

SHAMA

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v.

STATE OF HARYANA

(Criminal Appeal No. 2311 of 2009)

DECEMBER 14, 2016

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[A. K. SIKRI AND ABHAY MANOHAR SAPRE, JJ.]

Penal Code, 1860 – ss.302/34 – Murder – Dying declaration – Eye-witness – Victim was going on his bicycle to attend his duty – Three accused came on scooter – One accused fired a gun shot – Victim got hit in abdomen – Taken to hospital – Inspector (PW-11) recorded the statement of the victim at the hospital – Victim died after 10 days – Trial court convicted all three accused and sentenced them to life imprisonment – Conviction confirmed by High Court – Appellant-accused challenged conviction pleading illegality in recording of dying declaration – Held: On facts, statement of victim-deceased was recorded only after doctor certified him to be in fit state of mind – Dying declaration of victim-deceased does not record any unnatural things or exaggerated version of incident – Dying declaration was properly recorded and rightly relied by the courts below for appellant’s conviction – It was also corroborated by testimony of PW-3 who proved the motive behind the incident and also proved the incident in question by identifying the accused – Conviction accordingly affirmed – Arms Act – s.25 – Evidence Act, 1872.

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Evidence Act, 1872 – s.32(1). – Dying declaration – Admissibility – Discussed – Held: Law does not prescribe any format for recording dying declaration – It does not prescribe any special authority to record it unless any special law or rule is enacted to that effect – All that the law requires is that the declarant should be in a fit state of mind and able to recollect the situation resulting in the available state of affairs in relation to the incident and the Court should be satisfied that reliance ought to be placed thereon – Dying declaration, once proved, can be relied upon, even in absence of corroborative evidence, but with extreme care and caution – Maxims – “Nemo moriturus praesumitur mentire”.

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A **Dismissing the appeal, the Court**

HELD: 1. On perusal of the dying declaration, it would go to show that firstly, it records specifically the names of the three accused persons including the appellant; Secondly, it records the entire incident, how it happened and who fired the gun shot on the injured; Thirdly, it bears the thumb impression of the injured; Fourthly, it is signed by the person who recorded it in his handwriting [Inspector (PW-11)]. [Para 26] [865-D-E]

2. Having taken note of the totality of the circumstances surrounding the incident in question which found acceptance by the Courts below for convicting the appellant along with two co-accused, there is no good ground to reject the dying declaration of the deceased. It was rightly made the basis for resting the appellant's conviction. Firstly, it was recorded immediately after the incident (just within two hours of the incident); Secondly, the Inspector (PW-11) recorded the dying declaration in the hospital after getting the injured medically examined by the Doctor (PW-1) who certified that the injured was in a fit condition to give a statement; Thirdly, the dying declaration does not record any unnatural things or/and exaggerated version of the incident; Fourthly, it is signed (thumb impression) by the deceased and the Inspector, who recorded it in his handwriting and lastly, it is attested by the Inspector (PW-11). [Paras 27, 28] [865-E-F, G-H; 866-B]

3. There is no evidence to accept the submission that it was the police who falsely implicated the names of the accused in the dying declaration which led to the registration of FIR against them resulting in their conviction. The appellant failed to cite any incident of significance to prove that the police authorities knew the accused persons prior to the date of incident or/and that the accused or police authorities had some kind of grudge/animosity due to some prior incident etc. and due to which the police falsely implicated the accused persons in this case. [Paras 29, 30] [866-B-D]

4. Dying declaration made by the deceased is admissible in evidence under Section 32(1) of the Evidence Act, 1872. In the absence of any kind of infirmity or/and suspicious circumstances surrounding its execution, once it is proved in

evidence in accordance with law, it can be relied on for convicting an accused even in the absence of corroborative evidence but with a rule of prudence that it should be so done with extreme care and caution. [Para 32] [866-G-H; 867-A]

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Panchdeo Singh v. State of Bihar AIR 2002 SC 526:
2001 (5) Suppl. SCR 503 – relied on.

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R v. Woodcock (1789) 1 Leach 500 – referred to.

