

SHER SINGH & ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 646 of 2006)

FEBRUARY 15, 2008

**[P.P. NAOLEKAR AND MARKANDEY KATJU, JJ.]**

*Evidence Act, 1872: s.32 – Dying declaration – Admissibility of – Duty of court regarding – Certificate of doctor as to fit state of mind – Requirement of – Held: Court to ensure that statement was not result of tutoring and also to ascertain from evidence that deceased was in fit state of mind – Where it is proved by testimony of Magistrate that declarant was fit to make statement without doctor's opinion to that effect, it can be acted upon provided court ultimately holds the same to be voluntary and truthful – Certificate by doctor is essentially rule of caution and, therefore, voluntary and truthful nature of statement can be established otherwise – On facts, fact that second dying declaration was contrary to first declaration would not make it untrue – Oral dying declaration made to uncle of declarant consistent with subsequent declarations implicating accused persons stating about their involvement in commission of crime – Therefore, accused were rightly convicted under s.302/34 IPC on the basis of dying declaration made against them – Penal Code, 1860 – s.302/34.*

**The prosecution case was on 18.7.1994 that the accused persons who were husband, father-in-law, mother-in-law and sister-in-law poured kerosene oil on the deceased and burnt her which resulted in her death after three days in the hospital. Her first dying declaration made before the A.S.I the same day was that the fire was accidental, and was caught while preparing tea. The uncle of deceased PW-4 met the deceased the next day when she told him that she was burnt by the accused. On his**

A application to District Magistrate, PW7 the Executive  
Magistrate was directed to record her statement and on  
20.7.1994, he recorded the statement. Two days later, S.I.  
also recorded her statement after taking doctor's opinion  
about her fit state of mind. Third day, she died. The  
B accused persons were convicted under s.302 r/w s.34 IPC  
which was upheld by High Court. Hence the present  
appeal.

Dismissing the appeal, the Court

C . HELD: 1. Acceptability of a dying declaration is  
greater because the declaration is made in extremity.  
When the party is at the verge of death, one rarely finds  
any motive to tell falsehood and it is for this reason that  
the requirements of oath and cross examination are  
D dispensed with in case of a dying declaration. Since the  
accused has no power of cross-examination, the court  
would insist that the dying declaration should be of such  
a nature as to inspire full confidence of the court in its  
truthfulness and correctness. The court should ensure  
E that the statement was not as a result of tutoring or  
prompting or a product of imagination. It is for the court  
to ascertain from the evidence placed on record that the  
deceased was in a fit state of mind and had ample  
opportunity to observe and identify the culprit. Normally,  
the court places reliance on the medical evidence for  
F reaching the conclusion whether the person making a  
dying declaration was in a fit state of mind, but where the  
person recording the statement states that the deceased  
was in a fit and conscious state, the medical opinion will  
not prevail, nor can it be said that since there is no  
G certification of the doctor as to the fitness of mind of the  
declarant, the dying declaration is not acceptable. What  
is essential is that the person recording the dying  
declaration must be satisfied that the deceased was in a  
fit state of mind. Where it is proved by the testimony of  
H the Magistrate that the declarant was fit to make the

statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise. [Para 14] [969-A, B, C, D, E, F]

2. The first dying declaration was recorded on 18.7.1994 by ASI DW-1 The victim did not name any of the accused persons and said that it was a case of an accident. However, in the statement before the court, DW-1 specifically deposed that he noted that the declarant was under pressure and at the time of recording of the dying declaration, her mother-in-law was present with her. In the subsequent dying declaration recorded by the Executive Magistrate PW 7 on 20.7.1994, she stated that she was taken to the hospital by the accused only on the condition that she would make a wrong statement. This was reiterated by her in her oral dying declaration and also in the written dying declaration recorded by SI PW 8 on 22.7.1994. The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was under threat and duress that she would be admitted in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural. Although it does not contain the certificate of the doctor that she was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue. The oral dying declaration made to the uncle is consistent with the second dying declaration implicating

