

Delhi High Court

Amrit Kaur vs State on 20 July, 1989

Equivalent citations: 41 (1990) DLT 542, I (1990) DMC 477, 1990 (19) DRJ 36

Author: V Bansal

Bench: C Talwar, V Bansal

JUDGMENT V.B. Bansal, J.

(1) Smt. Amrik Kaur w/o Sh, Avtar Singh r/o House No. T-650/EA/1, Baljit Nagar, Delhi was convicted for the offence punishable under Section 302 Indian Penal Code by Shri V.S. Aggarwal, Additional Sessions Judge, Delhi vide judgment dated 3rd February 1986. She has been sentenced to rigorous imprisonment for life by the learned Additional Sessions Judge vide separate order of even date.

(2) Peeling aggrieved from her conviction and sentence Smt. Amrik Kaur has filed this appeal.

(3) It would be proper to narrate brief facts of the case. Shri Gurcharan Singh s/o Shri Pratap Singh r/o Gali No. 13, Kot Harnam Dass, Sultan Wind Road, Amritsar is the father of Smt. Harpreet Kaur. He arranged marriage of his daughter with Inderjit Singh son of Shri Avtar Singh and Smt. Amrik Kaur accused. That marriage was solemnised on 29-4-1983 and after marriage Smt. Harpreet Kaur st (4) S.I Vijay Manchanda obtained Mlc of Smt. Harpreet Kaur who was declared to be lit for statement by H K Bagai. Thereafter, S 1. Manchanda recorded the statement of Smt. Harpreet Kaur in the presence of Dr. K.N. Srivastava. It was, inter alia. stated by her that her marriage was solemnised with Inderjit Singh four months back and her father resides at Amritsar. It was further stated by her that her mother-in-law Amrik Kaur used to rebuke her for bringing insufficient dowry and complained that her parents had given insufficient dowry. She had further stated that on that day at about 5 30 P M. she was alone in the house when her mother-in-law gave a push to her on a burning stove in the kitchen and when she fell down kerosene oil was sprinkled on her by Smt. Amrik Kaur as a result of which she received burns. She had further stated that her husband was watching T.V. in the other room and she was brought to the Ram Manohar Lohia Hospital (in short 'the Hospital') by him in a taxi. She went on to state that her husband and father-in-law were good persons and it was only her mother-in-law who used to give abuses to her and she was burnt by her mother-in-law.

(5) According to the prosecution story Public Witness -17 Inspector Amrik Singh, Sho Police Station Patel Nagar also reached the Hospital after getting information and thereafter he went to the residence of Shri G.C. Pillai, Sdm Patel Nagar and brought him to the Emergency Ward of the Hospital where Smt. Harpreet Kaur was admitted. In the meantime, S.I. Vijay Manchanda made endorsement on the statement of Smt. Harpreet Kaur which had been attested by Dr. K.N. Srivastava on the basis of which the Fir No. 401 was recorded at 8.45 P.M. The investigation of the case was entrusted to S.I. Vijay Manchanda.

(6) Shri G.C. Pillai Sdm (Public Witness 8) recorded the dying declaration of Smt. Harpreet Kaur on which she affixed her thumb impression as she was by that time unable to sign. This dying declaration was handed over to the Investigating Officer. The Investigation Officer thereafter

brought the Inspector at the spot and lifted exhibits. He also recorded the statement of the witnesses.

(7) On 8th September, 1983 Gurcharan Singh received information at Amritsar about the burn injuries of his daughter and so he reached Delhi on the morning of 9th September, 1983. He talked to his daughter Smt. Harpreet in the Hospital when she is stated to have disclosed to him that in the evening of 8th September, 1983 at about 5.30 P.M. when she was in the kitchen her mother in-law reprimanded her and thereafter gave a push as a result of which she (Harpreet Kaur) fell on the burning stove and her mother-in-law poured kerosene oil on her. She also informed her father that her husband and father-in-law took her to the Hospital in a taxi. His statement was recorded by the I.O. when apart from stating about the making of the disclosure to him by his daughter he claimed that after the marriage of his daughter with Inderjit Singh whenever he came to Delhi in connection with his work he met his daughter who used to tell him that her mother-in-law was causing harassment to her and gave taunts of bringing insufficient dowry. It was also stated by him that he gave sofa-set, washing machine, double-bed etc. after purchasing them from Delhi itself and that on her visit to Amritsar on the eve of Raksha Bandhan his daughter told him that her mother-in-law demanded one refrigerator and bangles upon which he told his daughter that on his next visit to Delhi he would purchase the said articles and would give the same. Smt. Amrik Kaur appellant was arrested on 9th September, 1983.