5.1 It cannot be said that the dying declaration is bad because it was recorded by the Inspector and not by any Magistrate. Firstly, the law does not prescribe any format for recording dying declaration; and secondly, it also does not prescribe any specific authority to record it unless any special law or rule is enacted to that effect. No such rule was brought to the notice of the Courts below and here also. On the other hand, the perfect working and neatly structured dying declaration at times brings about an adverse impression and creates suspicion in the mind of the Court since the dying declaration need not be drawn with mathematical precision. [Paras 34, 35] [867-C-E]

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5.2 All that the law requires is that the declarant should be in a fit state of mind and be able to recollect the situation resulting in the available state of affairs in relation to the incident and the Court should be satisfied that the reliance ought to be placed thereon rather than distrust. [Para 36] [867-E-F]

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5.3 There was no illegality in recording the dying declaration by the Inspector as urged by the appellant. The concerned Inspector before recording the statement had got the deceased medically examined by the Doctor and it was only after the Doctor certified that the deceased was in fit state of mind to speak, his dying declaration was recorded. In the absence of any other suspicious circumstances surfacing the dying declaration, it is not possible to discard the dying declaration only on this ground. [Para 37] [867-F-G]

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6. Once the statement of the deceased had been recorded after taking due procedural care and pursuant to which the police started the investigation and promptly arrested the appellant, there was no need to record another statement of the deceased during the intervening period of 10 days, as urged by the

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A appellant. It was neither a case of infirmity in the prosecution case and nor was the requirement of law to do so. [Para 39] [868-B]

B 7. Further, as rightly held by the two Courts below, (PW-3) was the eyewitness to the incident. He knew all the three accused and also knew the family feud going on between the two families due to marriage affair of their son/daughter. PW-3 witnessed the incident in question as at the relevant time, he was passing through the road in search of his buffalo and having noticed the incident identifying all the accused. His statement was believed by the Trial Court and the High Court. Nothing was pointed out from his evidence to discard his testimony. [Para 40] [868-C-E]

C 8. The dying declaration (Ex. PF/1) was properly recorded and was rightly relied on by the Courts below for resting the appellant's conviction. It was corroborated by the testimony of PW-3, who proved the motive behind the incident and also proved the incident in question by identifying the accused. [Para 41] [868-F]

Case Law Reference

E 2001 (5) Suppl. SCR 503 relied on Para 32
(1789) 1 Leach 500 referred to Para 33

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2311 of 2009.

F From the Judgment and Order dated 30.04.2009 of the High Court of Punjab and Haryana at Chandigarh in CrI. Appeal No. 403-DB of 2000.

Basava Prabhu Patil, Sr. Adv., Abhimanyu Bhandari, Adv. for the Appellant.

G Ms. Geeta Luthra, Sr. Adv., Ujjwal Jain, Dr. Monika Gusain, Advs. for the Respondent.

The Judgment of the Court was delivered by

H **ABHAY MANOHAR SAPRE, J.** 1. This appeal is filed against the final judgment dated 30.04.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.403-DB of 2000

whereby the High Court dismissed the appeal filed by the appellant herein and upheld the judgment/order of conviction and sentence rendered by the Trial Court. A

2. The case of the prosecution is as under:

Naurang-the deceased was an inhabitant of Malia Mandi, Hansi. About 8-9 months prior to the occurrence, his daughter Suman was married to son of Sube Singh (Accused No.3). However, the relations between the two families had become strained due to this marriage. B

3. On 09.10.1997, at about 9.15 p.m., Naurang-the deceased was going on his bicycle to attend his duty at Hafed Spinning Mill, Hansi. When he reached near nursery, Sube Singh, his brother-Shama (appellant herein) and one fat man-Jai Singh came on a scooter. Jai Singh asked to Naurang about his name and when he told his name, he fired a shot from his pistol on Naurang's abdomen, which hit a little above his Navel. Some passers-by took Naurang to a General Hospital, Hansi. Dr. S.K. Gupta (PW-1) Medical Officer of General Hospital, Hansi informed the police about the admission of injured Naurang in Hospital. After receiving information, Mam Chand, Inspector (PW-11) came to the Hospital and made an application seeking opinion of the doctor about the fitness of Naurang so as to enable him to record his statement. After getting the opinion of the Doctor that Naurang was fit to make statement, Mam Chand, Inspector (PW-11) recorded the statement of Naurang(Ex.PF/1). Thereafter he sent the same to the Police Station through Constable Sumer Singh for registration of the case. Since the condition of Norang was serious, he was referred by the doctor to Medical College and Hospital, Rohtak. C
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4. Thereafter Mam Chand, Inspector (PW-11) went to the scene of occurrence, prepared the site plan and took possession of the bicycle and blood stained earth from the scene of occurrence. F

5. On 13.10.1997, Rajinder Kumar, S.I.(PW-13) arrested the appellant-Shama. On 18.10.1997, the statements of the witnesses were recorded. G

6. On 19.10.1997, Rajinder Kumar, S.I.(PW-13) received a wireless message from PGI Rohtak that injured Naurang had expired due to the injuries suffered by him. Accordingly, an offence under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") was registered against the accused persons. H

A 7. On 10.11.1997, after getting a secret information, Mam Chand-Inspector (PW-11) arrested Jai Singh with a pistol of 12 bore. Sube Singh was also arrested.

