therefore, appears to us that after suffering the injuries the deceased must have become unconscious immediately. There was, therefore, no question of his making a dying declaration to anyone thereafter. We also notice the fact that according to PW-1 after making a dying declaration, the accused walked a few steps with him with his help till

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such time they got a rickshaw which carried them to the hospital. According to the Medical Officer, PW-13, a person with such injuries could not walk at all even with the help of someone else. Having regard to the sever nature of injuries and the vital organs involved which suffered incised injuries such as heart and the lungs, we entertain a serious doubt about the recording of the second dying declaration by the Medical Officer almost two hours after the occurrence."

73. Now coming to the other important aspect of this case, in the FSL Report (Ex.PW-16/E), it is reported that there was no entry mark on the shirt of the deceased. The learned Trial Court has brushed aside this important piece of evidence by presuming that the deceased must have kept 2 or 3 buttons of his shirt open due to it being summer season. We are afraid that there was no scope of any such presumption to be drawn. In fact, on the contrary, the deceased was performing his duty at an official function, and it is inconceivable that a hotel staff will be improperly dressed while serving the guests of the Hotel. The absence of the entry wound, therefore, in our opinion, places a doubt on the weapon of offence and the manner in which it is described by PW-1/*Bhagmal Singh*.

74. On the weapon of the offence, that is, the ice-pick, the FSL Report stated that there were no blood marks found on the same. This also dents the case of the prosecution as the time-gap between the incident and the alleged recovery of the weapon does not explain that the appellant would have wiped off the blood so immaculately that even the FSL could not find trace of it on the same. In any case, no witness had deposed in this regard.

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75. In addition to the above, the weapon of the offence was handed over to the police by PW-6/*Onkar Singh,* to whom also the same is handed over by an unknown person accompanying PW-3/*Rajinder Bansal*. Therefore, there is a doubt on the recovery of the weapon and its chain of custody as well.

76. Given the above nature of evidence, in our opinion, therefore, the learned Trial Court has erred in convicting the appellant. There were enough doubts that remained from the testimony of the prosecution witnesses and documents. As noted hereinabove, PW-1/*Bhagmal Singh* did not appear to be a wholly reliable witness and, therefore, there was need for his testimony to be corroborated by other evidence, which, in our opinion, the prosecution has failed to do to an extent that we can move from a stage of suspicion to a stage of finding that there could be no other person but the appellant who would have caused the injury to the deceased.

CONCLUSION:

77. In our conclusion, therefore, the prosecution failed to prove its case against the appellant beyond all reasonable doubt.

78. We, accordingly, set aside the judgment of conviction dated 30.07.2004 and consequently, the order on sentence dated 31.07.2004 passed by the learned Trial Court.

79. The appellant is acquitted of the charges levelled against him. However, the bail bonds and the surety furnished by the appellant shall stand discharged 60 days from today.

Signature Not Verified
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By:REYMON VASHIST
Signing Date:28.10.2026
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80. A copy of this Judgment be communicated to the concerned Jail Superintendent and the learned Trial Court for necessary information.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

OCTOBER 28, 2026/sg/hn

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:28.10.2026
19:05:12