Tapinder Singh vs State Of Punjab on 7 May, 1970

Equivalent citations: 1970 AIR 1566, 1971 SCR (1) 599, AIR 1970 SUPREME COURT 1566

Author: I.D. Dua

Bench: I.D. Dua, A.N. Ray

PETITIONER:
TAPINDER SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT:
07/05/1970

BENCH:
DUA, I.D.
BENCH:
DUA, I.D.
RAY, A.N.

CITATION:
1970 AIR 1566 1971 SCR (1) 599
1970 SCC (2) 113
CITATOR INFO :
R 1972 SC1766 (9)
R 1976 SC1994 (6)
R 1984 SC1523 (10)

ACT:
Code of Criminal Procedure, 1898. 154-First Information Report what is-s. 162(1) of Code whether bars admission off dying declaration into evidence.
Evidence Act, 1872-Dying declaration is admissible under s. 32(1) and bar of s. 162(1) Cr. P. C. does not apply-Value of dying declaration.
Ballistic expert-if eye-witnesses are believed the non-examination of ballistic expert loses all importance.

HEADNOTE:
The appellant was tried for murder, on the allegation that he caused the death of B by firing five shots at him from

his pistol. The testimony against him consisted of a dying declaration made by B, the statements of three eyewitnesses and some circumstantial evidence. The trial court convicted the appellant and sentenced him to death. The conviction and sentence were affirmed by the High Court. In appeal by special leave before this Court the appellant contended : (i) that the information relating to the occurrence given to the police by telephone regarding which, an entry was made in the daily dairy must be treated as the first information report; (ii) that the dying declaration of deceased was inadmissible because it was hit by s. 162 of the code of Criminal Procedure; (iii) that the dying declaration was unreliable; (iv) that the evidence in the case was not sufficient to justify the conviction of the appellant; (v) that, among other omissions, the non-examination of the ballistic expert created a lacuna in the prosecution case; and (vi) that in view of the alleged, motive-the appellant's suspicion that the deceased had illicit relations with his wife-the sentence should be reduced.

HELD : (i) The telephonic message recorded in the daily diary of the police station was a cryptic and anonymous oral message which did not in terms clearly specify a cognizable offence and could not, therefore, be treated as first information report. The mere fact that this information was the first in point of time could not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report, has to be determined on the relevant facts and circumstances of each case. [605 B-C]

(ii)Section 162 Criminal Procedure Code in express terms excludes from its purview statements 'falling within the provisions of s. 32(1) of the Indian Evidence Act indisputably, the dying declaration in the present case fell within s. 3(1) of the Indian Evidence Act and as such it was both relevant and outside the prohibition contained in s.162(1) Cr. P. C. [605 D-E]

(iii)(a) In view of the evidence of the Judicial Magistrate who recorded the dying declaration the mere fact that the original dying declaration had been stolen from the file, could not destroy its value. Nor could the fact that the investigating officer was allowed to make a copy

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of the dying declaration be interpreted to mean that the Magistrate was subservient to the police. A dying declaration is not a confidential document and can legitimately serve as a guide in further investigation. [606 D-G]

(b) A dying declaration is not a deposition in Courtand it is neither made on oath nor in the presence of the accused. Itis therefore not tested in cross-examination on behalf of the accused.But a dying declaration is admitted in evidence by way of an exceptionto

the general rule against the admissibility of hearsay evidence on the principle of necessity. The weak points of the dying declaration merely serve to put the court on its guard while testing its reliability by imposing on it an obligation to closely scrutinise all attendant circumstances. So scrutinised. the dying declaration in the present case must be accepted as true. [607 D-E]
(iv)If the dying declaration is acceptable as true then even in the absence of other corroborative evidence it would be open to the court to act upon the dying declaration and convict the appellant stated therein to be the offender. An accusation in a dying declaration comes from the victim and if it is accepted then in view-of its sources the court can safely act on it. In the present case not only the dying declaration but the other evidence including that of three eye-witnesses justified the conviction of the appellant. [609 E-F]
(v)When the eye witnesses have been believed minor points such as non-production of the ballistic expert lose all importance. [610 E-F]
(vi)In view of the manner in which five shots were fired at the deceased,the murder was deliberate and pre-planned and the plea for reductionof the sentence could not be accepted. [611 E]
Sarup Singh v. State of Punjab, A.I.R. 1964 Punjab 508, Brahmin Ishwarlal Manilal v. State of Gujarat, Cr. A. No. 120/63 dt. 10-8-1965. Kushal Rao v. State of Bombay, [1958] S.C.R. 152 at pp. 568-569 and Harbans Singh v. State of Punjab, [1962] Sup. 1 S.C.R. 104, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 244 cf 1969.