8. The challan was prepared by Mam Chand, Inspector on 30.12.1997 and the same was forwarded for presentation in the Court.

B 9. The case was committed to the Court of Sessions. The charges were framed against all the three accused, namely, Shama, Sube Singh and Jai Singh, under Section 302/34 IPC. Charge under Section 25 of the Arms Act, 1878 was also framed against Jai Singh.

C 10. The prosecution examined 15 witnesses and 3 witnesses were examined in defence. The accused persons were examined under Section 313 of the Criminal Procedure Code, 1973 (hereinafter referred to as "the Code").

D 11. Vide order dated 24.08.2000, the Additional Sessions Judge, Hisar convicted all the three accused for the offence punishable under Section 302/34 IPC. Accused Jai Singh was held guilty under Section 25 of the Arms Act also.

E 12. By order of sentence dated 26.08.2000, all the three accused were sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each under Section 302/34 IPC. In default of payment of fine, to undergo further rigorous imprisonment for two years. Jai Singh was also sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- under Section 25 of the Arms Act. In default of payment of fine, to undergo further rigorous imprisonment for six months. Both the sentences shall run concurrently.

F 13. Challenging the judgment/order of conviction and sentence, Shama and Sube Singh filed an appeal being Criminal Appeal No.403-DB of 2000 and Jai Singh filed a separate appeal being Criminal Appeal No. 595-DB of 2000 before the High Court.

G 14. Both the appeals were heard together. By a common impugned judgment dated 30.04.2009, the High Court dismissed both the appeals.

15. Aggrieved by the said judgment, Shama alone has filed this appeal by way of special leave before this Court.

H 16. By this Court's order dated 04.12.2009, leave was granted and the appellant was released on bail.

17. When the matter was on Board on 15.09.2016, Mr. Rameshwar Prasad Goyal, learned counsel appearing for the appellant, was not present and the matter could not be taken up. Thereafter when the matter came up on 29.09.2016, learned counsel for the appellant was not present. This Court, therefore, requested Mr. Basava Prabhu Patil, learned senior counsel, who was present in the Court, to assist the Court as Amicus Curiae on behalf of the appellant with Mr. Abhimanyu Bhandari, learned counsel. The matter was accordingly adjourned to enable the amicus curiae to prepare the case.

18. Heard Mr. Basava Prabhu Patil, learned senior counsel appearing as Amicus Curiae, for the appellant and Ms. Geeta Luthra, learned senior counsel for the respondent-State.

19. Learned Amicus Curiae appearing for the appellant (Accused) reiterated the same submissions, which were pressed into service by the appellant before the Sessions Court and the High Court though unsuccessfully.

20. Elaborating the submissions, learned counsel for the appellant attacked the impugned judgment, which according to him was based solely on the dying declaration (Ex. PF/1) recorded by the Inspector, Mam Chand (PW-11). According to learned counsel, the Courts below should not have placed reliance on such dying declaration because, firstly, the Magistrate did not record it; secondly, the deceased was not in a fit condition to give any statement when it was being recorded; thirdly, though incident is said to have occurred on 09.10.1997 whereas the deceased expired on 19.10.1997 and during this intervening period, no efforts were made to record any other statement of the deceased, fourthly, the reading of dying declaration would suggest that an attempt was made to implicate the accused persons falsely by the police authorities; and lastly, in the absence of any corroborative piece of evidence to prove the complicity of the appellant in commission of the crime in question, it is not safe to rest the appellant's conviction only on the basis of dying declaration of the deceased.

21. Learned counsel for the respondent (State) supported the impugned order and contended that keeping in view the concurrent findings of the two Courts below which are based on proper appreciation of evidence and the law laid down by this Court on the subject governing the issue, no case is made out to set aside the appellant's conviction.

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A 22. Having heard learned counsel for both the parties and on perusal of the record of the case, we find no merit in any of the submissions urged by the learned counsel for the appellant (accused).

