A SOHAN LAL @ SOHAN SINGH AND ORS.

v.

STATE OF PUNJAB

OCTOBER 14, 2003

B [K.G. BALAKRISHNAN AND B.N. SRIKRISHNA, JJ.]

Penal Code, 1860: Sections 302 and 109.

C *Murder—Married woman died due to extensive burn injuries within seven years of marriage—Husband charge-sheeted for dowry death under S.304-B but not under S. 302 or for abetment of murder under S.109—Trial court convicted husband under S.302 r/w S. 109—High Court upheld conviction—Correctness of—Held: Failure to frame a charge under S. 109 had certainly prejudiced the accused—Conviction set aside.*

D

Evidence Act, 1872 :

Section 32—Dying declaration—Conviction based upon—Married woman died of extensive burn injuries within seven years of marriage— E *Deceased made dying declaration before Executive Magistrate—Trial court relying on the dying declarations convicted the accused—Correctness of—Held: There is no circumstance to show that the Executive Magistrate had any motive to make out a false case against the accused—Hence, it is safe to convict the accused on the basis of the dying declaration.*

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According to the prosecution, a married woman died due to extensive burn injuries within seven years of marriage. It was alleged that the deceased was set on fire by her husband-appellant No. 1, mother-in-law-appellant No. 2 and sister-in-law-appellant no. 3 in connivance with one another. The deceased before her death had made G **a dying declaration before the Executive Magistrate, PW-6. The deceased was allegedly being harassed by the appellants-accused to extract dowry from her parents.**

Appellants Nos. 2 and 3 were charge-sheeted under Section 302 H **of the Penal Code, 1860. However, appellant No. 1 was charge-sheeted**

for dowry death under Section 304-B IPC but not under Section 302 IPC or for abetment of murder under Section 109 IPC. The trial court convicted appellants Nos. 2 and 3 under Section 302 IPC and appellant No. 1 under section 302 read with Section 109 IPC and they were sentenced to undergo imprisonment for life. Hence the appeal.

On behalf of the appellants, it was contended that failure to frame a charge under Section 109 IPC against appellant No. 1 had prejudiced him in the trial court; the District Magistrate had acted with great haste in deputing PW-6 to record the dying declaration; and that it was unsafe to convict the accused on such a dying declaration.

Allowing the appeal in part, the Court

HELD : 1. Failure to frame a charge with regard to the substantive offence under Section 109 of the Penal Code has certainly prejudiced the accused in the trial. The accused-appellant No. 1 was called upon to face trial only for the charge under Section 304-B IPC. Neither a charge under Section 302 IPC, nor under Section 109 IPC was levelled against him in the Charge Sheet. In the absence of a charge being framed against appellant No. 1 under Section 302 or 109 IPC, it would certainly cause prejudice to him, if he were convicted under either of these offences at the end of the trial. It was not permissible for the trial court to convict the appellant No. 1 for the offence under Section 302 read with Section 109 IPC. His conviction under Section 302 read with section 109 IPC is, therefore, illegal and is liable to be set aside. The High Court erred in upholding the conviction of appellant No.1 under Section 302 read with Section 109 IPC and dismissing his appeal. [681-G-H, 682-A-B]

Joseph Kurian Philip Jose v. *State of Kerala,* [1994] 6 SCC 535 and *Wakil Yadav* v. *State of Bihar,* [2000] 10 SCC 500, relied on.

2. There is no circumstance brought on record to suspect the *bonafides* of the Executive Magistrate, PW-6; nothing has been elicited to show that he was interested in fabricating a case against the accused or that he had any motive to make out a false case against the accused. Hence, it is not possible to accept the contention of appellant Nos. 2 and 3 that it is unsafe to convict them on the dying declaration. [689-A-B]

A *Laxman* v. *State of Maharashtra,* **[2002] 6 SCC 710, followed.**

Paparambaka Rosamma v. *State of A.P.,* **[1999] 7 SCC 695,** *Koli Chunilal Savji* v. *State of Gujarat,* **[1999] 9 SCC 562 and** *Ravi Chander* v. *State of Punjab,* **[1998] 9 SCC 303, relied on.**

B **3. As to how much time the District Magistrate should take in responding to a request for recording a dying declaration, it is not a matter of law or rigidity, but one of convenience depending on the circumstances and the urgency with which he views it. [[689-D]**

C CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 280 of 2003.

