

MAKHAN SINGH

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v.

THE STATE OF HARYANA

(Criminal Appeal No. 1290 of 2010)

AUGUST 16, 2022

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**[B. R. GAVAI AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

Evidence – Two dying declarations – In first dying declaration recorded by DW-1, deceased exonerated appellant and his family – However, in the second dying declaration recorded by PW-6, deceased implicated appellant and his parents – Trial Court convicted appellant u/s. 304-B of the IPC and sentenced him to 10 years rigorous imprisonment – High Court reduced the sentence from 10 years to 7 years – On appeal, held: In the first dying declaration, PW1-doctor had examined deceased whether she was in fit state of mind and conscious to make statement – After certification, DW-1 also satisfied herself as to whether deceased was voluntary making statement or not – However, the second dying declaration was recorded without there being examination by a doctor with regard to the fitness of the deceased – Further, PW6 herself admitted that PW13 (father of deceased) and PW11 (sister of deceased) were present in the hospital – The possibility of the second dying declaration being given after tutoring by her relatives cannot therefore be ruled out – DW-2(DSP) had stated in his deposition that the statement was made by the deceased after being tutored by her relatives – Also, prosecution had not examined DW1 and DW2 – Therefore, in the facts and circumstances of the case, the first dying declaration considered more reliable and trustworthy than the second dying declaration – Accordingly, appellant acquitted of all the charges.

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Allowing the appeal, the Court

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HELD: 1. The first dying declaration (Ex. DO/C) is recorded by DW-1. A perusal of the said would reveal that prior to recording the statement of deceased, PW-1 had examined as to whether she was in a fit state of mind and conscious to make the statement. After certification, DW-1 got herself satisfied as to whether

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A deceased was voluntarily making the statement or not and
thereafter, recorded her statement. The said dying declaration
(Ex. DO/C) is also endorsed by PW-1 with the remarks that
deceased was conscious throughout while making statement.
DW-1 has also deposed that even after making the statement,
B she confirmed from the deceased as to whether the statement
was voluntarily made by her. [Para 16][365-A-C]

2. As against this, as far as the second dying declaration
(Ex. PE) which was recorded by another Judicial Magistrate PW-6
after 3 days is concerned, it was recorded without there being
examination by a doctor with regard to the fitness of the deceased
C to make the statement. Though the statement is recorded in
Hospital and though doctors were available, PW-6 did not find it
necessary to get the medical condition of the deceased examined
from the doctors available in the hospital. It is further to be noted
that PW-6 herself has admitted that PW-13) and PW-11, father
D and sister of deceased were present in the hospital. The possibility
of the second dying declaration (Ex. PE) being given after tutoring
by her relatives cannot therefore be ruled out. [Para 17][365-D-
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3. It is also relevant to note that the prosecution had not
E examined DW-1 and DSP (DW-2). It therefore creates a serious
doubt with regard to fairness and impartiality of the IO. Apart
from that, it is to be noted that on the basis of very same evidence,
the trial court, by giving benefit of doubt, has acquitted the father
and mother of the appellant. In that view of the matter, conviction
F of the appellant on the very same evidence, was improper. [Para
19][365-H; 366-A]

4. Therefore, this Court finds that in the facts and
circumstances of the present case, the first dying declaration (Ex.
DO/C) will have to be considered to be more reliable and
trustworthy as against the second one (Ex. PE). In any case, the
G benefit of doubt which has been given to the other accused by
the trial court, ought to have been equally given to the present
appellant when the evidence was totally identical against all the
three accused. [Para 20][366-B-C]

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Harjit Kaur v. State of Punjab (1999) 6 SCC 545 : 1999 (5) JT 317; *Sayarabano v. State of Maharashtra* (2007) 12 SCC 562 : [2007] 2 SCR 354; *Sher Singh v. State of Punjab* (2008) 4 SCC 265 : [2008] 2 SCR 959; *Munnawar v. State of U.P.* (2010) 5 SCC 451; *Lakhan v. State of M.P.* (2010) 8 SCC 514 : [2010] 9 SCR 705; *Shudhakar v. State of M.P.* (2012) 7 SCC 569 : [2012] 7 SCR 128; *Raju Devade v. State of Maharashtra* (2016) 11 SCC 673 : [2016] 3 SCR 818; *Kashmira Devi v. State of Uttarakhand* (2020) 11 SCC 343 : [2020] 1 SCR 152; *State of U.P. v. Veerpal* (2022) 4 SCC 741 – referred to.

