



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

103

CRA-D-382-DB-2005 (O&M)

Date of decision: 06.07.2026

Mahender Singh

...Appellant(s)

VERSUS

State of Haryana

...Respondent(s)

**CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present :- Mr. Atul Lakhanpal, Sr. Advocate with
Mr. Raahat Kataria, Advocate for the appellant.

Mr. Dhruv Dayal, Addl. AG Haryana.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant appeal has been preferred against the judgment of conviction dated 09.09.2004 passed by the Additional Sessions Judge, Panipat in case SC-51 of 2002 arising out of FIR bearing No.332 dated 08.10.1999 registered under Section 302 of the Indian Penal Code, 1860 at Police Station Model Town, Panipat, whereby appellant has been convicted for commission of offence under Section 302 I.P.C. and sentenced to undergo imprisonment for life with a fine of Rs. 1,000/- and in default thereof to undergo further RI for a period of 06 months, vide order dated 10.09.2004.

FACTS IN BRIEF:

2. On the intervening night of 07-08.10.1999, an information was received at the Police Station that Anju wife of Mahender Singh, resident of Bharat Nagar, Panipat had suffered burn injuries and had been taken to Civil

Hospital, Panipat. On receipt of the said information ASI Om Parkash alongwith other Police Official(s) went to the Civil Hospital, Panipat where the doctor handed over a medical *ruqa* (Ex. PD/1) and MLR of Anju in which Doctor had verified that Anju had suffered burn injuries and advised for arranging recording of dying declaration of Anju. Thereafter, an application was submitted by ASI Om Parkash to the Chief Judicial Magistrate, Panipat for deputing officials for recording of dying declaration of Anju. He deputed Sh. N.K. Singhal, Judicial Magistrate 1st Class, Panipat, who accordingly went to the General Hospital, Panipat for recording of dying declaration. Anju (since deceased), in her statement made to Sh. N.K. Singhal, Judicial Magistrate 1st Class, Panipat, alleged that her husband had set her ablaze. He was abusing her as '*Lucha Labari*'. In the night, Mehender Singh (husband of said Anju) had sprinkled kerosene on her person and set her ablaze. Then she raised noise. On hearing her noise, the neighbours came there and brought her to the Hospital. She further stated that she was alone at home at that time when she was set ablaze by her husband. She further stated that her husband is worker in a factory and that he was also consuming liquor at the time of incident and had already taken his dinner. Copy of the dying declaration was supplied to the ASI Om Parkash and whereafter the aforesaid FIR was registered. Later Anju died on 21.10.1999. Section 302 of the Indian Penal Code, 1860 was hence added to the FIR.

3. The police carried out investigation and recorded statement of witnesses and collected its evidence. On completion thereof, the final report under Section 173 Cr.P.C. was submitted before the Illaqa Magistrate. Copy

of the challan and the documents appended to it was supplied to the appellant-accused free of cost. Finding the case to be triable by the Court of Sessions, the case was committed by the Judicial Magistrate 1st Class, Panipat to the Court of Additional Sessions Judge (I), Panipat, vide order dated 18.01.2000.

4. Upon finding a *prima facie* case against the accused, the trial Court framed a charge under Section 302 of the Indian Penal Code, 1860, to which the appellant-accused pleaded not guilty and claimed trial.

5. In order to prove its case, the prosecution examined the following witnesses:-

PW-1	Dr. Ved Parkash Gupta.
PW-2	Moti Ram
PW-3	Jai Pal
PW-4	Sh. N.K. Singal, the then Judicial Magistrate 1 st Class, Panipat.
PW-5	Inspector Randhir Singh.
PW-6	Rajesh Constable.
PW-7	Naresh.
PW-8	SI Zile Singh.
PW-9	Rajesh Kumar.
PW-10	SI Om Parkash
PW-11	Dr. R.K. Jain.

6. Statement of the appellant-accused was recorded under section 313 of the Code of Criminal Procedure, 1973, in which he denied the commission of alleged offence and denied the evidence. He pleaded false implication. In his defence, the appellant-accused produced document Ex. DA, however, he did not produce any other evidence whereupon defence evidence was closed after recording his statement.

7. The parties were heard at length and upon hearing counsel for the respective parties, the trial Court recorded a finding of conviction against the appellant herein and sentenced him for life. Hence the present appeal.

