Supreme Court of India
Maniram vs State Of M.P. on 23 September, 1993
Equivalent citations: AIR 1994 SC 840, 1993 CriLJ 946, 1994 Supp (2) SCC 539
Author: K J Reddy
Bench: K J Reddy, G Ray
ORDER K. Jayachandra Reddy, J.

1. This is an appeal under Section 2 of the Supreme Court (Enlargement of Appellate Jurisdiction) Act against the judgment of the High Court of Madhya Pradesh reversing the order of acquittal of the respondent and convicted him under Section 302, I.P.C. and sentenced him to undergo imprisonment for life.

2. The appellant was prosecuted for committing the murder of his wife Radhabai aged about 16 years on 24-7-1981 in his house at Village Pemath within the jurisdiction of Police Station, Raisen. According to the prosecution, because of some earlier trouble and misunderstanding between the wife and husband, the appellant was not happy with her. On the day of occurrence, at about 5.00 p.m. , the appellant is alleged to have sent his mother away asking her to go to the market and thereafter poured kerosene oil on the deceased, set fire and ran away. The mother-in-law who came back found the deceased in burns and sent for the appellant who then came and tried to extinguish the fire and poured water on Radhabai (deceased). Thereafter, the deceased was sent to the hospital where Doctor Tiwari (P.W. 2) admitted and examined her. The police were informed and the Sub-Inspector (P.W. 9) reached the hospital early in the morning and he recorded a dying declaration Ex.P. 7. A requisition was sent to the Tehsildar and he came to the hospital at about 7.15 a.m. and is alleged to have recorded another dying declaration Ex.P. 19. The deceased died later and the medical evidence shows that she died because of burns. This aspect has not been in dispute. The prosecution examined about ten witnesses and out of the other witnesses some turned to be hostile and evidence of other witnesses are not very much relevant. Therefore, the prosecution case rested entirely on the two dying declarations one recorded by the Sub-Inspector (P.W. 9) another recorded by the Tehsildar (P.W. 10) Ex.P. 19. The learned sessions Judge having examined the two dying declarations found that Ex. P. 7 was of doubtful nature since no doctor had attested the same and the contents which were in great detail threw doubt. Further, it was in nature of the F.I.R. Now coming to the Ex.P-19 the learned Sessions Judge found that it was not attested by any doctor nor the signature or the thumb impression of the deceased was taken. Accordingly, the trial Court acquitted the accused. The State preferred an appeal and the High Court relying on Ex.P. 19, convicted the accused reversing the order of acquittal. While coming to such a conclusion, the High Court held that Ex. P. 19 is beyond any suspicion and that it was recorded by an independent witness.

3. In this appeal, Shri Gambhir, learned Counsel for the appellant submits that Ex.P. 19 would show that it was recorded by a Sub-Inspector (P.W. 9) not by the Tehsildar (P.W. 10), as alleged by the prosecution and that at any rate when there is no other evidence except the dying declaration, it should be beyond suspicion and should be wholly reliable. He pointed out several infirmities, namely, that no attestation from the doctor was taken to the effect whether the patient was conscious or not and that the signature or thumb impression of the deceased was not taken and

thirdly the perusal of Ex.P. 19 shows that the dying declaration was recorded by the Sub-Inspector (P.W. 9) not by the Tehsildar (P.W. 10) as being put forward by the prosecution. We find considerable force in this submission. As already submitted, Ex.P. 7 is only in the nature of the F.I.R. and it was recorded by the Sub-Inspector and that by itself does not inspire confidence. Now coming to Ex.P. 19, P.W. 10 deposed that he recorded the dying declaration and he himself attested that the patient was conscious. He was cross-examined at length as to why he did not ask the doctor to be present and certify whether the patient was conscious. He has not given any convincing answer. That apart, he admitted that he did not think it necessary to take the signature of the deceased person or at least take the thumb impression. Further, a perusal of the dying declaration shows that the Sub-Inspector was present and he has affixed his signature on Ex.P. 19 and put the date and time which is exactly the time at which the recording of the dying declaration is said to have been recorded by P.W. 10. In the body of the dying declaration, we only find the signature of P.W. 9. After that, there is an endorsement of the Tehsildar that the declarant was in the state of senses and was fully aware of what she had stated. It looks like that the Tehsildar was present and the declaration was recorded by the Sub-Inspector and the Tehsildar made only an endorsement that the patient was conscious. The contents of Ex.P. 19 are completely at variance of the deposition of P. W. 10 when he says that he recorded the dying declaration. That apart, in a case of this nature, particularly when the declarant was in the hospital itself, it was the duty of the person who recorded the dying declaration to do so in the presence of the doctor after duly being certified by the doctor that the declarant was conscious and in senses and was in a fit condition to make the declaration. These are some of the important requirements which have to be observed. In the instant case, as noted above, there is no other evidence against the appellant except this dying declaration which is of highly doubtful nature. In our view, the learned Sessions Judge has given the good reasons for acquitting the accused and the view taken by him is quite reasonable and there is no good ground for reversing the same by the High Court. In the result, we set aside the conviction and sentence awarded against the appellant and allow the appeal. If he is in jail, he shall be released forthwith. A copy of this judgment shall be despatched immediately.