Appeal by special leave from the judgment and order dated July 23, 1969 of the Punjab and Haryana High Court in Criminal Appeal No. 302 of 1969 and Murder Reference No. 25 of 1969.

Nur-ud-din Ahmad and R. L. Kohli, for the appellant. R. N. Sachthev, for respondent No. 1.

Frank Anthony, S. R. Agarwal and E. C. Agarwala, for respondent No. 2.

The Judgment of the Court was delivered by Dua, J. In this appeal by special leave the appellant challenges his conviction and sentence under s. 302, I.P.C. for the; murder of his brother-in-law (husband of his wife's sister). The occurrence is stated to have taken place on Sunday October 8, 1968 at about 4.45 p.m. near the clock tower in Ludhiana' City.

It is not disputed that on August 13, 1968 the appellant Tapinder Singh, a business man and a Municipal Commissioner, had lodged a first information report (Ex. PR) with the police station,

Sadar, Ludhiana against Kulwant Singh, deceased whom he described as. his Sandhu (his wife's sister's husband) and one Ajit Singh, alleging that on the pretext of consulting him they had taken him in their car to the canal near the Agricultural College an after getting down from the car, when they had walked about 150 paces on the banks of the canal, the deceased Kulwant Singh, saying that he would teach the appellant a lesson, whipped out a-- clasp-knife and attacked him. Ajit Singh also shouted that the appellant should not be allowed to escape. The appellant raised alarm and tried to run away."- While endeavoring to ward off with his right hand the knife blow by Kulwant Singh the appellant's right hand palm got wounded and started bleeding, Just at that moment Gurmel Singh, Sarpanch and Shamsher Singh, Lambardar, happened to pass that way in a car. They stopped the car. In the meantime Kulwant Singh and Ajit, Singh got into, their car and went away. Pursuant to this report admittedly a criminal case was pending against the deceased when the occurrence in question took place. Kulwant Singh, deceased, who had been arrested pursuant to that report, in a case under s. 307/ 324, I.P.C., was actually on bail on the date of the occurrence. According to the prosecution Gurdial Singh (P.W. 7), father of the deceased Kulwant Singh is employed, as Works Manager in the, Ludhiana Transport Company, which is a private concern and which plies buses on different routes in Ludhiana District. Gurdial Singh is also a share- holder of this Company. The workshop, the office and the taxi stand of this Company are located in Sarai Bansidhar which faces the clock tower. Gurdial Singh, in addition, owns two taxis which he runs on hire. He also owns two private cars which are used both for personal requirements and as taxis. The deceased used to look after these four vehicles. The father and the son used to live together in Model Town. The two taxis used to remain at the Taxi Stand about 100 yards away from the clock tower whereas the other two cars used to be parked at Gurdial Singh's business premises. On August 8, 1968 at about 4.45 p.m. the deceased was sitting on a Takhat posh at the Taxi Stand. It being a Sunday the shops in the neighborhood were closed. Sher Singh (P.W. 9) was standing close to the Takhat posh. Harnek Singh, the driver of one of the taxis and Gurdial Singh were also present. At the taxi stand there was at that time only-one taxi belonging to Gurdial Singh. The appellant came from the side of the railway station and fired at the deceased five shots from his pistol. After receiving three shots the deceased dropped down and the remaining two shots hit him when he was lying. The persons present there raised art ,alarm, shouting 'Don't kill; dont kill'. The appellant, after firing the shots, briskly walked back towards the railway station. The ,deceased who was bleeding profusely was taken in the taxi by Gurdial Singh, his father and Hamek Singh, the driver, to Dayanand Hospital where they were advised to take the injured to Brown's Hospital because his condition was serious. It is in evidence that some person had telephoned to the City Kotwali, Ludhiana on the day of the occurrence at about 5-30 p.m. informing the police authorities that firing had taken place at ax Stand, Ludhiana. The person, giving the information on telephone, did not disclose-his identity; nor did he give any further particulars. When the police officer receiving the telephone message made further enquiries from him he disconnected the telephone. This report was entered in the daily diary at 5.35 p.m. The Assistant Sub-Inspector, Hari Singh, along with_ Assistant Sub-Inspectors Amrik Singh, Jagat Singh and Brahm Dev and constables Prakash ,Singh, Harbhajan Singh and Harbans Lal, left the police station in a government jeep for the Taxi Stand, Ludhiana near Jagraon Bus Stand on the Grand Trunk Road, about a furlong and a half away from the City Kotwali Police Station. From there Hari Singh learnt that the injured man had been removed by some persons to Dayanand Hospital. As it was rumored at the place of the occurrence that the appellant Tapinder Singh had shot at the deceased, Hari Singh deputed Amrik Singh and Brahm Dev to search for him.