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Case Law Reference

[2007] 2 SCR 354	referred to	Para 7	
[2008] 2 SCR 959	referred to	Para 7	
[2010] 9 SCR 705	referred to	Para 7	
[2012] 7 SCR 128	referred to	Para 7	
[2016] 3 SCR 818	referred to	Para 7	
[2020] 1 SCR 152	referred to	Para 7	

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1290 of 2010.

From the Judgment and Order dated 15.05.2009 of the High Court of Punjab and Haryana at Chandigarh in Crl. Appeal No.1189-SB of 2002.

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R. K. Rathore, Sudarshan Singh Rawat, Ms. Saakshi S. Rawat, Advs. for the Appellant.

Piyush Hans, Ms. Annu Singh, Navin Gupta, Dr. Monika Gusain, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

B. R. GAVAI, J.

B 1. The appellant-Makhan Singh has approached this Court being aggrieved by the judgment dated 15th May 2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.1189-SB of 2002 vide which the High Court, though reduced the sentence awarded from 10 years to 7 years, but concurred with the judgment and order of conviction dated 13th/16th July 2002 recorded by the trial court in Sessions Case No. 55 of 1998 for the offence punishable under Section 304-B of the Indian Penal Code, 1860 (for short 'IPC').

C 2. Deceased Manjit Kaur was married to the appellant-Makhan Singh on 28th January 1996. It is the prosecution case that the appellant used to demand dowry from the parents of the deceased Manjit Kaur. It is further the prosecution case that, succumbing to the demands of the appellant, an amount of Rs.30,000/- was paid to him by the parents of the deceased Manjit Kaur. The appellant again demanded an amount of Rs.2 lakhs. According to the prosecution, the appellant had utilized the said amount for going to Moscow. However, after coming back from Moscow in March 1998, he again tortured deceased Manjit Kaur and asked her to bring Rs.6 lakhs as he wanted to go to USA. According to the prosecution, deceased Manjit Kaur, fed up with the torture, consumed poisonous substance on 21st April 1998. Deceased Manjit Kaur was taken by the appellant initially to the Community Health Centre, Ladwa and thereafter, she was referred to L.N.J.P. Hospital, Kurukshetra. From L.N.J.P. Hospital, deceased Manjit Kaur was taken to a private Nursing Home of Dr. H.K. Sobti (PW-1) at Kurukshetra, wherein she was admitted.

F 3. Ms. Vani Gopal Sharma, Judicial Magistrate, First Class, Kurukshetra (DW-1) recorded the dying declaration of the deceased Manjit Kaur (Ex. DO/C), wherein the deceased stated that she was suffering from fever and since many medicines were lying on the Angithi, by mistake, she took medicine of green colour. It appears that thereafter, Kamlesh Kaur (PW-11) and Bhan Singh (P)W-13), parents of deceased Manjit Kaur reached the hospital on the next morning. On 24th April 1998, they made a request for recording the statement of deceased Manjit Kaur under Section 164 of the Cr.P.C. On such a request being made, Ms. Kanchan Nariala, Judicial Magistrate, First Class, Kurukshetra

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(PW-6) recorded the statement of deceased Manjit Kaur (Ex. PE) on 24th April 1998, wherein she stated that her husband had demanded Rs. 6 lakhs to go to USA. According to the said dying declaration (Ex. PE), the appellant as well as his parents administered the said poisonous substance to deceased Manjit Kaur. On the basis of the second dying declaration (Ex. PE), an FIR was registered on 25th April 1998. After the said dying declaration (Ex. PE) was recorded, Sub-Inspector Gurdwaya Ram (PW-14), Investigating Officer (for short 'IO') recorded her oral statement (Ex. PV) on 28th April 1998. On 28th April 1998, deceased Manjit Kaur was referred to PGIMS, Chandigarh, where she expired on 9th May 1998.