(8) Smt. Harpreet Kaur died on 11th September, 1983 at 2.45 P.M. as per the death summary Ext. Public Witness 2/B. On 12th September, 1983 Dr. L.T. Ramani conducted post mortem examination on the body of Smt. Harpreet Kaur vide report Ext. Public Witness 9/A and opined that death of Smt. Harpreet Kaur was due to toxemia resulting from burn injuries.

(9) After completing the investigation the appellant was challaned.

(10) During trial the accused denied all the allegations and claimed herself to be innocent. She has also stated that she did not know as to why her daughter-in-law had grudge against her and claimed that either she had not made these dying declarations or they are false. She also claimed that her daughter-in-law was not in a fit state of mind to make dying declarations and that there was a quarrel in the house of her parents at the time of her marriage when some one wanted to forcibly marry the girl. She claimed that she with the help of her husband and son had extinguished the fire and removed Harpreet Kaur to the Hospital. She examined Kartar Singh (DW1), Inderjit Singh (DW2) and Avtar Singh (DW3).

(11) The learned trial court after trial convicted and sentenced the accused as referred to above.

(12) Bawa Gurcharan Singh the learned counsel for the appellant has submitted that there was no cogent, independent and reliable evidences in support of the case of the prosecution and the learned trial court has erred in recording finding of conviction of the appellant. He has further submitted that there are suspicious circumstances brought on the record during the recording of the evidence showing that Smt. Harpreet Kaur (deceased) had not named Smt. Amrik Kaur appellant to be the culprit when produced before lady Dr. Veena Sabharwal. He has further submitted that the

prosecution story with regard to the recording of the statement of Smt. Harpreet Kaur by S.I. Vijay Manchanda is falsified from the evidence on record to the effect that S.I. Vijay Manchanda (Public Witness 18) had, in fact, gone to the residence of Shri G.C. Pillai, Tdm for getting the dying declaration of the injured recording from him. He has also submitted that the Investigating Officer S.I. Vijay Manchanda could not possibly be present in the Hospital for recording the statement of the deceased when he as per the evidence of the prosecution itself was stated to be away to get the Sdm from his residence. It has further been submitted by him that then? was, in fact, no demand of dowry either before or at the time of the marriage of Smt. Harpreet Kaur with Inderjit Singh son of the appellant. He has further submitted that the accused/appellant had not made any demand of dowry articles, nor had she ever complained about the giving of less dowry in the aforesaid marriage. According to Bawa Gurcharan Singh the learned counsel for the appellant there is hardly any reliable evidence even with regard to the motive. He has, therefore, prayed for acquittal of the appellant.

(13) Shri R.P. Lao, the learned counsel for the State has, on the other band, submitted that it is a case in which a young girl has lost her life in less than five months after her marriage and she had been a victim of the atrocities committed by none else than her mother-in-law. He has also submitted that Smt. Harpreet Kaur made dying declaration before Lady Dr. Veena Sabharwal when none of her relations was present and even no information was available with the police. He has further submitted that the police acted quickly when S I. Vijay Manchanda recorded the statement of the victim after she was declared fit for statement by the doctor and that the recording of the statement has been proved by Dr. K.N. Srivastava (Public Witness 7), an independent witness. He has further submitted that Shri G C Pillai (PW 8) was the Ilaqa Sdm and an independent but witness who had made statement in unambiguous term about his having correctly recorded the statement of Harpreet Kaur. Shri Lao has, therefore, submitted that the only possible conclusion from the evidence on record could be that it is the accused/appellant who has been responsible for causing burn injuries to Smt. Harpreet Kaur resulting in her death. He has, thus, submitted that the appellant has rightly been convicted and so prayed that the appeal merits dismissal.

(14) The law with regard to the appreciation of dying declaration is well settled. Before a conviction can be made on a dying declaration the Court must be fully satisfied that the declaration is reliable in the sense that it was actually made by the deceased when fully possessed of the power to understand the implication of her statement and the same was made without any exterior influence or ulterior motive. It has further to be proved that the said declaration reflects a true version. A dying declaration is made in the absence of an accused and without oath. In this way, the accused does not have an opportunity to test its veracity by way of cross-examination and so it has to be scrutinised thoroughly. Therefore, it would be hazardous and unsafe to accept the dying declaration and base conviction thereon if there are suspicious features and infirmities in the evidence adduced at the trial with regard to the recording of dying declaration. However, we are also conscious that a person in great agony unlikely to survive would hesitate to falsely implicate innocent person at such moments. We would be discussing all the submissions keeping in view the aforesaid legal propositions.