From the Judgment and Order dated 13.9.2002 of the Punjab and Haryana High Court in Crl. A. No. 553-DB of 1999.

D Dr. J.N. Dubey, Anurag Dubey, Mrs. Upasana Dubey, Ms. K.B. Upadhyay, Ms. Sneh Mishra and S.R. Setia for the Appellants.

Y.P. Dhingra, Bimal Roy Jad and Ms. Sunita Pandit for the Respondent.

E The Judgment of the Court was delivered by

SRIKRISHNA, J. : This appeal by special leave is directed against the judgment of the Punjab & Haryana High Court dismissing the appeals of the present appellants against convictions, under Section 302 read with F Section 109 IPC in respect of appellant No. 1, and under Section 302 IPC in respect of appellant Nos. 2 and 3.

On 1.4.1996 an F.I.R. was lodged at the Sadar Police Station on the basis of information given by one Bansi Ram (Taya i.e. Uncle) at 10.40 p.m. on that night with regard to the unnatural death, in suspicious G circumstances, of one Kamlesh Rani. The gist of the F.I.R. was that Kamlesh Rani was being harassed by her husband-Sohan Lal @ Sohan Singh (first appellant), mother-in-law Harbans Kaur (second appellant) and sister-in-law Kanchan (third appellant), who ill treated her to extract dowry from her parents. The said Kamlesh Rani was also thrown out of the house H of her in-laws and it was only after intervention of interested parties that

she returned to the house of the in-laws on 31.3.1996. On 1.4.1996, Bansi Ram received information that Kamlesh Rani had been admitted in G.N.D. Hospital, New Emergency, Amritsar with extensive burn injuries. He lodged a complaint that Kamlesh Rani had been set on fire by her husband, Sohan Lal, mother-in-law, Harbans Kaur, father-in-law, Sarwan Singh, and sister-in-law, Kanchan after pouring kerosene oil on her, after conniving with one another.

The police started investigation in the matter, seized certain incriminating materials and also recorded statements of witnesses. As a result of the investigation, the police filed a Charge Sheet against the three appellants and Sarwan Singh. It was alleged against Harbans Kaur and Kanchan that at about 4.00 p.m. on 1.4.1996 they murdered Kamlesh Rani and committed an offence punishable under Section 302 of the IPC. In the alternative, since Kamlesh Rani had died on account of burn injuries otherwise than under normal circumstances, within seven years of her marriage with Sohan Lal @ Sohan Singh, Sohan Lal (husband), Sarwan Singh (father-in-law), Harbans Kaur (mother-in-law) and Kanchan (sister-in-law) of Kamlesh Rani were charged with subjecting Kamlesh Rani to cruelty and harassment on account of demand of dowry and causing her dowry death, an offence punishable under Section 304B of the IPC. The accused denied the charges and claimed to be tried. The prosecution examined Dr. Gurmanjit Rai, Lecturer, Forensic Medicines, Medical College, Amritsar (PW 1), Bansi Ram (PW 2), Usha Rani (PW 3), Gopi Ram (PW 4), Rishi Ram (PW 5), Lakhbir Singh, Naib Tehsildar, Ratala (PW 6), Jit Singh (PW 7), Surinder Singh HC (PW 8), A.S.I Joginder Singh, P.S. Civil Lines, Amritsar (PW 9), Dr. Sat Pal, Surgical Specialist, C.S.C. Saroya, Distt. Nawan Shehar (PW 10) and A.S.I. Satnam Singh (PW 11) and produced certain material objects and documents to prove the charges against the accused. The trial court held that Kamlesh Rani had died as she was murdered by second appellant Harbans Kaur and third appellant Kanchan abetted by first appellant Sohan Lal @ Sohan Singh. The trial court also recorded a finding that, as far as dowry death was concerned, there was no definite statement of any witness that any of the accused had ever demanded dowry at the time of the marriage or even thereafter. Upon appreciation of the evidence on record, the trial court held that the prosecution had failed to prove its case against accused Sarwan Singh beyond a shadow of doubt. Sarwan Singh was, therefore, acquitted

A of all charges against him, but Harbans Kaur and Kanchan were held guilty of burning Kamlesh Rani to death and Sohan Lal @ Sohan Singh was held guilty of abetting the same. Harbans Kaur and Kanchan were thus held guilty of an offence punishable under Section 302 of the IPC, while Sohan Lal @ Sohan Singh was held guilty of an offence punishable under section B 302 read with Section 109 IPC. All three accused were sentenced to imprisonment for life and fine of Rs. 1,000 each and, in default, a further imprisonment of two months. Being aggrieved by the convictions, the three appellants, Sohan Lal @ Sohan Singh, Harbans Kaur and Kanchan are in appeal.