A the accused persons stating about their involvement in the commission of crime. The third dying declaration recorded by the SI on the direction of his superior officer is consistent with the second dying declaration and the oral dying declaration made to her uncle though with some minor inconsistencies. The third dying declaration was recorded after the doctor certified that she was in a fit state of mind to give the statement. On overall consideration of the entire evidence, there is no infirmity in the judgment of the High Court which has considered all material evidence placed by the prosecution while arriving at the conclusion of finding the accused guilty of an offence they were charged with. [Paras 15,16] [969-G; 970-A, B, C, D, E, F, G]

D *Paparambaka Rosamma and Ors. v. State of Andhra Pradesh*, AIR 1999 SC 3455; *Harjit Kaur and Others v. State of Punjab and others*, (1998) 9 SCC 691; *Koli Chunilal Savji and Anr. v. State of Gujarat*, AIR 1999 SC 3695 and *Laxman v. State of Maharashtra*, AIR 2002 SC 2973 – referred to.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 646 of 2006.

From the Judgment and Order dated 6.1.2005 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 613-D.B./2000.

F Chander Shekhar Ashri (A.C.) and Rekha Aggarwal for the Appellants.

Rahul Malik (for Kuldip Singh) for the respondent.

The Judgment of the Court was delivered by

G **P.P. NAOLEKAR, J.** 1. Three accused have been convicted and sentenced with rigorous imprisonment for life under Section 302/34 of the Indian Penal Code (IPC) and a fine of Rs.1,000/- each and in default of which to undergo further rigorous imprisonment of three months. The fourth accused has been tried in the Juvenile Court and hence no order was passed

by the Court regarding her.

2. The brief facts are that Jaspal Kaur (deceased) married the accused appellant Sher Singh in 1993. She was living in her matrimonial home for one-and-a-half years with the accused - her husband Sher Singh, father-in-law Attar Singh, mother-in-law Kailash Kaur and sister-in-law Lakhwinder Kaur alias Rani who has been tried in the Juvenile Court. On 18.7.1994 at about 12.00 noon, the deceased received serious burn injuries and was taken to the Civil Hospital, Ludhiana. ASI Hakim Singh was informed and told to record her statement. Hakim Singh (DW 1) recorded her statement at 9.00 p.m. in which she said that the fire was accidental, caught while preparing tea. When her uncle Harbhajan Singh (PW 4) met her on 19.7.1994, the deceased informed him that she was burnt by the accused. On 20.7.1994, he moved an application before the District Magistrate to record her statement. The ADM directed the Executive Magistrate, Rajiv Prashar (PW 7) to record her statement and on 20.7.1994 he recorded her statement. Her uncle moved another application this time before the DSP(Rural) Kanwarjit Singh (PW 1) requesting him to re-examine the matter as according to him she was forced to make a wrong statement before Hakim Singh. On 22.7.1994 the S.I. recorded her statement (Exh.PJ) at about 8.05 p.m. after taking the doctor's opinion. He stated that she was fit to make a statement. On 23.7.1994 Jaspal Kaur died due to burn injuries. Hence the offence was converted into that of Section 302 read with Section 34 IPC which resulted in trial and conviction.

3. It is submitted by the learned counsel for the appellant before us that while appreciating the evidence, reliance should have been placed upon the first dying declaration made on 18.7.1994, which was first in time immediately after the incident wherein she stated that the fire was accidental and no one was responsible for the same, particularly when there are 6 dying declarations in total (3 written and 3 oral) wherein the statement has been improved from time to time. Submission of the learned counsel for the appellants is that it is only when the uncle of the