Hari Singh himself, along with.sub-Inspector Jagat Singh and the police constables left for Dayanand Hospital. From there they went to the Civil Hospital and then they proceeded to C.M.C. Hospital at about 6-30 p.m. On enquiry they were informed that Kulwant Singh had been admitted there as an indoor patient. Hari Singh went upstairs in the Surgical Ward and obtained the report (Ex. PH/ 13) prepared by Dr. E. Pothan who was in the Surgical Ward where Kulwant Singh was lying. The statement of Kulwant Singh (Ex. PM) was also recorded by him at about 6.50 p.m. in that ward and the same after being read out by him was thumb marked by Kulwant Singh as token of its correctness. That statement was forwarded to the police station, City Kotwali for registration of the case under s. 307, I.P.C. Exhibit PM was also attested by Dr. Sandhu, House Surgeon. Hari Singh deputed Assistant Sub- Inspector, Jagat Singh to arrange for a Magistrate for recording Kulwant Singh's dying declaration in the hospital. The statement of Gurdial Singh, father of the deceased was also recorded there at about 7.20 p.m. Jagat Singh, A.S.I. brought Shri Sukhdev Singh, P.C.S., Judicial Magistrate, First Class, to the Hospital at about 7.30 p.m The dying declaration was, however, recorded at about 8.30 P.m. because Kulwant Singh was not found to be in a fit 'state of health to make the statement earlier. Kulwant Singh died at the operation theatre the same midnight. Pursuant to Ex. PH/ 13 first information report was registered and the appellant committed to stand his trial for an offence under S. 302, I.P.C.

The learned Additional Sessions Judge, believing Gurdial Singh (P.W. 7), Sukhdev Singh, Judicial Magistrate (p.W. 10) and Mukhtiar Singh, H. C. (P.W. 6) held proved the motive for the crime viz., that the appellant suspected illicit intimacy between his wife and the deceased who was married to her elder sister. According to the trial Judge the appellant for this reason bore a grudge against the deceased. The three eye witnesses Gurdial Singh, (P.W. 7), Hamek Singh (P.W. 8) and Sher Singh (P.W. 9) were held to have given a true and correct account of the occurrence and being witnesses whose presence at the place of occurrence was natural their evidence, was considered trustworthy, which fully proved the case against the accused. The dying declaration was also found to be free from infirmity and being categorical and natural the court considered it sufficient by itself to sustain the conviction. The circumstantial evidence, including that of the recovery of blood stained earth from the place of occurrence, the recovery of blood stained clothes of the deceased, the fact of the accused having absconded and the recovery of the pistol and cartridges were also held to corroborate the prosecution story. Omission on the part of the prosecution to produce a ballistic export was considered to be immaterial and it was held not to weaken or cast a doubt on the prosecution case because the oral evidence of eye witnesses to the commission of the offence impressed the court to be trustworthy and acceptable. The trial court also took into consideration the allegations con-the course of the committal proceedings in the court of Shri Mewa Singh, Magistrate, on November 20, 1968 to the effect, inter alia, tained in an application presented by Gurdial Singh (P.W. 7) in that an attempt was being made on behalf -of the accused to tamper with the prosecution witnesses. The trial court convicted the accused under s. 302, I.P.C. and imposed capital sentence.