C The case of the prosecution rests mostly on two declarations made by Kamlesh Rani, one on 2.4.1996 to the Naib Tehsildar-cum-Executive Magistrate, Lakhbir Singh (PW 6) at 3.15 p.m. and the second statement made under Section 161 of the Cr. P.C., recorded by Satnam Singh, A.S.I. (PW 11) at 7.10 p.m. on 7.4.1996. It also rests on the oral testimony of D the witnesses for corroboration of the statements made in the said declarations.

Appellant No. 1, accused Sohan Lal husband of Kamlesh Rani, according to the Charge Sheet, had been charged only with the offence of E dowry death, punishable under Section 304B of the IPC. There was no charge under Section 302 or for abetment of murder under Section 109 of the IPC. Counsel for the appellants contended that Section 109 of the IPC, which deals with abetment of a substantive offence, is itself a substantive offence for which punishment is prescribed under the section. Learned counsel contended that unless an accused has been charged for an offence F under Section 109 IPC and tried, it was not open to the trial court to sustain the charge under Section 302 with the help of Section 109 IPC for which the accused was never tried. Learned counsel relied on the judgments of this Court in *Joseph Kurian Philip Jose* v. *State of Kerala,* [1994] 6 SCC 535 and *Wakil Yadav and Anr.* v. *State of Bihar,* [2000] 10 SCC 500 to G buttress his contention.

Joseph Kurian (supra) holds thus:

> "Section 109 IPC is by itself an offence though punishable in the H context of other offences. A-4 suffered a trial for substantive

offences under the Indian Penal Code and Abkari Act. When his direct involvement in these crimes could not be established, it is difficult to uphold the view of the High Court that he could lopsidedly be taken to have answered the charge of abetment and convicted on that basis. There would, as is plain, be serious miscarriage of justice to the accused in causing great prejudice to his defence. The roles of the perpetrator and abettor of the crime are distinct, standing apart from each other."

This view was reiterated in the subsequent judgment in *Wakil Yadav* (supra). In *Wakil Yadav* (supra) the appellant was originally charged with several other accused under Section 302 with the aid of Section 109 IPC. The Court of Sessions convicted all the 7 accused for the offences charged. The High Court in appeal acquitted 5 persons, convicting one Guru Charan Yadav substantively for the offence under Section 302 IPC and the appellant, Wakil Yadav, for the offence under Section 302 read with Section 109 IPC. There was no dispute that no charge had been framed against the appellant, Wakil Yadav, under Section 109 IPC. This Court reiterated the law laid down in *Joseph Kurian* (supra) and held that it was not open to the High Court to convict the accused, Wakil Yadav, for an offence under Section 302 with the aid of Section 109 IPC, as no charge had been framed against him under Section 109 IPC, which is itself a substantive offence.

Section 211 of the Code of Criminal Procedure requires that the charge against the accused be precisely stated. Sub-section(4) of Section 211 of the Code of Criminal Procedure specifically requires that the law and section of the law against which the offence is said to have been committed shall be mentioned in the charge. The learned counsel for the respondent State, relying on Section 464 of the Code of Criminal Procedure, urged that failure to specify Section 109 in Charge Sheet against Sohan Lal was a mere irregularity which would not vitiate the trial without proof of prejudice to the accused. We cannot agree. The learned counsel for the accused is fully justified in his submission that failure to frame a charge with regard to the substantive offence of Section 109 IPC has certainly prejudiced the accused in the trial court. The accused Sohan Lal @ Sohan Singh was called upon to face trial only for the charge under Section 304B IPC. Neither a charge under Section 302 IPC nor under Section 109 IPC,

A was levelled against him in the Charge Sheet. In the absence of a charge being framed against the accused Sohan Lal under Section 302 or 109 IPC, it would certainly cause prejudice to him, if he is convicted under either for these offences at the end of the trial. In our view, it was not permissible for the trial court to convict the first accused Sohan Lal for the offence B under Section 302 read with Section 109 IPC. His conviction under Section 302 read with Section 109 IPC is, therefore, illegal and is liable to be set aside. The High Court erred in upholding the conviction of Sohan Lal @ Sohan Singh under Section 302 read with Section 109 of the IPC and dismissing his appeal.