ARGUMENTS FOR THE APPELLANT:

8. Learned Senior counsel appearing on behalf of the appellant contends that the entire case of the prosecution is based on the dying declaration of Anju, which was recorded by the then Judicial Magistrate 1st Class, Panipat. The said dying declaration is liable to be disbelieved since the same is surrounded by suspicious circumstances enumerated as under:-

- (i) that the time of making of the dying declaration is recorded at 4.45 p.m. which does not match with the timelines of recording of the dying declaration after 6.00 a.m., as given by the Investigating Officer while appearing as PW-10;
- (ii) It is contended that the dying declaration is incomplete as much as a specific question had been put to Anju (since deceased) as to whether she wanted to say anything else. In response thereto her answer was “yes sir”. However, nothing has been recorded thereafter which shows that the said dying declaration is incomplete;
- (iii) that even though the High Court Rules and Orders mandate that a dying declaration is to be read over to the declarant and only thereafter, it is to be counter-signed by the Duty Magistrate, however, there was no such

declaration made;

- (iv) It is further contended that even though, the thumb impressions of deceased-Anju were taken on the dying declaration, however, as per the deposition made by PW-11/doctor, who conducted the Post Mortem, there were marks of superficial and deep burns all over the body except for the external genitalia and the feet dorsum, hence, it was not possible for the thumb impressions of the deceased to have been obtained on the dying declaration;
- (v) It is argued with vehemence that the deceased died after a period of nearly 10 days of the incident in question and the recording of her statement. At that point of time, there was nothing on record to suggest that the deceased-Anju was reeling under an expectation of death. Hence, the deposition cannot be accepted with as gospel truth ;
- (vi) It is further contended that there were no circumstances on the basis whereof it may be assumed that the marital relationship between the parties was discordant or strained. There is also no material to disclose the nature of the altercation, if any, that had taken place between the husband and wife, immediately before the occurrence, which triggered the incident. Hence, there was neither any occasion nor any motive for Mahender Singh to have set Anju ablaze;

- (vii) It is further contended that none of the prosecution witnesses alleged or established that the appellant-accused/Mahender Singh was present at the spot and he was also not alleged to have run away from the spot. In the absence thereof, the presence of the appellant, at the place of occurrence is not established by the prosecution. There can be no presumption about presence of the accused at the spot.
- (viii) It is further argued with vehemence that the Magistrate did not put any specific questions to the deceased to ascertain her mental orientation and fitness before recording her dying declaration. In the absence thereof, it could not be assumed that deceased/Anju was in a fit state of mind to give a complete and true account of the incident in question.
- (ix) An additional argument has been raised by the learned Senior counsel that there are various discrepancies in the testimony of the prosecution witnesses. While PW-3/Jai Pal, father of the deceased, stated that the issues about marital discord or quarrel was shared by deceased-Anju with her Mausi-Krishna, however, Krishna has neither been examined nor her statement was ever recorded under Section 161 Cr.P.C. Hence, PW-3 remains a hearsay witness about an alleged marital discord between the husband and the wife.

- (x) It is further argued with vehemence that the site plan shows that there were various rooms in the immediate vicinity of the room occupied by the deceased and the accused but none of the neighbours has been either cited as witnesses or joined in the proceedings. It is contended that Moti Ram was not the immediate neighbour of the deceased, yet, the circumstances under which Moti Ram came to the spot and brought the deceased to the hospital have also not been explained. It is thus contended that the possibility of the deceased having been tutored on the way to the hospital cannot be ruled out in entirety.
- (xi) It is further contended that even though PW-3/Jai Pal acknowledges that the parties had a five year old son, there is no explanation put forth by the parties about the whereabouts of the son and as to whether he was present at the house on the intervening night when the incident in question took place. He would have been the best witness to the incident but for the reasons unassignable, the statement of the child has not been recorded nor has he been before the Court to make any deposition.