On appeal the High Court rejected the criticism on behalf of the accused that the occurrence had nottaken place at the spot and in the manner deposed to by the eye witnesses. On a detailed and exhaustive discussion of the arguments urged before the High Court it came to this conclusion :

"..... that there was motive on the part of the appellant to commit this crime, that the three eyewitneses produced by the prosecution are reliable, they were present at the time of the occurrence and have given a correct version of the incident and that the medical evidence fully supports the prosecution and

-no suspicion is attached to it. The deceased made more than one dying declaration and we are satisfied that they were not induced and that the deceased gave a correct version of the incident. The suggestion made that Tapinder Singh has been roped in on suspicion in not correct because implicit in such an argument is the suggestion that the crime was committed by somebody else. It was broad day light, the assailant must have been identified and consequently we are satisfied that the offence has been fully brought home to the appellant. The place of the occurrence does not admit of any doubt because there is good deal of evidence on the record that blood was recovered from where the Takhat posh was kept by GurJial Singh and there is no suggestion that the blood was found from anywhere else. The learned counsel has then urged that the offence does not fall under section 302, Indian Penal Code, but no reasons have been given as to why this is not an offence punishable under section 302, Indian Penal Code.

Learned counsel urged that something must have happened which induced Tapinder Singh to commit this crime. There is nothing on the record, not even a suggestion, that anything happened. Tapinder Singh came armed with a pistol and fired as many as five shots at Kulwant Singh, two of which he fired on his back when Kulwant Singh had falled on the ground. The appellant, therefore, does not deserve the lesser penalty contemplated by law. Consequently, we uphold the conviction and sentence imposed upon Tapinder Singh. The appeal is dismissed and the sentence of death is confirmed."

On appeal in this Court under Art. 136 of the Constitution, Mr. Nuruddin Ahmed, learned advocate for the appellant. ad- dressed elaborate arguments challenging the conclusions of the courts below on which they have sustained the appellant's conviction. He started with an attack on the F.I.R. based on the dying declaration. According to the counsel, the information in regard to the offence had already been conveyed to the police by means of a telephone message and the police had actually statrted investigation on the basis of that information. This argument was, however, not seriously persisted in and was countered by the respondents on the authority of the decision in Sarup Singh v.

State of Punjab("). The telephone message was received by Hari Singh, A.S.I., Police Station, City Kotwali at 5-35 p.m. on September 8, 1969. The person conveying the' information did not disclose his identity, nor did he give any other particulars and - all that is said to have been conveyed was that firing had taken place at the taxi stand Ludhiana. This was, of course, recorded in the daily diary of the police station by the police officer responding to the telephone call. But prima facie this cryptic and annoymous oral message which did not in terms clearly specify a cognizable offence cannot be treated as first information report. The mere fact that this information was the first in