C The learned counsel for the appellants then strongly assailed the convictions of Harbans Kaur (mother-in-law) and Kanchan (sister-in-law) under Section 302 IPC. He contended that the version given in the First Information Report (FIR) lodged at the instance of Bansi Ram (PW 2) and the version given by Bansi Ram in his evidence before the trial court are D irreconcilable and suggest that Bansi Ram could never have had the information with which he rushed to the Police. In the FIR, Bansi Ram says: "After making my niece Kamlesh to understand the things, we sent her with her parent's in-law on 31.3.1996. Today on 1.4.1996, we received information that Kamlesh was admitted to G.N.D. Hospital, New Emergency, E Amritsar in burnt condition. I accompanied by Usha Rani W/o Hira Lal (brother's daughter-in-law) reached G.N.D. Hospital, New Emergency, Amritsar. My niece Kamlesh told us that on that day at about 4.00 p.m. she was present in her house and that her husband Sohan Lal, Banso, mother-in-law, Sarwan Singh, father-in-law and Kanchan her sister-in-law after conniving with one another had set her on fire, after pouring kerosene F oil on her." In his testimony before the court, Bansi Ram stated that on 1.4.1996, Gurbux Singh, another son of Sarwan Singh, came to their house at 8.00 p.m. in the night and told that Kamlesh was admitted in G.N.D. Hospital, Amritsar in burnt condition. He then said, " I accompanied by Usha Rani and another person went to the said hospital. Kamlesh was in G excessively burnt condition. She told us that her husband's sister Kanchan had tied her legs and Sohan Singh accused had set her on fire after pouring kerosene oil on her body." A number of improvements, variations and inconsistencies between the FIR statement made by Bansi Ram (PW 2) and his evidence before the court were highlighted by the learned H counsel for the accused. He also contended that it was impossible for

Kamlesh Rani to have spoken to Bansi Ram and given him information as to what transpired at the time of the incident. Strong reliance was placed by the learned counsel on the bed-head ticket (Ex. PQ) which showed that on 1.4.1996 Kamlesh Rani was admitted to the hospital at 6.30 p.m. with alleged history of burns, that she was prescribed several medicines which included a strong sedative and pain killer like Calmpose and Pathidine injections. There is an endorsement at 8.40 p.m. in the bed-head ticket (Ex. PQ): "seriousness of the Pt. explained to the relatives." There is also an endorsement at 9.10 p.m.: "Pt. declared unfit for statement due to sedation."

The learned counsel urged that according to the evidence of Bansi Ram, he received information about the burn injuries and admission in the hospital of Kamlesh Rani at about 8.00 p.m.; he immediately went to Usha Rani and accompanied by her and others came to the hospital. By that time, injections Calmpose, Furtulin and Pathidine had already been administered at 7.20 p.m., as seen from the I.O. Chart dated 1.4.1996. It would be improbable that the patient would be in a position to talk to anyone, if these strong sedatives had been administered at 7.20 p.m.. There appears to be substance in this contention. At 9.10 p.m. the doctor had declared the patient unfit for statement due to sedation. The exact time at which Bansi Ram reached the hospital is not available from the evidence on the record. The evidence of Usha Rani (PW 3) suggests that she had received information about Kamlesh Rani receiving burn injuries and her admission to the hospital at 8.30 p.m. on 1.4.1996. According to PW 3, she found that, "she was in a serious condition, she was speechless and was not able to speak." It is true that Usha Rani was declared as a hostile witness and cross-examined. Nonetheless, it is open to the accused to rely on the testimony of Usha Rani for the purpose of improbabilising the evidence of Bansi Ram, in so far as his talk with Kamlesh Rani on the night of 1.4.1996 is concerned. In our view, the contention of the learned counsel for the accused is justified and needs to be upheld. A cumulative assessment of the evidence of Bansi Ram (PW 2), Usha Rani (PW 3) and the medical chart (Ex. PQ) improbabilises that Bansi Ram could have had a talk with Kamlesh Rani in the evening of 1.4.1996, before he went to the Police Station and had the FIR recorded.