(15) According to the prosecution story Smt. Harpreet Kaur was got admitted in the Hospital by her father-in-law Aviar Singh at 625 P.M. on 8th September 1983. It is the admitted case of the prosecution that parents of the injured are residents of Amritsar and none of her relations was present at the time she was taken to the casualty of the said hospital. Dr. Veena Sabharwal (Public Witness I) has stated that the injured gave history of being doused with kerosene oil and pushed on a burning stove by the mother-in-law. She has, during cross-examination, stated that she did not think it necessary to enquire about the name of mother-in-law since the patient would have only one mother-in-law. According to her the Duty Constable was present by her side at the time the history was given by the injured, which she had written in portion A to A of Mlc Ext. Public Witness /A. Apparently, this statement to Dr. Veena Sabharwal should be sufficient to hold that the aforesaid facts were narrated to her by Smt Harpreet Kaur. Dr. Veena Sabharwal is an independent witness in her own right and had made a statement in official capacity having no interest in anyone. The submission of the learned counsel for the State that she should be believed appeared to be plausible. However, the learned counsel for the appellant has referred to facts thereby making out a case for coming to a reasonable conclusion that may be that the name of mother-in-law was not given by the injured at that moment. These circumstances we would discuss hereinafter.

(16) According to lady Dr. Veena Sabharwal the history was given by the injured in the presence of the duty constable. In this way, the duty constable is another witness to corroborate the making of this dying declaration by the injured. Public Witness 6 Constable Harnam Singh was the duty constable in (he Casualty of Dr. Ram Manohar Lohia Hospital on the day of the incident. While appearing in the witness-box he has claimed that on 8-9-1983 at 6.25 P.M. Harpreet Kaur wife of Inderjit Singh was brought by Avtar Singh in burnt condition when she was examined by Dr. Veena Sabharwal and she prepared MLC. According to him the patient stated that she was set on fire by her mother-in law and he gave this information to police station Patel Nagar where Dd No. 86 B was recorded. During cross-examination he has claimed having stated to the 10 during enquiry that the injured told the doctor that she was set on fire by mother-in-law. He was however, confronted with his statement Ex Public Witness 6/DA where it was not so recorded. He has also claimed having stated to the 1.O. that the Mlc was written in his presence but was again confronted with his statement Ext Public Witness 6/DA where it was not so recorded. He has admitted having recorded entry Ext. Public Witness 6/DD in the register with regard to the bringing oC Harpreet Kaur in injured condition to the hospital and his giving information to the police station. Constable Prithi Singh (Public Witness 13) was the Daily Diary Munshi of P.S. Patel Nagar at the relevant time who has claimed having correctly recorded Dd No. X6-B (Ext. Pw 13/A) on the basis of information conveyed by Duty Constable and that a copy of this Dd entry was given by him to S.I. Vijay Manchanda. A perusal of this Dd entry shows that there is no mention of the injuries having been caused by mother-in law. It is pertinent to note that Exi. Public Witness 6/ Db is the original entry made by constable Harnam Dass which was kept on record by the trial court. A bare look at this entry makes it abundantly clear that the words "Saas Dwara" have been added subsequently since the spacing in these two words is much less as compared to the spacing of the other words and these are the words in the beginning of the line. If really these words were written by constable Harnam Singh at the time he recorded this entry these words would have been communicated by him to Constable Prithi Singh and, thus, would have been reflected in Dd No. 86-B. The very fact that the words 'mother in law' are conspicuous by their absence from this Dd entry No. 86-B is clearly

indicative of the fact that the words were not actually conveyed by Constable Harnam Singh to the Duty Constable in the police station. In this way, the possibility of these words "Saas dwara" having been added subsequently cannot be ruled out.