point of time does not by itself clothe it with the character of first information report. The question whether or not a particular document constitutes a first information report has, broadly speaking, to be determined on the relevant facts and circumstances of each case. The appellant's submission is that since the police authorities had actually proceeded to the spot pursuant to this information, however exiguous it may appear to the court-, the dying declaration is hit by s. 162, Cr. P.C. This submission is unacceptable on the short ground that s. 162(2), Cr. P.C. in express terms excludes from its purview statements falling within the provisions of s.32 (1), Indian Evidence Act. Indisputably the dying declaration before us falls within s. 32(1), Indian Evidence Act and as such it is both relevant and outside the prohibition contained in s. 162 (1), Cr. P.C. The counsel next contended that the dying declaration does not contain a truthful version of the- circumstances in which Kulwant Singh bad met with his death and, therefore, it should not be acted upon. This argument is founded on the submission that the deceased did not meet with his death at the spot sworn by the prosecution witnesses and that none of these witnesses actually saw the occurrence 'because they were not present at the place and time where and when the deceased was shot at. We are far from impressed by this contention. The trial court and the High Court have both believed the three eye witnesses and have also relied on the dying declaration. Normally, when the High Court believes the evidence given by the eye witnesses this Court accepts the appraisal of the evidence by that Court and does not examine the evidence afresh for itself unless, as observed by this Court in Brahmin Isharlal Manilal v. The State of Gujarat. (1) "It is made to appear that justice has failed for reason of some misapprehension or mistake in the reading of the evidence by the High Court."

(1) A.I.R. 1964 Punjab 508.

(1) Crl. A. No. 120 of 1963 decided on August 10, 1965.

It was added in that judgment :

> "There must ordinarily be a substantial error of law or procedure or a gross failure of justice by reason of misapprehension or mistake in reading the evidence or the appeal must involve a question of principle of general importance before this Court will allow the oral evidence to be discussed."

In the present case it was contended that the original document embodying the dying declaration is missing from the judicial record and it is suggested that the mysterious disappearance of this important document during the committal proceedings was intended to remove from the record the evidence which would have shown that this dying declaration could not legally constitute the basis of the F.I.R. and thereby frustrate the plea, of the accused that S. 162, Cr. P.C. operated as a 'bar to its admissibility. The bar created by s. 162(1), Cr. P.C., as already noticed, is,inapplicable to dying declarations. But, as the original dying declaration has somehow disappeared from the Judicial record and the case is of a serious nature, we undertook to examine the evidence in respect of the dying declaration. The evidence of Shri Sukhdev Singh, Judicial Magistrate, as P.W. 10, is clear on the point. The witness has repeated in court the statement made to him by Kulwant Singh which was recorded by the witness in Punjabi in his own hand. An attempt was made by Mr. Nuruddin to persuade us to hold that Shri Sukhdev Singh's statement is not trustworthy. It was argued that there

was no cogent reason for the Magistrate to permit the police officers to make a copy of the dying declaration. This, according to the counsel, shows that the Magistrate acted in a manner subservient to the demands of the police officers and, therefore, his, statement should not be taken on its face value. We do not agree. The Magistrate, as observed by the High Court, is quite clear as to what the deceased had told him. He has repeated the same in his statement in court. Exhibit PJ has been proved by him as a correct account of the dying declaration recorded by. him. It is not understood how the fact that the Investigating Officer was allowed to make a copy of the dying declaration could go against the Magistrate. The dying declaration could legitimately serve as a guide in further investigation. It was not argued that the dying declaration being a confidential document had to be kept secret from the Investigating Officer. Our attention was drawn by the respondents to the application dated November 20, 1968(Ex. PZ) filed by Gurdial Singh in the court Of Shri Mewa Singh, Magistrate, for expeditious disposal of the commitment proceedings. In that application it was suggested that the defence had got removed' the dying declaration and statements under s. 164, Cr. P.C. which had presumably been destroyed. According to the respondent's suggestion it was the accused who was interested in the disappearance of the original dying declaration from the record. In this connection we may point out that on October' 27, 1968 Shri Mewa Singh, Magistrate, had lodged a report with the police under ss. 379/400/201, I.P.C., alleging theft of the F.I.R., the, dying declaration and statements Of witnesses recorded under s.164 Cr. P.C. in the case State v. Tapinder Singh. For the disposal of this appeal it is unnecessary for us to express any opinion as to who is responsible for the disappearance of the dying declaration. That question was the subject matter of a criminal proceeding and we have not been informed about its fate.