The learned counsel thereafter contended that if Bansi Ram's testimony

A is not believable, then the whole of the FIR becomes doubtful and the case against the accused necessarily collapses. We cannot accept this. It may be probable that Bansi Ram might have given information to the police which was exaggerated and added things which, probably, he did not learn from Kamlesh Rani on 1.4.1996. It is possible that seeing Kamlesh Rani B in the hospital, after suffering extensive burns to the extent of 80 per cent, Bansi Ram might have suspected the in-laws of Kamlesh Rani as having murdered her. The First Information Report is only a report about the information as to the commission of an offence; it is not substantive evidence, as the police has yet to investigate the offence. If Bansi Ram's was the only testimony in support of the prosecution, then perhaps the C counsel's was right. We find, however, that the prosecution strongly relied on two declarations, one made to Naib Tehsildar, Lakhbir Singh (PW 6) on 2.4.1996 as well as the statement made by Kamlesh Rani under Section 161 of the Cr. P.C. recorded on 7.4.1986 by Satnam Singh, A.S.I., both of which can be treated as dying declarations.

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The learned counsel for the accused strongly assailed the two dying declarations and contended that the two dying declarations are mutually contradictory and the evidence of the other witnesses do not probabilise their truth. It was contended that the overall circumstances make it unsafe E to convict the accused merely on the said dying declarations. We need to consider these arguments in detail and assess their merit.

The first dying declaration (Ex. PN) was recorded on 2.4.1996, on the basis of a complaint (Ex. PL) made by Bansi Ram to the Deputy F Commissioner, Amritsar alleging that the police were not cooperating in recording the statement by Kamlesh Rani, who had been admitted in the Emergency Ward. A request was made that some officer may be deputed for recording her statement and legal action be taken. Lakhbir Singh, Naik Tehsildar-cum-Executive Magistrate addressed a letter dated 2.4.1996 to the Doctor on duty in the hospital requesting the doctor to issue a certificate G as to whether Smt. Kamlesh Rani was fit to give a dying declaration. According to the evidence of Lakhbir Singh (PW 6), Bansi Ram made an application addressed to the District Magistrate, Amritsar, on which the District Magistrate made an endorsement at 2.05 p.m. on 2.4.1996 directing the Tehsildar to record her statement as an emergency. The document and H the endorsement have been proved by PW 6. PW 6, thereafter, went to

the hospital and addressed the letter (Ex. PM) to the Doctor on duty requesting him to certify as to whether Smt. Kamlesh Rani was fit to give dying declaration. The Doctor on duty (Dr. Vikram Dua, Junior Resident, Surgical Unit-4, GND Hospital, Amritsar) made an endorsement on the application (Ex. PM) to the effect: "Pt. is fit for statement." His endorsement (Ex. PM/1) was made at 3.00 p.m.. Thereafter, PW 6 went to Kamlesh Rani, disclosed his identity to her, asked the attendants to go out and, after ascertaining that she was fit to make the statement voluntarily, recorded her statement. The dying declaration (Ex. PN) was recorded without any omission or addition and as narrated by Kamlesh Rani at 3.15 p.m.. An endorsement on Exhibit PN 1 was made by PW 6 stating, "The above given dying declaration of Smt. Kamlesh Rani wife of Sh. Sohan Lal, was recorded by the undersigned on 2.4.1996 at 3.15 p.m. in the Emergency Ward of Guru Nanak Dev Hospital, Amritsar." He, thereafter, sent the original dying declaration to the District Magistrate, who with his endorsement upon Exhibit PN/1 directed that the same to be sent to the S.S.P., Taran Taran under sealed cover. This dying declaration (Ex. PN) translated in English reads as under:

> "I, Kamlesh Rani wife of Sohan Lal resident of 1-a, Jajj Nagar near V.V. Modern School, Amritsar. I was burnt on pouring kerosene oil by my mother-in-law Harbans Kaur and I am conscious although my body was completely burnt but I understand all the things. Before I burnt I took tea mixed something in it. After that my mother-in-law put kerosene oil on me and my sister-in-law named Kanchan lit the fire. My husband harasses me and demanded for bringing money from her parents if she resides with him. Heard and admitting the correct.
>
> RTI of
> Sd Kamlesh Rani
> W/o Sohan Lal
> 2.4.96"