- A deceased met her in the hospital that she changed her first dying declaration and implicated the accused appellants for commission of crime. When the dying declaration was recorded by the Executive Magistrate on 20.7.1994, there is no certification of the doctor that she was in a fit state of mind to give the dying declaration even though she had received 80% burns. It is urged that one local congress worker Nirmala Sharma was present at the bedside of the deceased when the dying declaration was made by her on 20.7.1994 and possibility of her being tutored could not be ruled out.
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- C 4. To appreciate argument of the learned counsel for the appellants, it would be necessary to scrutinize the written dying declarations made by the deceased to Hakim Singh, Rajiv Prashar and Arvind Puri and oral dying declarations made before her uncle and father. On 18.7.1994, ASI Hakim Singh recorded her statement when the doctor endorsed that she was fit to make a statement. However, the doctor was not present when the dying declaration was made, though her mother-in-law, one of the accused was present. Hakim Singh in his statement before the Court stated that while recording the dying declaration he felt that Jaspal Kaur was under pressure. In this statement, she said that when the incident took place her husband and father-in-law were not present in the house and her mother-in-law was standing outside the house, in front of the gate, while she was preparing tea. The stove suddenly burst and she was soaked with oil and her clothes caught fire. She shouted "*bachao, bachao*", her mother-in-law heard her cries for help and doused her with water from the bathroom. Thereafter, she was taken to the hospital by her mother-in-law with the help of her neighbours and she said that no one was at fault for the accident.
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- F
- G 5. Harbhajan Singh (PW 4) in his deposition said that after 6 to 7 months of the marriage of the deceased with one of the accused, Sher Singh, all accused persons were demanding money to the tune of Rs.10,000/-. On 15.7.1994, the deceased had gone to his house at Jullandhar and told him that she has to
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take Rs.10,000/- from her father otherwise she would have to face dire consequences. At that time, the father of the deceased, Balkar Singh, was in Thailand and, therefore, Harbhajan Singh sent her back. On 19.7.1994, he went to Ludhiana to see Jaspal Kaur. He saw that the house was locked and on enquiring from neighbours he came to know that she was admitted in the hospital. He met her in the Medical Hospital where she was admitted. She told him that her husband, mother-in-law, father-in-law and sister-in-law set her ablaze and that her mother-in-law held her by her hair and threw her on the ground, Attar Singh poured kerosene oil from a 'peepi' lying closeby on her and Sher Singh set her on fire with a match-box and her sister-in-law exhorted them that she should be burnt so that she does not survive. She requested them to take her to the hospital and the accused persons said that if she would make a statement in their favour then alone she would be taken to the hospital. Consequently, since she was under fear, she made a statement in their favour to the police. Hearing this, PW-4 moved an application before the DM for re-recording of her statement. On 20.7.1994, the deceased's statement was recorded by the Executive Magistrate Rajiv Prashar (PW 7) (Exh.PG) in the presence of Dr. Rajinder Kumar and Nirmala Sharma. In the dying declaration, it was stated that she was burnt by her in-laws, when her mother-in-law asked her to prepare tea. Her father-in-law, mother-in-law and sister-in-law poured oil on her and burnt her. She said that her husband was not with her but thereafter in the next sentence she said that they were four – father-in-law, mother-in-law, sister-in-law and husband. She said further that they had stated that unless she would make a wrong statement they would not take her to the hospital and on agreeing to it they had taken her to the hospital. It is stated by her that her sister-in-law lit the fire by match-stick. She went to the bathroom where the bucket of water was kept and poured the same upon herself.

6. Dr. Rajinder Kumar, Registrar, Plastic Surgery, New Daya Nand Hospital, Ludhiana issued a certificate to the effect

A that Jaspal Kaur, aged 19 years, was admitted in the hospital  
on 19.7.1994 at 4.10 p.m. and according to the record, the  
patient had got burn injuries upto 80 per cent. There is no  
certificate of the doctor that the patient was in a condition to  
make a dying declaration but it is apparent from the dying  
B declaration that the doctor was present when it was recorded.