(17) The case of the prosecution has been that the lady Dr. Veena Sabharwal (Public Witness 1) took Harpreet Kaur injured to the Emergency Ward where case-sheet Hxt. Public Witness 2/C was prepared by the doctor. The submission of the learned counsel for the State has been that after an injured is taken to the ward the case-sheet is prepared by the doctor on the basis of the Mlc prepared in the Casualty. A perusal of the case-sheet Ext. Public Witness 2/C shows that there is no mention of mother-in-law in the history given in this document. There is yet another piece of evidence referred to by the learned counsel for the appellant to show that the entries were being made in the case-sheet with wrong dates. It is the admitted case of the prosecution that Shri Gurcharan Singh (Public Witness 3) father of the deceased came to Delhi from Amritsar in the morning of 9-9-1983. However, there is an endorsement on the back of Ext. PW2/C of the case-sheet showing that Gurcharan Singh was informed about the serious condition of the patient and that she could die any time. The date under the signatures of Gurcharan Singh is given as 8-9-1983. It is thus clear that even a wrong date has been mentioned showing the presence of Gurcharan Singh in the hospital on 8-9-1983 when actually he reached Delhi in the morning of 9-9-1983.

(18) Considering all these factors, we are clearly of the view that it may not be safe to hold that Smt. Harpreet Kaur had named her mother-in-law while giving the history to the doctor in the casualty of the Hospital.

(19) The learned counsel for the appellant Bawa Gurcharan Singh has been attacked the dying declaration Ext. Public Witness 18/A recorded by Si Vijay Manchanda (PW18) He has submitted that there is a complete non-compliance with the Punjab Police Rules as applicable to Delhi about the recording of dying declaration. He has further submitted that it has consistently been held by Supreme Court followed by all other High Courts that dying declarations should not as a matter of rule be recorded by the Investigating Officer. He has further submitted that the dying declaration should also be recorded in question and answer form so that at the time of its appreciation the court is in a position to assess as to what was the question and how much suggestion was made to the deponent. There can possibly be no dispute with regard to the proposition of law. State (Delhi Administration) v. Laxman Kumar and others 1986 Supreme Court Cases (Cri. 2) is a clear authority on this point. The short question, however, for consideration is as to whether the statement Ext. Public Witness 18/A has been recorded by S I Vijay Manchanda (PW18) as an Investigating Officer and so can it be said to be against the well settled law on the subject. At this stage we may make it clear no case had so far been registered and S.I. Vijay Manchanda was not the Investigating Officer. In fact, he had reached the hospital after getting information about the admission of Smt. Harpreet Kaur in injured condition and the statement Ext. Public Witness 18/A forms the basis of the FIR. It is only after the recording of the Fir that the investigation was entrusted to him. In these circumstances we are clearly of the view that the statement Ext Public Witness 18/A has not been recorded by S.I. Vijay Manchanda as an Investigating Officer and so the statement cannot be ignored on this account alone. We find support for this view from State of Punjab v. Amarjit Singh J.T.I 983(3) S.C. 537. In the aforesaid case Asi Kashmira Singh upon getting information about

the incident reached Civil Dispensary, Bhogpur wherefrom he came to know that the patient had been taken to Jullunder upon which he went to Civil Hospital. Jullunder but was told by Dr. Jasbir Singh that the injured was unfit for making a statement. The patient was, therefore, referred to the Medical College Hospital, Ludhiana and Asi reached the Medical College Hospital and after the patient was declared fit for statement recorded her statement and sent the same to the police station on the basis of which Fir was recorded. It was held by the Supreme Court that he was not an Investigating Officer and so it cannot be said that he had recorded the dying declaration as an Investigating Officer. Reliance in this case was placed on an earlier judgment of the Supreme Court in case *Munna Raja v. State of Madhya Pradesh* 1976(2) Scr 64 The following para of the case *Munna Raja* (Supra) was quoted with approval :- "IN regard to the second dying declaration, Ex.P 14, the main objection of the learned counsel is that it was made to the investigating officer himself and ought therefore be treated assuspect. In support of this submission, reliance was placed on a judgment of this Court in *Balak Ram v. State of U P* The error of this argument consists in this assumption that the dying declaration was made to an investigating officer. The statement Ex. P. 14, was made by Bahadur Singh at the police station by way of a first information report. It is after the information was recorded, and indeed because of it, that the investigation commenced and therefore it is wrong to say that the statement was made to an investigating officer. The Station House Officer who recorded the statement did not possess the capacity of an investigating officer at the time when he recorded the statement. The judgment on which the counsel relies has, therefore, no application."