The learned counsel for the accused criticised the dying declaration (Ex. PN) as not legally sustainable on several grounds. First, it is contended that the certificate of fitness is not endorsed on the dying

A declaration itself but on a separate paper i.e. on Exhibit PM/1. Secondly, it is contended that the certificate of fitness alleged to have been given by Dr. Vikram Dua, Junior Resident, Surgical Unit-4, G.N.D. Hospital, Amritsar was not proved as the said Dr. Dua was not examined at all. He also criticised the evidence of Dr. Sat Pal, Surgical Specialist, C.H.C. B Saroya (PW 10), who produced the bed-head ticket and identified the writing and signature of Dr. Vikram Dua with his endorsement on the application. Though this witness was not even cross examined, the learned counsel contended that the certificate of Dr. Dua was not proved in accordance with law. He also criticised the evidence of PW 6 by C contending that no material was produced by PW 6 to show that he was really appointed as Naik Tehsildar-cum-Executive Magistrate. PW 6 also denied having made a statement to the Police during investigation and that he had not brought the Gazette Notification whereby he had empowered to discharge the function of an Executive Magistrate.

D Having read the evidence of PW 6, in the light of the law laid down by a Constitution Bench of this Court in *Laxman* v. *State of Maharashtra,* [2002] 6 SCC 710, and on assessment of the dying declaration, Exhibit PN, we are afraid that none of the contentions can prevail. The Constitution Bench in *Laxman* (supra), while resolving the conflict of opinion as to E the manner of testing the credibility of a 'dying declaration', overruled the view taken in *Paparambaka Rosamma* v. *State of A.P.,* [1999] 7 SCC 695 and approved the correctness of the view taken in *Koli Chunilal Savji and Anr.* v. *State of Gujarat,* [1999] 9 SCC 562. According to the Constitution Bench:

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> "The juristic theory regarding 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 G 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 H 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 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, has always to 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. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite. In most cases, however, such statements are made orally before death ensues and is reduced to writing by someone like a Magistrate or a doctor or a police officer. When it is recorded, no oath is necessary nor is the presence of a Magistrate absolutely necessary, although to assure authenticity it is usual to call a Magistrate, if available for recording the statement of a man about to die. There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certification by the doctor is essentially a rule of caution and therefore the

A voluntary and truthful nature of the declaration can be established otherwise."

The view taken in *Paparambaka Rosamma* (supra) that in the absence of a medical certification as to the fitness of state of mind, it would be B risky to accept a dying declaration on the subjective satisfaction of the Magistrate was overruled as having been too broadly stated and not being the correct enunciation of law. The Constitution Bench said :

> "...It is indeed a hypertechnical view that the certification of the doctor was to the effect that the patient is conscious and there was C no certification that the patient was in a fit state of mind especially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the answers elicited was satisfied that the patient was in a fit state of mind whereafter he recorded the dying declaration. Therefore, the D judgment of this Court in *Paparambaka Rosamma* v. *State of A.P.* must be held to be not correctly decided and we affirm the law laid down by this Court in *Koli Chunilal Savji* v. *State of Gujarat*."

In *Koli Chunilal Savji* (supra) a Bench of three learned Judges E rejected the contention that in the absence of a doctor while recording the dying declaration, the declaration loses its value and cannot be accepted. The Court observed that, "... the aforesaid requirements are a mere rule of prudence and the ultimate test is whether the dying declaration can be held to be a truthful one and voluntarily given."

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Ravi Chander and Ors. v. *State of Punjab,* [1998] 9 SCC 303, was approved, in which this Court held that for not examining the doctor, the dying declaration recorded by the Executive Magistrate and the dying declaration orally made need not be doubted. The Court observed that the G Executive Magistrate is a disinterested witness and is a responsible officer as long as there was no material on record to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration, no question arises to checking the genuineness of the dying declaration recorded by the Executive Magistrate.

H In the face of this clear enunciation of law, we are afraid that none

of the above arguments urged by the learned counsel can be accepted. A Upon careful assessment of the evidence tendered by PW 6, Lakhbir Singh, Naik Tehsildar, we find no circumstance brought on record to suspect his *bonafides*; nothing has been elicited to show that he was interested in fabricating a case against the accused or that he had any motive to make out a false case against the accused. Hence, we are unable to accept the B contention of the learned counsel for the accused that it is unsafe to convict the accused on the dying declarations.