7. Shri Rajiv Prashar, District Transport Officer, Gurdaspur  
(PW-7), who was posted as Executive Magistrate on 20.7.1994,  
recorded the statement. He deposed that he reached the  
hospital and enquired from Dr. Rajinder Kumar who was  
C standing near the deceased whether she was in a condition to  
make the statement and then the statement was recorded. He  
deposed that the statement was read over to her and he  
obtained her right hand thumb impression and the thumb  
impression of her right foot. He stated that the statement is in  
D his hand and bears his signature.

8. The oral dying declaration made before the father Balkar  
Singh (PW-6) on 22.7.1994 cannot be relied upon. It is admitted  
by him in the cross-examination that when he went to the hospital  
he did not have any talk with his daughter as she was not in a  
E position to speak at that time. He touched her but she was unable  
to speak.

9. DSP (Rural), Ludhiana instructed SI Arvind Puri (PW 8)  
to record the statement of injured Jaspal Kaur. Accordingly, he  
F went to the hospital and moved an application before the doctor  
whether the injured was in a fit condition to make the statement  
or not. On 22.7.1994 at 6.45 p.m., the doctor certified that she  
was fit to make a statement and accordingly her statement was  
recorded on 22.7.1994. In her statement, she said that her father-  
G in-law Attar Singh and husband Sher Singh often used to give  
beatings to her and they used to ask her to bring Rs. 10,000/-  
from her parents. When she was preparing tea, her mother-in-  
law caught hold of her hair and pressed the same towards the  
ground and her father-in-law picked up a kerosene oil can and  
H poured the same on her body and her husband Sher Singh lit

the match box. She raised alarm. Her sister-in-law Rani exhorted that she should be burnt in such a manner that she might not escape. Her husband asked all other persons to move out and thereafter closed the room from outside. After some time, her husband opened the door of the room, but by that time she was badly burnt and was speaking at a very low speech. When she pleaded them to take her to the hospital, her father-in-law, husband and sister-in-law said that they would take her to the hospital only if she would make the statement in their favour. On that she told them that she would do so. She got her statement recorded on 18.7.1994 under duress of her in-laws. On 22.7.1994, she stated that the offence had been committed by her mother-in-law, father-in-law, husband and sister-in-law for not bringing Rs.10,000/- from her parents, with an intention to kill her by pouring kerosene oil upon her. She stated that she had no fear of anyone then and thereafter she got her above mentioned statement recorded. According to her, the statement heard by her was correct. She put her right thumb impression on the dying declaration. This statement is proved by SI Arvind Puri (PW-8).

10. In *Paparambaka Rosamma and Ors. v. State of Andhra Pradesh*, AIR 1999 SC 3455, it was held by this Court that although the doctor had appended a certificate to the dying declaration to the effect that the patient was conscious while recording the statement, yet it would not be safe to accept the dying declaration as true and genuine, since the certificate of the doctor was only to the effect that the patient was conscious while recording the statement. It is necessary for the prosecution to prove that the dying declaration is true, voluntary and free from all doubts. But the doctor's certificate only said that the patient was conscious, it did not say that the patient was in a fit state of mind. In medical science there are two stages – one of consciousness and the other of a fit state of mind, but they are not synonyms, and one may be conscious without being in a fit state of mind. The court did not rely upon the dying declaration as the court had also found serious lacunae in other material

A particulars.

11. But in *Harjit Kaur and Others v. State of Punjab and others*, (1998) 9 SCC 691, it is held that even if the dying declaration is not certified by the doctor, it will still have to be accepted because the person recording it had stated that the victim was fit to make the statement and had said that he took the doctor's opinion regarding the same.

12. In *Koli Chunilal Savji and Anr. v. State of Gujarat*, AIR 1999 SC 3695, the question again was whether in the absence of a doctor's certificate as regards the mental fitness of the person to make a statement, would it not be reliable? This Court held that the requirement of such endorsement is only a matter of prudence and the ultimate test is whether the dying declaration is voluntary and truthful. Before recording the dying declaration, the officer concerned must find that the declarant was in a fit condition to make the statement and if the Magistrate is satisfied about the condition of the patient to make the statement, such statement can be relied upon.