4. Upon completion of investigation, though on verification by K.K. Rao, DSP (DW-2) who found the accused innocent, Sub-Inspector Gurdwaya Ram (PW-14), IO was of the opinion that there were sufficient grounds for trial and therefore, he filed the charge-sheet. Charges came to be framed for the offence punishable under Section 304-B of the IPC. At the conclusion of the trial, the trial court convicted the appellant under Section 304-B of the IPC. However, the trial court found that the other two accused, i.e., the parents of the appellant were entitled to get benefit of doubt and acquitted them. The appellant was sentenced to suffer rigorous imprisonment for a period of 10 years. In an appeal preferred by the appellant before the High Court, though the High Court confirmed the conviction under Section 304-B of the IPC, it reduced the sentence awarded to 7 years. Being aggrieved thereby, the present appeal.

5. We have heard Shri R.K. Rathore, learned counsel appearing on behalf of the appellant and Shri Piyush Hans, learned counsel appearing on behalf of the State.

6. Shri Rathore submitted that the trial court and the Appellate Court have failed to take into consideration that in the very first dying declaration (Ex. DO/C), deceased Manjit Kaur had stated that she had consumed the medicine by mistake. He therefore submitted that the death was accidental. He further submitted that the second dying declaration (Ex. PE), which was recorded after 3 days, had been recorded after the parents of deceased Manjit Kaur instigated her to implicate the appellant. He submitted that in case of conflicting dying declarations, the accused is entitled to get benefit of doubt. He therefore submitted that the order of conviction deserves to be set aside.

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A 7. Shri Hans vehemently submitted that each of the dying
 declarations has to be appreciated independently. He submitted that the
 courts below have rightly found that the first dying declaration (Ex. DO/
 C) was given by the deceased Manjit Kaur under the influence of her
 husband, whereas the second dying declaration (Ex. PE) was given by
 B her independently out of her free will. He further submitted that in view
 of the concurrent findings of fact, this Court should not interfere. Shri
 Hans has relied on the following authorities in support of his submission:

C *Harjit Kaur v. State of Punjab*¹, *Sayarabano v. State of
 Maharashtra*², *Sher Singh v. State of Punjab*³, *Munnawar v. State of
 U.P.*⁴, *Lakhan v. State of M.P.*⁵, *Shudhakar v. State of M.P.*⁶, *Raju
 Devade v. State of Maharashtra*⁷, *Kashmira Devi v. State of
 Uttarakhand*⁸ and *State of U.P. v. Veerpal*⁹.

D 8. The law with regard to dying declaration has been summarized
 by this Court in the case of *Lakhan* (supra), wherein the Court considered
 various oral judgments on the issue and observed thus:

E “21. In view of the above, the law on the issue of dying declaration
 can be summarised to the effect that in case the court comes to
 the conclusion that the dying declaration is true and reliable, has
 been recorded by a person at a time when the deceased was fit
 physically and mentally to make the declaration and it has not
 F been made under any tutoring/duress/prompting; it can be the sole
 basis for recording conviction. In such an eventuality no
 corroboration is required. In case there are multiple dying
 declarations and there are inconsistencies between them,
 generally, the dying declaration recorded by the higher officer like
 a Magistrate can be relied upon, provided that there is no
 circumstance giving rise to any suspicion about its truthfulness. In
 case there are circumstances wherein the declaration had been
 made, not voluntarily and even otherwise, it is not supported by