It was strenuously urged by the learned counsel for the accused that the testimony of the Naib Tehsildar Lakhbir Singh (PW 6) is unbelievable because the District Magistrate appears to have acted with great haste in C deputing Lakhbir Singh to record the dying declaration as soon as he was approached by Bansi Ram (PW 2). It was also urged that the entries in the bed-head ticket suggest that the witness was constantly under administration of heavy sedatives which improbabilises the recording of her dying declaration by Lakhbir Singh (PW 6). In our view, these are D arguments of desperation. As to how much time the District Magistrate should take in responding to a request for recording a dying declaration, is not a matter of law or rigidity, but one of convenience depending on the circumstances and the urgency with which he views it.

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The bed-head ticket shows that the last injection of Pathidine and other sedative drugs were given at 7.20 p.m. on 1.4.1996. On 2.4.1996, no Pathidine injection was given in the morning. On the contrary, there is an endorsement in the treatment sheet stating, "Sedation dose of evening withheld. Pt. declared fit for statement and the same given in the presence F of the Magistrate." It is contended that this entry has not been proved by any witness. In our view, this argument is without substance. If the accused wanted to rely on this entry, to impeach the credit worthiness of Exhibit PN, they were free to examine any witness. Whether this entry is held proved or not, it does not detract from the credit worthiness of the evidence of Lakhbir Singh (PW 6). We, therefore, think that there is no G substance in this contention.

We are satisfied that the dying declaration (Ex. PN) was made by the deceased Kamlesh Rani and that there is no need to discard the evidence of PW 6; that when she made the dying declaration she was in a fit mental H

A condition to do so and was fully conscious of what she was saying. Irrespective of whether the endorsement of Dr. Dua upon Exhibit PM/1 has been proved in accordance with law or not, we find no reason to discard the dying declaration (Ex. PN).

B The learned counsel asserted that this is a peculiar case in which there are five statements which can be characterised as dying declarations and each one is inconsistent with the others. He, therefore, urged that we should disbelieve all of them, give the benefit of doubt to the accused, and acquit them.

C According to the learned counsel for the accused, the circumstances under which the deceased Kamlesh Rani died have been narrated differently on five different occasions. First, there is the version in the FIR lodged by Bansi Ram (PW 2); second, is the version given in the deposition of Bansi Ram (PW 2); third, is the dying declaration recorded by Naib D Tehsildar Lakhbir Singh (PW 6) (Ex. PN); fourth, is the version in the statement of Kamlesh Rani recorded under Section 161 of the Cr. P.C. and fifthly, the version given in the deposition of Jit Singh (PW 7) under cross-examination. Learned counsel contended that each one of the versions is inconsistent with the others and, therefore, taking an overall E view, as each one the versions conflicts with the dying declaration (Ex. PN), it would be unsafe to rely on the dying declarations to uphold the conviction of the appellants. Although, at the first blush, the contention of the learned counsel for the appellants seems attractive, upon a careful appraisal it has no substance. We have already analysed the deposition F of Bansi Ram (PW 2) in the light of the deposition of Usha Rani (PW 3). A cumulative reading of the two, together with the medical endorsements made on the bed-head ticket of G.N.D. Hospital, clearly ruled out Bansi Ram as having received any information from deceased Kamlesh Rani. It is true that both in the FIR as well as in the deposition of Bansi Ram (PW 2) an exaggerated version had been given. Merely, because Bansi G Ram takes it upon himself to give an exaggerated and coloured version of the circumstances under which Kamlesh Rani died, we do not think that it would be proper to reject the dying declaration (Ex. PN) which we have tested on the anvil of the law laid down by the Constitution Bench of this Court in *Laxman* (supra) and found it to have passed. We are, therefore, H not inclined to accept the contention that the dying declaration (Ex. PN)

needs to be rejected because of the FIR of Bansi Ram and the deposition of Bansi Ram do not tally with it. A