(20) The question, however, remains about the reliability of the dying declarations. The case of the prosecution has been that S.I. Vijay Manchanda got opinion of Dr. Bagai to the effect that the injured was fit for statement at 7 35 P. M and thereafter he correctly recorded the statement of Harpreet Kaur (Ext. Public Witness J8/A) in the presence of Dr. K N. Srivastava (Public Witness 7) and it was attested by the doctor. It was also the case of the prosecution that while the statement was being recorded by S.I. Vijay Manchanda Inspector Amrik Singh, Shro P.S. Patel Nagar reached the Hospital and he brought Sh. G.C. Pillai Sdm to the hospital who had recorded statement Ext. Public Witness 8/A. There is no doubt that these are two independent dying declarations claimed to have been recorded by two different persons at different times and normally they ought to be discussed separately. However, the submission of the learned counsel for the appellant has been that there are circumstances brought on record proving that it was practically impossible for the recording of the two dying declarations in the manner in which and the time at which they have been recorded. It is on this account that we are taking up these two dying declarations together.

(21) Initially S.I. Vijay Manchanda (Public Witness 18) has stated that on 8th September, 1983 at 6.15 P.M. he received Ext. Public Witness 13/A copy of D.D. No. 86-B from duty officer PS. Patel Nagar upon which he while accompanied by Constable Sheodhar Singh reached the Hospital and collected Mlc Ext PWI/A of Harpreet Kaur who was declared fit for statement by Dr Bagai at 7.35 P.M. vide endorsement Ext. Public Witness 7/A. He went on to state that he correctly recorded statement Ext. Public Witness 18/A of the injured in the presence of Dr K N. Srivastava and it was signed by her at point 'A' after admitting the contents as correct and it was attested by Dr. Srivastava. He went on to state that. the endorsement Ext. Public Witness 18/B was made by him on the aforesaid statement and rukka was sent to police station through constable Sheodhan Singh and in the meantime Inspector Amrik Singh reached with Sdm Sh. G C. Pillai who recorded her

statement. This rukka was sent by S, Manchanda at 8.15 P.M. PW12AS[Chiranjit Singh while working as duty officer at P.S Patel Nagar received this rukka at 8.40 P.M. on the basis of which Fir Ext. Public Witness 12/A was recorded. Dr.KN.Srivastava (Public Witness 7) has claimed that he examined the patient at 7.30 P.M. who was declared fit for statement in his presence by Senior Resident Dr. Bagai. According to him her statement was recorded by the police officer in his presence between 7.30 P.M. and 8 00 P.M and he certified that it was recorded in his presence vide his endorsement Ext. Public Witness 7/B. Inspector Amrik Singh (Public Witness 17) has stated that on 8(h September, 1983 he was Shro P S. Patel Nagar and at about 7,00 P.M Duty Officer gave information to him about the receipt of a message from Willingdon Hospital regarding the admission of Harpreet Kaur in injured condition upon which he reached the said hospital at about 7.. 0 P.M. where he found S.I. Vijay Manchanda recording her statement. He has also stated that he perused the Mlc showing 95 per cent burns and immediately rushed to the house of G S Pillai (in fact GC. Pillai) at Pusa Complex. He went on to state that he returned to the hospital accompanied by Mr. Pillai at about 8.00 P.M. where her statement was recorded by the Sdm in his presence.

(22) Shri G.C. Pillai (Public Witness 8) has stated on 8-9-1983 between 7.30 p.m. and 8.00 p.m. police officer of P.S. Patel Nagar came to his house for recording statement of victim of burn injuries in Ram Manohar Lohia hospital upon which he accompanied the police officer to the Emergency Ward and found the patient lying on the bed. He has further stated that he questioned the patient as to what happened and recorded her statement Ext. PW8/A as narrated by her. He went on to state that the statement was read over to the patient who was fit to make a statement and she had affixed her thumb impression at point 'A'.

(23) Apparently these statements do indicate that the statements of Smt. Harpreet Kaur have correctly been recorded by two different officers when she was in a position to make a statement and there should be no reason to disbelieve them However, the learned counsel turn the appellant has referred to a number of circumstances thereby indicating that the statements could not have been recorded in the manner in which they are claimed to have been recorded and so may not indicate the true version. We would be discussing these circumstances hereinafter.

(24) The first question is as to who had declared Smt. Harpreet Kaur to be fit for statement and at what time. The prosecution has placed reliance on endorsement Ext. PW7/A stated have been made by Dr. H K. Bagai who was working as Senior Resident at the relevant time. This doctor was not available having already left the hospital and this endorsement has been proved by Public Witness 2 Sahib Singh Record Clerk as also by Dr. K.N. Srivastava PW7). The endorsement aforesaid reads as under :- "PATIENT is fit to give statement on 8-9-83 to 7.30 P.M. sd/- H.K. Bagai"

There is over-writing with regard to the date showing that the date actually written has been changed. A perusal of the aforesaid writing shows that it is some what unusual if a writing is made on a particular date such date is mentioned at the end or under the signatures but the manner in which the writing exists in the instant case creates a doubt whether it was made on that day or subsequently. This doubt gets strength from the fact that the statement Ext. PW18/A stated to have been recorded by S.I. Vijay Manchanda has been attested by Dr. Bagai There is no explanation on the record as to why and under what circumstances Dr. Bagai left immediately after declaring the

patient as fit for statement.