9. Learned Senior counsel for the appellant has placed much reliance on the deposition of PW-10/ASI Om Parkash to discredit the time of occurrence. He contends that while ASI Om Parkash has stated that he received information of the occurrence at about 5.00 a.m. in the morning and he reached at the hospital thereafter. As per the proceedings initiated by

him, he first went to the civil hospital, casualty ward, where he met with Dr. Ved Parkash Gupta (PW-1), who handed over the ruqa (Ex. PD/1) alongwith the MLR (Ex. PA). Thereafter, he moved an application (Ex. PJ) to the Chief Judicial Magistrate, Panipat for recording of the dying declaration, which was marked to Sh. N.K. Singal, the then Judicial Magistrate 1st Class, Panipat. Thereafter he went to the residence of Sh. N.K. Singal and put up the application (Ex. PK) before him for recording the statement of Anju. The statement was recorded upon which an endorsement (Ex. PD/2) was made and the same was sent to the Police Station for registration of the case on the basis whereof FIR (Ex. PD) was registered. Counsel contends that it is also stated by the Investigating Officer, in the cross-examination, that he had reached at the civil hospital at around 5.15 a.m. and that the statement of Anju was recorded by the Judicial Magistrate 1st Class around 6.00 a.m. and that he left the hospital at around 7.00 a.m. and went to the spot where he remained about two hours. He contends that the time of recording of statement of Anju (since deceased) has been mentioned as 6.00 a.m. by the investigating officer whereas time recorded in the dying declaration, by Duty Magistrate is 4.45 a.m. He thus contends that there is material contradiction(s) and mismatch between the timelines mentioned, hence, the dying declaration is surrounded by suspicious circumstances. The same should thus not be accepted at its face value and it be not assigned any undue weightage. He submits that apart from the dying declaration, there is no other evidence to link the appellant to the offence. The judgment of conviction thus needs to be set aside and appellant be acquitted.

ARGUMENTS BY STATE COUNSEL:

10. Responding to the above, learned State counsel contended that the present case, based on dying declaration, has been proved beyond reasonable doubt. The circumstances cited as discrediting the dying declaration are misplaced and countered effectively by the un-impeachable evidence on record. Adverting to the argument about discrepant timelines as per the medical record and dying declaration with the deposition of the Investigation Officer (PW-10), it is contended that as per the medical ruqa (Ex. PA/1), the time mentioned therein is 3.30 a.m. He contends that the investigating officer/PW-10 undisputedly went to the house of the Chief Judicial Magistrate, Panipat whereafter a Duty Magistrate was assigned. Then, he moved an application before the Duty Magistrate. As per the acknowledgement Ex. PC made by the Duty Magistrate, the application was received at 4.30 a.m. Thereafter, the Duty Magistrate proceeded to the Civil Hospital, Panipat and he reached there in 10 minutes where the Doctor certified that Anju (since deceased) was fit to make her statement. The statement (Ex. PC/1) was accordingly recorded by the Duty Magistrate/the Judicial Magistrate 1st Class, wherein the deceased specifically levelled allegations against her husband/Mahender Singh (appellant-accused) for having set her ablaze. It was also set out that the deceased was sprinkled with kerosene oil and set ablaze after a fight that had ensued between the parties. The neighbours came on hearing the noise of the deceased and they extinguished the fire and brought her to the hospital. She further stated that she was alone at the time of the incident and her husband was consuming liquor after dinner when she was set ablaze. He further contends that after recording of the dying declaration, the same was thumb marked by the

deceased and it was specifically set out thereunder that the dying declaration had been read over to the deceased. The Duty Magistrate signed the same at 4.45 a.m. thereafter, a certificate Ex. PA-3 was also handed by Dr. Ved Parkash Gupta(PW-1) at 4.56 a.m. that the deceased Anju was in a fit state of mind during the recording of her statement, hence, the factum of mental orientation and fitness stands fully established. He further contends that there were only two persons at the time when the dying declaration was recorded i.e. the Duty Magistrate himself as well as the attending Doctor, PW-1/Dr. Ved Parkash Gupta. It is submitted that both these witnesses stepped into the witness box as PW-1 and PW-4 respectively and they have corroborated the entire timelines. He submits that merely because the Investigating Officer, during his deposition before the Court has given certain different timelines, the same would not be sufficient to belie the timelines they were specifically mentioned in the contemporaneous documents that were prepared in the normal course of business and at the time of the proceedings. He further submits that the deposition of PW-10 was recorded in April-2002, i.e. nearly after a lapse of 03 years and that there is a possibility of the witnesses not being able to recall each and every minute detail. Such errors are only normal. He contends that merely because the times mentioned by the Investigating Officer are at variance than what has been mentioned in the documents would not be sufficient at this stage to discard the documents that were prepared by independent person in due course and had no axe to grind against the appellant-accused.