B 23. We have perused the dying declaration (Ex.PF/1) in its original form by requisitioning the original record of the case from the Sessions Court. It is clear from the evidence that the incident in question occurred around 09.15 p.m. on road near a place called "Nursery". The deceased was shifted immediately from the place of occurrence to the General Hospital which is near to the place of occurrence. It is also clear from the record that the statement of the injured (deceased) was recorded immediately at 10.50 p.m. in the Hospital by the Inspector, Mam Chand C (PW-11) and thereafter FIR (Ex.-PF) was registered around 11.00 p.m. in the nearest Police Station.

D 24. Mam Chand. Inspector (PW-11) recorded the statement of the deceased after obtaining certification from Dr. S.K. Gupta (PW-1), who certified that injured (deceased) was in a fit condition to give a statement. Dr. S. K. Gupta also proved this fact in his evidence.

25. The dying declaration was signed (thumb impression) by the injured and it bears the Inspector's signature, who recorded the dying declaration. It reads as under:

E **"Statement of Naurang son of Ram Chand caste Ahir, resident of Maliyan Mandi, Hansi.**

Stated that I am the resident of above noted address:

F **About 8-10 months ago, the marriage of my daughter Suman, was performed with Sube Singh, son of Hari Singh, resident of Mill Gate, Hisar and our relations had become stained with him.**

G **Today at about 9.15 p.m., I was going to attend my duty in Hafed Spinning Mill, Hansi. When I reached near the Nursery, then from the opposite side, three persons on a scooter reached there. Sube Singh and his brother Shyama and one fat man was accompanying them and they intercepted me. Out of them one fat man was asked me my name. I replied that my name is Naurang. That person aimed and fired a pistol-shot at me on my abdomen and that shot hit me on my**

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navel (amblicus). The passerby lifted me and removed me to the Hospital. All these three persons, with intent to murder me, by firing bullet-shot, have caused me injuries. Earlier also, they had given me threat of dire consequences, i.e., to murder me. I was riding on the cycle which is lying on the spot. I have heard my statement, which is correct. Action may be taken.

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Attested

L.T.I. Naurang

Sd/-

Mam Chand, Inspector

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SHO P.S. City Hansi

Dated : 9.10.97"

26. Perusal of the dying declaration would go to show that firstly, it records specifically the names of the three accused persons-Sube Singh and Shama (appellant herein) and one fat person; Secondly, it records the entire incident, how it happened and who fired the gun shot on the injured; Thirdly, it bears the thumb impression of the injured; Fourthly, it is signed by the person who recorded it in his handwriting [Inspector, Mam Chand (PW-11)].

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27. Having taken note of the totality of the circumstances surrounding the incident in question which found acceptance by the Courts below for convicting the appellant along with two co-accused, we find no good ground to reject the dying declaration of the deceased. In our opinion, it was rightly made the basis for resting the appellant's conviction. It is apart from the fact that there is corroborative piece of evidence also to prove the complicity of the appellant in the crime in question. This we say for the reasons mentioned infra.

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28. Firstly, it was recorded immediately after the incident (just within two hours of the incident); Secondly, the Inspector (Mam Chand-PW-11) recorded the dying declaration in the hospital after getting the injured medically examined by the Doctor (Shri S.K. Gupta-PW-1) who certified that the injured was in a fit condition to give a statement; Thirdly, the dying declaration does not record any unnatural things or/and exaggerated version of the incident. In other words, the dying declaration

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A only records the natural events such as the names of the persons, the description of vehicle used by the persons named therein, identity of the person who fired the gun shot, reason as to why the deceased was targeted, and where the gun shot was hit; Fourthly, it is signed (thumb impression) by the deceased and the Inspector, who recorded it in his handwriting and lastly, it is attested by the Inspector (PW-11).

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29. We cannot accept the submission of learned counsel for the appellant when he urged that it was the police who falsely implicated the names of the accused in the dying declaration which led to the registration of FIR against them resulting in their conviction.

C 30. In our view, there is no evidence to accept this submission. The appellant failed to cite any incident of significance to prove that the police authorities knew the accused persons prior to the date of incident or/and that the accused or police authorities had some kind of grudge/animosity due to some prior incident etc. and due to which the police falsely implicated the accused persons in this case. In our view, there
D has to be some strong circumstance to prove false implication by the police officials in any serious offence such as the one here. We do not find it to be so here.

E 31. On the other hand, we find that the dying declaration clearly records that the son of Sube Singh (one of the accused), was got married to deceased's daughter-Suman around 8-10 months prior to the date of incident and due to non-acceptance of the marriage in the two families, the relations between Sube Singh and deceased's family had become strained, which led to the incident in question. It has also come in evidence that the appellant (Shama) was brother of Sube Singh. The deceased
F thus knew the two accused due to their relations with them. The appellant being the brother of Sube Singh accompanied him with third person-shooter with an intention to eliminate the deceased. Since the deceased did not know the third person and hence he described him as "one fat man" who had accompanied Sube Singh and Shama on scooter. He was later identified as Jai Singh.