¹ (1999) 6 SCC 545

G ² (2007) 12 SCC 562

³ (2008) 4 SCC 265

⁴ (2010) 5 SCC 451

⁵ (2010) 8 SCC 514

⁶ (2012) 7 SCC 569

⁷ (2016) 11 SCC 673

⁸ (2020) 11 SCC 343

H ⁹ (2022) 4 SCC 741

the other evidence, the court has to scrutinise the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance.” A

9. It could thus be seen that the Court is required to examine as to whether the dying declaration is true and reliable; as to whether it has been recorded by a person at a time when the deceased was fit physically and mentally to make the declaration; as to whether it has been made under any tutoring/duress/prompting. The dying declaration can be the sole basis for recording conviction and if it is found reliable and trustworthy, no corroboration is required. In case there are multiple dying declarations and there are inconsistencies between them, the dying declaration recorded by the higher officer like a Magistrate can be relied upon. However, this is with the condition that there is no circumstance giving rise to any suspicion about its truthfulness. In case there are circumstances wherein the declaration has not been found to be made voluntarily and is not supported by any other evidence, the Court is required to scrutinize the facts of an individual case very carefully and take a decision as to which of the declarations is worth reliance. B C D

10. In the present case, there are two dying declarations. The first one in point of time is recorded by Ms. Vani Gopal Sharma (DW-1) and the second one is recorded by Ms. Kanchan Nariala (PW-6). In her first dying declaration (Ex. DO/C), deceased Manjit Kaur has exonerated the appellant and his family members. In the second dying declaration (Ex. PE), she has implicated the appellant as well as his parents. In the first dying declaration (Ex. DO/C), she stated that she was having fever and by mistake, she took another medicine of green colour. On a specific query being made to her by Ms. Vani Gopal Sharma (DW-1) as to whether she has suspicion on anyone, she has replied in the negative. The first dying declaration (Ex. DO/C) is also endorsed by Dr. Sobti (PW-1) stating therein that the patient remained conscious throughout her statement. E F

11. In her second dying declaration (Ex. PE), she has stated that the appellant’s father and mother caught hold of her and the appellant forcibly administered her the medicine. G

12. It is pertinent to note that the prosecution had not examined Ms. Vani Gopal Sharma (DW-1), who had recorded the first dying declaration (Ex. DO/C) and therefore, the defence was required to examine her as DW-1. A perusal of her evidence would reveal that on H

- A ASI Ranjit Singh making a request, she went to the hospital of Dr. Sobti (PW-1) and asked her whether Mrs. Manjit Kaur was fit to make a statement and thereupon, the doctor opined that she was fit to make the statement. Thereafter, she recorded the statement of deceased Manjit Kaur. She stated that when she was recording the statement, nobody except Dr. Sobti (PW-1) was present there and everyone else was asked to go out. She stated that she found that deceased Manjit Kaur was in sound disposing mind but still she gave her sometime to relax so that she could compose herself and could give statement voluntarily. She stated that she was satisfied that the deceased Manjit Kaur was prepared to make statement voluntarily. Thereafter, her statement was recorded.
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- C After recording her statement, right thumb impression of deceased Manjit Kaur was taken. She deposed that deceased Manjit Kaur remained conscious throughout and she appended a certificate to that effect. She has also deposed with regard to the certificate issued by Dr. Sobti (PW-1).

- D 13. Ms. Vani Gopal Sharma (DW-1) was cross-examined by Additional Public Prosecutor. In her cross-examination, she has reiterated that she had satisfied herself that deceased Manjit Kaur was making statement voluntarily and only then, she recorded it and even satisfied herself after recording her statement.