Next, we turn to the evidence of Jit Singh (PW 7) on the basis of which the dying declaration (Ex. PN) is impeached. PW 7 was examined only to prove the recovery of certain material objects. He was a Pancha, who had signed the Panchanama which showed the recovery of certain incriminating articles. His examination-in-chief merely consists of the fact that certain articles were recovered in his presence and that he had attested the Panchanama, and that his statement had been recorded by the police. Surprisingly, in his cross-examination, this witness came out with a new story that he was present at the seen of the occurrence, that Kamlesh Rani was lying in the hands of her husband Sohan Lal @ Sohan Singh and she had told all of them including Jit Singh that she had committed suicide, and that she had committed a blunder, before she was moved to the hospital. Rightly, this witness was declared as hostile and suggestions were made to him that the facts deposed by him had not been narrated in his statement to the police, that they had been so narrated at the instance of the accused and that he had deposed falsely under the cross-examination. We have no hesitation in rejecting that part of the testimony of PW 7 which appears to have found its way on the record so convenient for the accused. If at all there was any truth in his statement that he was present at the time of occurrence and that the deceased Kamlesh Rani had made any statement before him, it was the obligation of Jit Singh (PW 7) to have disclosed this to the police. Had he done so, he would have been treated as a material witness and examined by the police with regard to the so called statement made before him. The fact that no such disclosure was ever made by him to the police, and his attempt to come out with crucial material facts pertaining to the occurrence, although he was being examined only as a witness to the Panchanama, do not lend credence to his testimony. It appears to us that Jit Singh (PW 7) must have been won over by the accused and made bold to give convenient evidence under cross-examination. We are not inclined to accept this very convenient testimony of Jit Singh (PW 7) as detracting from the veracity and weight to be attached to the dying declaration (Ex. PN). B C D E F G

That leaves us with the other statement made by Kamlesh Rani to the police under Section 161 of the Cr. P.C. The High Court in its judgment H

A has quoted the statement of Kamlesh Rani under Section 161 of the Cr. P.C. (Ex. PV), which is as under:

> "Statement of Kamlesh Rani wife of Sohan Lal resident of Gali No. 1A, Judge Nagar, Amritsar u/s 161 Cr. P.C.
>
> B It is stated that I am resident of above said address on 1.4.96. I was burnt by my mother-in-law Harbans Kaur by pouring kerosene oil. Due to that my body was burnt. At this time I am conscious. Before burnt, I took a tea after mixing some poison in the tea. Then my mother-in-law put a kerosene oil on me. My C sister-in-law named Kanchan lit the fire by match box. Before the present occurrence my father-in-law Sarwan Singh, Sohan Lal, husband, Harbans Kaur mother-in-law and Kanchan sister-in-law stressing me for bringing dowry from my parents. On 1.4.1996 at the time of occurrence my father-in-law Sarwan Singh and D Sohan Lal my husband both were present in the house. My husband usually asked me that I did not like her and he further told me that if she remain with him bring more dowry from his parents house. I have heard my statement which is correct."

A comparison of the dying declaration (Ex. PN) recorded by PW 6, E Naib Tehsildar Lakhbir Singh, and the statement of Kamlesh Rani recorded under Section 161 of the Cr. P.C. (Ex. PV) shows that they tally in material particulars. There is no conflict or inconsistency between these two statements. The contention of the learned counsel as to the inconsistency must, therefore, fail.

F

Upon careful consideration of the facts and circumstances of the case, we are satisfied that we can safely accept the veracity of the dying declaration (Ex. PN) made by Kamlesh Rani deceased which is also fully corroborated by the other circumstances and not contradicted by her G statement recorded under Section 161 of the Cr. P.C.. No material has been placed before us to show that the dying declarations were the result of any tutoring or coaching. Hence, we are not satisfied that there exist any circumstances which compel us to suspect the trustworthiness of the dying declaration.

H Once we come to the conclusion that the dying declaration is credit

worthy, there is no doubt that the accusations against the appellants accused Harbans Kaur and accused Kanchan are fully proved. In the circumstances, we are of the view that both the courts below were justified in relying upon the dying declaration and convicting the two accused, Harbans Kaur and Kanchan. We see no reason to take a different view in the matter.

A

B

In the result, we make the following order :

First appellant Sohan Lal @ Sohan Singh is acquitted of all the charges. He shall be released forthwith, if his custody is not required in any other case.

C

The convictions of second appellant Harbans Kaur and third appellant Kanchan are hereby upheld. The appeal is dismissed as far as these accused are concerned.

V.S.S. Appeal dismissed.