The dying declaration is a statement by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death and it becomes relevant under.. s. 32(1) of the Indian Evidence Act in a case in which the cause of that person's death comes into question. It is true that a dying declaration is not a deposition in court and it is neither made on oath nor in the presence of the accused. It is, therefore, not tested by cross-examination on behalf of the accused. But a dying declaration is admitted in evidence by way of an exception to the general rule against the admissibility of hearsay evidence, on the principle of necessity. The weak points of a dying declaration just mentioned merely serve to put the court on its guard while testing its reliability, by imposing on it an obligation to closely scrutinise all the relevant attendant circumstances. This Court in Kushal Rao v. The State of Bombay(') laid down the test of reliability of a dying declaration as follows :

> "On a review of the relevant provisions of the Evidence Act and of the decided cases in the different High Courts in India and in this Court, we have come to the conclusion, in agreement with the -opinion of the Full Bench of the Madras High Court, aforesaid, (1) that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated; (2) that each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; (3) that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence; (4) that a dying declaration stands on the same footing as another piece of evidence and has to be judged in the light of surrounding circumstances and with

> reference to the principles governing the weighing of evidence-. (5) that a dying (1) [1953] S.C.R. 552 at pp. 568-569.

declaration which has been recorded by a competent magistrate in the proper manner, that is to say, in the form of questions and answers, and, as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declara- tion which depends upon oral testimony which may suffer from all the infirmities of human memory and human character, and (6) that in order to test the reliability of a dying declaration, the Court has to keep in view the circumstances like the opportunity of the dying man for observation, for example, whether there was sufficient light if the crime was committed at night; whether the capacity of the man to remember the 'facts stated had not been impaired at the time he was making the statement, by Circumstances beyond his control; that the statement has been consistent throughout if he had several opportunities of making a dying declaration apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring by interested parties.

Hence in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny, keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once the court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailants of the victim, there is no question of further corroboration. If, on the other hand, the court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corrobo- ration arises not from any inherent weakness of a dying declaration as a piece of evidence, as held in some of the. reported cases, but from the fact that the court, in a given case, has come to the conclusion that that parti- cular dying declaration was not free from the infirmities referred to above or from such other infirmities as may be disclosed in evidence in that case."

This view was approved by a Bench of five Judges in Harbans Singh v. State of Punjab.(') Examining the evidence in this (1) [1962] Supp. 1 S.C.R. 104.

case in the light of the legal position as settled by this Court we find that the dying declaration was recorded by the Magistrate within four hours of the occurrence. It is clear and concise and sounds convincing. It records :

> "Today at 4.45 p.m. my Sandhu (wife's sister's husband) Tapinder Singh fired shots with his pistol at me in the, presence of Harnek Singh, Sher Singh and Gurdial Singh at the taxi stand. He suspected that I had illicit relations with his wife. Tapinder Singh injured me with these fire shots."

Considering the nature and the-number of injuries suffered by the deceased and the natural anxiety of his father and others present at the spot to focus. their attention on efforts to save his life we are

unable to hold that he had within the short span of time between the occurrence and the making of the dying declaration been tutored to falsely name the, appellant as his assailant in place of the real culprit and also to concoct a non-existent motive for the crime. It is unnecessary for us to refer to the earlier declarations contained in Ex. PM, Ex. DC and Ex. PH/ 13 because the one recorded and proved by the Magistrate seems to us to be acceptable and free from infirmity. If the dying declaration is acceptable as truthful then even in the absence of other corroborative evidence it would be open to the court to act upon the dying declaration and convict the appellant stated therein to be the offender. An accusation in a dying declaration comes from the victim himself and if it is worthy of acceptance then in view of its source the court can safely act upon it. In this case, -however, we have also the evidence of eye witnesses Gurdial Singh, (P.W. 7), Hamek Singh (P.W. 8) and Sher Singh (P. W. 9) whose testimony appears to us to be trustworthy and unshaken. No convincing reason has been urged on behalf of the appellant why these three witnesses and particularly the father of the deceased should falsely implicate the appellant substituting him for the real assailant. It is not a case in which, along with the real culprit, someone else, with whom the complainant has some scores to settle, has been added as a co-accused. The only argument advanced on behalf of the appellant was that the deceased was shot at somewhere else and not at the place where the prosecution witnesses allege he was shot at. It was emphasised that these three witnesses were not present at the _place and time where the occurrence actually took place. This submission is, in our view, wholly unfounded,and there is absolutely no material in support of it on the existing record. The probabilites are clearly against it. The fact that Hari Singh, A.S.I. (P.W. 2) went to the place of occurrence and from there he learnt from someone, 13Sup. Cl/70-10 that the injured person bad been taken to Dayanand Hospital clearly negatives the appellant's suggestion. The fact that the A.S.I. did not remember the name of the person who gave this information would not detract from its truth. On the contrary it appears to us-to be perfectly natural for the A.S.I. in those circumstances not to attach much importance to the person who gave him this information. And then, the short duration within which the injured person reached the hospital also shows that those who carried him to the hospital were closeby at the time of the occurrence and the suggestion that Gurdial Singh (P.W. 7), Hamek Singh (P.W. 8) and Sher Singh (P.W. 9) must have been informed by someone after the occurrence does not seem to us to fit in with the rest of the picture. We are, therefore, unable to accept the appellant's suggestion that the deceased was shot at somewhere else away from the place of the occurrence as deposed by the eye witnesses.