(25) Dr. K N. Srivastava has made a clear statement that he had examined Harpreet Kaur and she made a statement before the SI. Vijay Manchanda in his presence. He also stated that this statement was completed at about 8.00 and he thereafter left. The short question for consideration at this stage is as to whether S.I. Vijay Manchanda could have recorded the said statement at the time at which it is claimed to have been recorded. It is also the case of the prosecution that Inspector Amrik Singh (Public Witness 17) had gone to Sh. G.C. Pillai from the hospital bringing him in the Emergency Ward at about 8.00 P.M. where the recording of the statement was completed by him at about 8.20 P.M. Shri G.C. Pillai (Public Witness 8) during cross-examination has claimed that most probably the police officer who had taken him to the hospital was S.I. Vijay Manchanda. He has also claimed that he gave the time at 8.20 P.M. on the statement after it was recorded and that on reaching near the patient he did not find any police officer. He has also stated that he did not find Dr. K.N. Srivastava in the room and there was only one police officer at the time of his recording the statement. He has further stated that the Mlg was available with the police officer who had brought him from his house. As already referred to it is SI. Vijay Manchanda who had obtained the Mlc of Smt Harpreet Kaur and so the Mlc was throughout available with him. At this stage we can examine the evidence to ascertain whether Inspector Amrik Singh actually reached the hospital and had brought Shri G.C. Pillai to the hospital as claimed by him. There is no doubt that Inspector Amrik Singh claims that after getting information from the duty officer he reached the hospital where S.I. Manchanda was recording the statement of the injured and thereafter he went to Sh. G.C. Pillai and brought him to the hospital. However, the statement of the witnesses examined by the prosecution give indication that Inspector Amrik Singh may not have gone to the hospital and, thus, even to the house of Shri Pillai to bring him. Asi Chiranjit Singh (Public Witness 12) was working as duty officer P.S. Patel Nagar. He has made a categorical statement that Sh. was present in the police station at 8.40 P.M. and 5 minutes later Sh. along with S.I. D.D. Sharma left the police station, S.I. Davinder Dutt Sharma appeared as Pwi I and he corroborates the statement of Asi Chiranjit Singh when he claimed having left the police station at 8.45 P.M. If really Inspector Amrik Singh was present in the police station at 8.40 P.M. it would be practically impossible for him to be present in the hospital or to be with Shri G.C. Pillai as claimed by him.

(26) Shri G.C. Pillai has claimed that he had taken about 20 or 25 minutes in recording the statement Ext. PW8/A of Smt. Harpreet Kaur and that the time 8.20 P.M. was recorded by him after completing the recording of the statement. If S. Manchanda had gone to bring Sh. G.C. Pillai from his house the possibility of his recording the statement of Harpreet Kaur during the same period becomes doubtful. According to S.I. Vijay Manchanda he completed the endorsement at 8.15 P.M. and the statement of Harpreet Kaur was completed at 8.00 P.M. If it to be so Dr. K.N. Srivastava should have been present in the ward at the time Shri G.C. Pillai reached there. There is yet another aspect which needs to be discussed. According to S.I. Manchanda Smt. Harpreet Kaur had signed her statement Ext. PW18/A after admitting the contents as correct and it was at about 8.00 P.M. Shri G.C. Pillai (Public Witness 8) is stated to have recorded her statement at 8.20 P.M. and at that time she had only affixed her thumb impression. The explanation for her having affixed her thumb impression is that her hand became stiff. There is, however, no opinion of doctor on the point. When a person is alive having burn injuries the hands would not become stiff within a gap of

about 20 minutes. It is also pertinent to note that there are two thumb impressions on statement Ext. PW8/A. The explanation given by Sbri Pillai is that the first thumb impression was smudged on account of which the second thumb impression was obtained. Shri G.C. Pillai has, however, been contradicted by Inspector Amrik Singh (Public Witness 17) when he has stated that Smt. Harpreet Kaur was not asked by Sh Pillai to sign but was simply asked to affix her thumb mark S.I. Vijay Manchanda (Public Witness 18) made a different statement when he claimed that Shri G.C. Pillai asked her to sign but by that time her hand became harder on account of which she affixed her thumb impression.