13. In *Laxman v. State of Maharashtra*, AIR 2002 SC 2973, a Constitution Bench of this Court had an occasion to consider similar aspects regarding veracity of dying declaration where the doctor's certificate regarding the fitness of a person had not been taken. This Court held that if the person recording the statement is satisfied that the person was fit then the veracity of the declaration will not be questioned. The Court said that the view taken in *Paparambaka case (supra)* of getting the doctor's certificate on the state of mind of the patient to make the statement would be a hyper-technical view, particularly when the Magistrate stated that the patient was in a fit state of mind and whereafter he recorded the dying declaration. The Court further held that where the Magistrate had ascertained from the doctor whether the victim was in a fit condition to make the statement and obtained an endorsement to that effect, merely because the endorsement was not made on the dying declaration but on the application, it would not render the dying

▶ declaration suspicious in any manner.

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14. Acceptability of a dying declaration is greater because the declaration is made in extremity. When the party is at the verge of death, one rarely finds any motive to tell falsehood and it is for this reason that the requirements of oath and cross examination are dispensed with in case of a dying declaration. Since the accused has no power of cross-examination, the court would insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court should ensure that the statement was not as a result of tutoring or prompting or a product of imagination. It is for the court to ascertain from the evidence placed on record that the deceased was in a fit state of mind and had ample opportunity to observe and identify the culprit. Normally, the court places reliance on the medical evidence for reaching the conclusion whether the person making a dying declaration was in a fit state of mind, but where the person recording the statement states that the deceased was in a fit and conscious state, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of mind of the declarant, the dying declaration is not acceptable. What is essential is that the person recording the dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the Magistrate that the declarant was fit to make the statement without there being the doctor's opinion to that effect, it can be acted upon provided the court ultimately holds the same to be voluntary and truthful. A certificate by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of a statement can be established otherwise.

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15. In the present case, the first dying declaration was recorded on 18.7.1994 by ASI Hakim Singh (DW-1). The victim did not name any of the accused persons and said that it was a case of an accident. However, in the statement before the court, Hakim Singh (DW-1) specifically deposed that he noted that the declarant was under pressure and at the time of recording

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A of the dying declaration, her mother-in-law was present with her. In the subsequent dying declaration recorded by the Executive Magistrate Rajiv Prashar (PW 7) on 20.7.1994, she stated that she was taken to the hospital by the accused only on the condition that she would make a wrong statement. This was  
B reiterated by her in her oral dying declaration and also in the written dying declaration recorded by SI Arvind Puri (PW 8) on 22.7.1994. The first dying declaration exonerating the accused persons made immediately after she was admitted in the hospital was under threat and duress that she would be admitted  
C in the hospital only if she would give a statement in favour of the accused persons in order to save her in-laws and husband. The first dying declaration does not appear to be coming from a person with free mind without there being any threat. The second dying declaration was more probable and looks natural to us. Although it does not contain the certificate of the doctor that she  
D was in a fit state of mind to give the dying declaration but the Magistrate who recorded the statement had certified that she was in a conscious state of mind and in a position to make the statement to him. Mere fact that it was contrary to the first declaration would not make it untrue. The oral dying declaration  
E made to the uncle is consistent with the second dying declaration implicating the accused persons stating about their involvement in the commission of crime. The third dying declaration recorded by the SI on the direction of his superior officer is consistent with the second dying declaration and the oral dying declaration  
F made to her uncle though with some minor inconsistencies. The third dying declaration was recorded after the doctor certified that she was in a fit state of mind to give the statement.

G 16. On overall consideration of the entire evidence, we find no infirmity in the judgment of the High Court which has considered all material evidence placed by the prosecution while arriving at the conclusion of finding the accused guilty of an offence they were charged with. The appeal is, accordingly, dismissed.

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Appeal dismissed.