Some minor points were also sought to be raised by Mr. Nuruddin. He said that the pair of shoes belonging to the deceased were left at the spot but they have not been traced. The takhat posh on which the deceased was sitting has also not been proved to bear the marks, of blood nor a* the blood marks proved ,on the seats of the car in which the deceased was taken to the hospital. The counsel also tried to make a -point out of the omission by the prosecution to' prove blood stains on the clothes of Gurdial Singh (P.W. 7) and Harmek Singh (P.W. 8) who had carried Kulwant Singh from the place of the occurrence to the hospital. Omission to produce a. ballistic expert was also adversely criticised. These, according to the counsel, are serious infirmities and these omissions militate against the prosecution story. In our opinion, the criticism of the counsel -assuming it to be legitimate, which we do not hold, relates to matters which are both insignificant and immaterial on the facts and circumstances of this case. They do not in any way affect the truth of the main ,elements of the prosecution story. On appeal under Art. 136 of the Constitution we do not think it is

open to this Court to allow such minor points to be raised for the purpose of showing ,defects in appraisal of the evidence by the High Court and for ,evaluating the evidence for ourselves so as to arrive at conclusions different from those of the High Court. The eye witnesses having been believed, these points lose all importance and cannot be pressed in this Court.

Considerable stress was laid on behalf of the appellant on the submission that according to the folder Ex. DC one Trilochan Singh was present in the hospital as a friend or relation of the injured person. From this it was sought to be inferred that Gurdial Singh, father of Kulwant Singh, had not accompanied his son to the hospital and that this would show that the eye witnesses are not telling the truth. The argument seems to us to be without any basis and is misconceived. In the first instance the name of Trilochan Singh on the folder has not been proved. It is the contents of Ex. DC which have been proved by Dr. E. Pothan (P.W. I at the trial) who had appeared as P.W. 10 in the court of the Committing Magistrate. Secondly in this document, as we have verified from the original record Gurdial Singh is actually mentioned as the father of the injured person. We are, therefore, not impressed by the submission that Ex' DC goes against the testimony of the eye witnesses. Incidentally, Ex. DC also contains the precise information which was the subject matter of the dying declaration. It appears that in order to discredit Ex. DC with respect to the information about the appellant being the assailant, the name of one Trilochan Singh (whose identity still remains unknown) was somehow made to appear on the folder but as it has not been legally proved and not referred to by any witness we need say nothing more about it. This argument thus also fails. The submission that the medical evidence contradicts the version given by eye witnesess also remains unsubstantiated on the record.

As a last resort it was contended that if the motive alleged by the prosecution is accepted then the sentence imposed would appear to be excessive. In our view, the manner in which the five shots were fired at the deceased clearly shows that the offence committed was deliberate and pre-planned. We are unable to find any cogent ground for interference with the sentence. The appeal accordingly fails and is dismissed.

G.C. Appeal dismissed.