(27) The case of the prosecution had been that Inspector Amrik Singh reached the hospital and it is he who brought Sbri GC. Pillai to the hospital from his house. Admittedly he did not write case diary on 8th and 9th September 1983. SI. Vijay Manchanda wrote the case diary on 8th but there is no mention by him about the arrival of Inspector Amrik Singh in the case diary. Even Inspector Amrik Singh had not mentioned in the case diary which he started on 10 9-83 about his having gone to the hospital. No valid explanation has been put forth about the non-mentioning in the case diary of the visit of Inspector Amrik Singh to the hospital.

(28) Sbri GC. Pillai (Public Witness 8) has stated that he was putting questions to Smt. Harpreet Kaur in Hindi and she gave reply in Hindi. He has also claimed that the questions were put by him to clear the doubts of accounts of communication gap because she was in critical condition and was talking with difficulty and in pain. Time and again it has been held by Courts that while recording the dying declaration it is always proper that such statement is recorded in question and answer form so that while appreciating the same it is apparent as to how much was suggested to the patient while recording a statement. In the instant case Harpreet Kaur was crying in pain and in critical condition when questions were also put to her but we have been deprived of an opportunity of knowing the questions put to her.

(29) There is yet another aspect to be considered for appreciating the claim of the prosecution about the making of dying declaration by Smt. Harpreet Kaur. Dr K. N. Srivastava (Public Witness 7) has admitted that the case-sheet in respect of Smt. Harpreet Kaur shows that at 7.05 P.M. on 8th September 1983 the patient was prescribed injection morphia 1/4 grain equivalent to 15mg. He has made a categorical statement that it is a sedative given for the relief of pain and has its effect for 8 hours. He has, however, claimed that he was not sure if it was actually given or not before recording her statement. He has claimed that whenever such injection is given to a patient the sister on duty usually ticks the place of prescription but there is no such mark against all the medicines. We are very clear in our mind that a person in critical condition taken to the casualty would immediately be given the treatment prescribed by the doctor attending to the patient and there can possibly be no question of not doing so especially to a patient like Harpreet Kaur who was having 95 per cent burns and in critical condition. Morphia is stronger than Pathedene and a judicial notice can be taken that a patient given such an injection in such condition would not have normal alertness and so it would be difficult to give full credence to the statement of the doctor that she was fully fit to make a statement. We find support for this view from the case State (Delhi Administration) v. Laxman Kumar and Others (supra).

(30) From the aforesaid discussion we are clearly of the view that prosecution has not been able to prove beyond reasonable doubt about the making of the two dying declarations by Smt. Harpreet Kaur and that she was fully alert and kept on making such statements.

(31) The prosecution has placed reliance on another dying declaration claimed to have been made by Smt. Harpreet Kaur to her father Shri Gurcharan Singh (Public Witness -3). While appearing in the witness-box Gurcharan Singh has stated that on 8-9-1983 at 7.1.0 P.M. his neighbour Jaswant Kaur d/o Kartar Singh told him that her father gave information on telephone about his daughter Jaswant alias Harpreet Kaur having been burnt upon which he along with his son Jatinder left Amritsar by Frontier Mail and reached Delhi in the morning of 9-9-1983. He went on to state that on enquiry his daughter Harpreet told him that on 8-9-1983 she was making tea on a burning stove when her mother-in-law scolded her and kicked her from behind as a result of which she fell on the burning stove. He has further stated that Harpreet Kaur further told him that thereafter her mother-in-law sprinkled kerosene oil on her and that she was taken to the hospital by her father-in-law and another. He has claimed that his statement was recorded by the police on 10-9-1983 only and he did not meet the police earlier. He has admitted his signatures on Exl. Dc which is his statement having his signatures also and there is a date 9-9-1983 under the signature of Amrik Singh There is no doubt that Inspector Amrik Singh (Public Witness -17) has also claimed that he recorded the statement of Gurcharan Singh on 10-9-1983. There is, however, no explanation as to how the statement Ext. Da was recorded on 9-9-1983 and why the signatures of Gurcharan Singh were obtained on 8-9-1983. In these circumstances, explicit reliance cannot be placed on this oral dying declaration so as to base conviction of the appellant.