- E 14. Ms. Kanchan Nariale (PW-6), who recorded the second dying declaration (Ex. PE), has also stated that she had satisfied herself that deceased Manjit Kaur was making a voluntarily statement. Attendants sitting by her side were asked to leave the premises. She stated that when she was recording the statement, except deceased Manjit Kaur, none were present. She has admitted in her cross-examination that she did not consider obtaining certificate of fitness from the Medical Officer to the effect that deceased Manjit Kaur was fit to make a statement. She has admitted that she did not obtain any opinion from any Medical Officer of L.N.J.P. Hospital, where she recorded the dying declaration. She has also admitted that Bhan Singh (PW-13) and Kamlesh Kaur (PW-11), father and sister of deceased Manjit Kaur were present in the hospital.
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- H 15. In the present case, we are faced with two dying declarations, which are totally inconsistent and contradictory to each other. Both are recorded by Judicial Magistrates. A difficult question that we have to answer is which one of the dying declarations is to be believed.

16. The first dying declaration (Ex. DO/C) is recorded by Ms. Vani Gopal Sharma (DW-1). A perusal of the said would reveal that prior to recording the statement of deceased Manjit Kaur, Dr. Sobti (PW-1) had examined as to whether she was in a fit state of mind and conscious to make the statement. After certification, Ms. Vani Gopal Sharma (DW-1) got herself satisfied as to whether deceased Manjit Kaur was voluntarily making the statement or not and thereafter, recorded her statement. The said dying declaration (Ex. DO/C) is also endorsed by Dr. Sobti (PW-1) with the remarks that deceased Manjit Kaur was conscious throughout while making statement. Ms. Vani Gopal Sharma (DW-1) has also deposed that even after making the statement, she confirmed from the deceased as to whether the statement was voluntarily made by her.

17. As against this, as far as the second dying declaration (Ex. PE) which was recorded by another Judicial Magistrate Ms. Kanchan Nariala (PW-6) after 3 days is concerned, it was recorded without there being examination by a doctor with regard to the fitness of the deceased Manjit Kaur to make the statement. Though the statement is recorded in L.N.J.P. Hospital and though doctors were available, Ms. Kanchan Nariala (PW-6) did not find it necessary to get the medical condition of the deceased examined from the doctors available in the hospital. It is further to be noted that Ms. Kanchan Nariala (PW-6) herself has admitted that Bhan Singh (PW-13) and Kamlesh Kaur (PW-11), father and sister of deceased Manjit Kaur were present in the hospital. The possibility of the second dying declaration (Ex. PE) being given after tutoring by her relatives cannot therefore be ruled out.

18. Not only that, it is also relevant to refer to the testimony of K.K. Rao (DW-2), who was the Deputy Superintendent of Police (DSP). He has stated, in his deposition, thus:

“However, no witness supported the version detailed Mrs. Manjit Kaur in that statement. According to my investigation the said statement dated 24.4.1998 was made by Mrs. Manjit after being tutored by her relatives and it did not contain the true version of the incident.”

19. It is also relevant to note that the prosecution had not examined Ms. Vani Gopal Sharma (DW-1) and K.K. Rao, DSP (DW-2). It therefore creates a serious doubt with regard to fairness and impartiality

A of the IO. Apart from that, it is to be noted that on the basis of very same evidence, the trial court, by giving benefit of doubt, has acquitted the father and mother of the appellant. In that view of the matter, conviction of the appellant on the very same evidence, in our view, was improper.

20. We therefore find that in the facts and circumstances of the present case, the first dying declaration (Ex. DO/C) will have to be considered to be more reliable and trustworthy as against the second one (Ex. PE). In any case, the benefit of doubt which has been given to the other accused by the trial court, ought to have been equally given to the present appellant when the evidence was totally identical against all the three accused.

C 21. Before we part with the judgment, we place on record our appreciation for the painstaking efforts made by Shri Piyush Hans, learned counsel appearing on behalf of the State for supporting the conviction.

22. In the result, we pass the following order:

- D (i) The appeal is allowed;
- (ii) The judgment dated 15th May 2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.1189-SB of 2002 and the judgment and order dated 13th/16th July 2002 passed by the trial court in Sessions Case No. 55 of 1998 are quashed and set aside;
- E (iii) The appellant is acquitted of all the charges charged with and his bail bonds shall stand discharged.

F 23. Pending application(s), if any, shall stand disposed of in the above terms.