G 32. Dying declaration made by the deceased is admissible in evidence under Section 32(1) of the Evidence Act, 1872. In the absence of any kind of infirmity or/and suspicious circumstances surrounding its execution, once it is proved in evidence in accordance with law, it can be relied on for convicting an accused even in the absence of corroborative
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evidence but with a rule of prudence that it should be so done with extreme care and caution. (See-Panchdeo Singh vs. State of Bihar, AIR 2002 SC 526) A

33. One of the principles, which is always kept in mind, while examining the dying declaration of the deceased is that **“a man will not meet his Maker with a lie in his mouth”**. As aptly said by Mathew Arnold in very old English case [see-Lyre LCR in R vs. Woodcock (1789) 1 Leach 500] -**“Truth sits on the lips of a dying man”**. This principle is deduced from a well known Latin legal maxim *“nemo moriturus praesumitur mentire”*. B

34. We are not impressed by the submission of learned counsel for the appellant when he urged that the dying declaration is bad because it was recorded by the Inspector and not by any Magistrate. C

35. In our considered opinion, firstly, the law does not prescribe any format for recording dying declaration; and secondly, it also does not prescribe any specific authority to record it unless any special law or rule is enacted to that effect. No such rule was brought to the notice of the Courts below and here also. On the other hand, we find that perfect working and neatly structured dying declaration at times brings about an adverse impression and creates suspicion in the mind of the Court since the dying declaration need not be drawn with mathematical precision. D

36. All that the law requires is that the declarant should be in a fit state of mind and be able to recollect the situation resulting in the available state of affairs in relation to the incident and the Court should be satisfied that the reliance ought to be placed thereon rather than distrust. E

37. We have not been able to notice any kind of illegality in recording the dying declaration by the Inspector as urged by the learned counsel for the appellant. As observed supra, the concerned Inspector before recording the statement had got the deceased medically examined by the Doctor and it was only after the Doctor certified that the deceased was in fit state of mind to speak, his dying declaration was recorded. In the absence of any other suspicious circumstances surfacing the dying declaration, it is not possible to discard the dying declaration only on this ground. F

38. This takes us to the next argument of learned counsel for the appellant. It was urged that since the deceased died 10 days after the G

A incident, his statement could have been recorded by the Magistrate during this intervening period.

39. We find no merit in this submission. Once the statement of the deceased had been recorded after taking due procedural care and pursuant to which the police started the investigation and promptly arrested the appellant herein on 13.10.1997, there was no need to record another statement of the deceased during the intervening period of 10 days. It was neither a case of infirmity in the prosecution case and nor was the requirement of law to do so.

40. There is yet another reason to uphold the appellant's conviction. As was rightly held by the two Courts below, Pyarelal (PW-3) was the eyewitness to the incident. He knew all the three appellants and also knew the family feud going on between the two families due to marriage affair of their son/daughter. He also knew that marriage issue was referred to the Panchayat wherein decision was ultimately taken to dissolve the marriage. PW-3 witnessed the incident in question as at the relevant time, he was passing through the road in search of his buffalo and having noticed the incident identifying all the accused. His statement was believed by the Trial Court and the High Court. Nothing was pointed out from his evidence to discard his testimony. We have perused the evidence of Pyarelal (PW-3) and find that it was rightly believed by the two Courts.

41. In the light of foregoing discussion, we are of the view that none of the arguments though pressed in service with force have any merit. We accordingly hold that the dying declaration (Ex. PF/1) was properly recorded and was rightly relied on by the Courts below for resting the appellant's conviction. We also hold that it was corroborated by the testimony of Pyarelal (PW-3), who proved the motive behind the incident and also proved the incident in question by identifying the accused.

42. Before parting, we record a word of appreciation for Mr. Basava Prabhu Patil, learned senior counsel, and Mr. Abhimanyu Bhandari, learned counsel, who on our request, appeared as amicus curiae for the appellant and argued the case ably with complete fairness.

43. In view of the foregoing discussion, the appeal fails and is accordingly dismissed. As a consequence, the bail granted to the

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appellant-Shama, son of Hari Singh on 04.12.2009 is cancelled. The A
appellant be taken into custody to undergo the remaining period of
sentence awarded by the Sessions Court.

Ankit Gyan

Appeal dismissed.