(32) Shri Lao learned counsel for the State has submitted that there has been a strong moving for Smt. Amrik Kaur to get ride of her daughter-in-law Smt. Harpreet Kaur since she was not happy on account of insufficient dowry. He has, thus, submitted that the dying declarations are to be considered in the light of the motive. The law is well settled that motive is not an ingredient of the force. When there is cogent and reliable independent evidence mere fact that the prosecution is unable to prove motive would not be a ground to discard the prosecution story. Many a times it becomes difficult to have evidence of motive would not sufficient to hold commission of offence by the accused, in order to succeed prosecution has to prove it case beyond reasonable doubt. Suspicion howsoever strong may be it cannot take the place of proof and the benefit of doubt has to go to the accused and not to take the prosecution.

(33) The main reliance about the motive is on the statement of PW-3 Gurcharan Singh. He has stated that he married his daughter Harpreet Kaur to Inderjit Singh son of the petitioner on 29-4-1983 in which he spent about Rs 50,000.00 . He went on to state that he often used to visit Delhi in connection with his business and met his daughter who complained that she was being maltreated by her mother-in law for bringing insfficient dowry. He went on to slate that a demand was made of double-bed and sofa-set which he purchased and gave about two months after the marriage. He has also claimed that later on a demand of washing machine was also made by the mother-in-law of his daughter and he fulfilled this demand also. He has claimed that his daughter came to Amritsar at the time of Raksha Bandhan told him about the demand of a fridge and two bangles of gold by her mother-in-law, when he told his daughter that he would arrange for them at

his next visit to Delhi. He has during cross-examination admitted that his daughter was graduate and her husband Inderjit Singh is only matriculate. He has also stated that on enquiry the in-laws of his daughter made no demand of dowry and suggested that they may send the girl only in three clothes. He has also stated that the in-laws of his daughter are less financially sound as compared to him and claimed that he had no intention to give double bed, sofa set, washing machine etc, to his daughter and that no such demand of dowry was made from him directly. He has also claimed that he did not receive back the dowry articles. However, the accused-appellant has been able to bring on record evidence to falsify the statement of this witness. He was shown document Ext. Da when he stated that his signatures on this document were obtained by a Head Constable at Delhi on 13-9-1983 when there was no date on it. However, when told about mention of Rs 50,000.00 in this document he had stated that he got it sent from Amritsar from Rajinder son-in-law of his brother. He has also stated that the writing of this document existed when he signed it. A perusal of this document shows that besides mentioning of the articles returned to him he has claimed about the giving of Rs 50,000.00 and made a demand of the return of the same. There is no mention of the giving of a sum of Rs. 50,000.00 to the in-laws of his daughter in his statement as PW-3. The claim of Gurcharan Singh has been that he did not receive any article of his daughter from his in-law. He has, however, admitted his signatures on Ex. Db on which he identified even the signatures of his brother, and of Kartar Singh. A perusal of this document shows that the articles mentioned therein were returned to the parents of Smt. Harpreet Kaur (deceased). It is thus, clear that Gurcharan Singh has not made a correct statement when he stated that there was demand of dowry by the mother-in-law of his daughter.

(34) Even otherwise it has been claimed by Gurcharan Singh that his financial position was sound as compared to that of the in-laws of his daughter. He has also claimed that whatever demand was made was fulfilled and even at the time of Raksha Bandhan he told his daughter that he would provide refrigerator and bangles on his next visit to Delhi. In these circumstances, there could possibly be no motive of the part of Smt. Amrik Kaur to cause burn injuries to her daughter-in-law resulting in her death.

(35) As already discussed in order to succeed the prosecution has to prove its case beyond reasonable doubt. The accused, however, would succeed if a reasonable doubt is created about the correctness of the prosecution story. Smt. Harpreet Kaur was a graduate and married to Sh. Inderjit Singh who is only a matriculate. At the time of the incident besides Smt. Amrik Kaur her husband Sh. Avtar Singh and son Inderjit Singh husband of Smt. Harpreet Kaur were present in the house. She was removed to the hospital by her husband and father-in-law. The mentioning of the word 'mother-in-law' in the Mlc Ext. PW-1/A by Smt. Harpreet Kaur is not proved beyond reasonable doubt. There are suspicious circumstances even with regard to the recording of the other dying declaration. Considering all these facts, we are clearly of the view that it would be hazardous to convict the appellant on such evidence and she is entitled to the benefit of doubt.

(36) As a result, we accept the appeal. The conviction of Smt. Amrik Kaur and the sentence awarded to her are set aside. She is on bail. Her bail bond stands discharged.