11. He contends that even though a generic argument has been sought to be raised that the appellant was not present at the place of

occurrence, however, the said contention is liable to be discarded since PW-9/Rajesh specifically deposed before the Court that he had heard Mahender and Anju (since deceased) fighting. The door was then closed. He further specifically deposed that the fight continued for nearly half an hour and thereafter, he heard the shrieks of the deceased whereupon he rushed to the place. The door was open and Anju had already been set ablaze. He further contends that the aforesaid sequence establishes that Mahender was present there but he ran away from the place of occurrence after putting his wife on fire. He submits that it needs to be kept in mind that the incident took place post midnight and no neighbour would have gone to enter the house of the accused at that odd hour. However, PW-9 overheard the fight and it was followed by the incident. The entire chain of events is thus complete and his presence at the spot needs no further corroboration.

12. It is contended that even otherwise, it is not the case set up by the appellant-accused during the course of the trial that he was not present at the place of occurrence as none of the witnesses had been cross-examined on such point nor any suggestion to this effect had been given. Further, even during recording of the statement under Section 313 Cr.P.C., no such stand had been taken by him. He further contends that in the event the appellant-accused wishes to contend that he was not present at the place of occurrence, the same would tantamount to taking a plea of alibi and that in such circumstances, the onus would lie upon the appellant-accused to lead evidence and to establish his alibi and to explain as to where he was at the given point in time.

13. He contends that apart from the deposition of PW-1/Dr. Ved

Parkash Gupta as well as PW-4/Sh. N.K. Singal, the then Judicial Magistrate 1st Class, PW-3/Jai Pal also interacted with his daughter-Anju and he had also re-iterated that deceased-Anju informed of the incident to him and that even in the communication the deceased had specifically stated that Mahender/appellant-accused had set her at ablaze on the intervening night. He thus contends that the version of the incident, as narrated by the deceased-Anju did not undergo any material change and remained consistent throughout.

14. He submits that in so far as the anomaly highlighted by the learned Senior counsel for the appellant that the deceased wanted to say something else but the same has not been recorded is concerned, the same is an inadvertent erroneous translation as the vernacular thereof specifically shows that when the question as to whether the deceased wanted to say anything else. She responded her response was that she did not want to say anything else (the said vernacular has been perused by this Court and we record that the submission made by the learned State counsel in this regard is correct and the translation wrongly records the fact).

15. It is also argued by the counsel that the submissions made by the learned Senior counsel for the accused-appellant that a person has to be under imminent danger of death at the time of the making of a statement for such statement to be relevant and to be read in evidence is misconceived in as much as Section 32 of the Indian Evidence Act, 1872 does not mandate that a person has necessarily to be aware of the consequence or to be under an expectation of death. He thus contends that the submissions advanced are thus misconceived and not borne out from a meaningful and objective

consideration and reading of the statute.

16. It is argued that merely because Krishna (Mausi) has not been examined about marital discord, the prosecution would not fail since the deceased herself informed about her cause of death. Besides, non-production of the child as a witness is not fatal as the incident was traumatic for a child to see his mother set ablaze. To put him to the trauma of recalling the incident was uncalled for in the facts of the present case. It is not the quantity but quality of evidence that is relevant and material.

17. Learned State counsel has further contended that during the spot inspection, the can of kerosene was also recovered from the place of occurrence and as per the FSL examination, the smell of kerosene was detected from the clothes of the deceased. The cause of death was thus ascertained conclusively that she died as a result of burn injuries after sprinkling of kerosene on her body.

18. We have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents appended with the instant appeal with their able assistance.

CONSIDERATION AND CONCLUSION:

19. The question that primarily comes up for consideration before this Court is as to whether the dying declaration dated 08.10.1999 recorded in the presence of the Duty Magistrate/Judicial Magistrate 1st Class, Panipat at 4.45 a.m. is surrounded by suspicious circumstances and as to whether the same could be accepted or not.

20. Having given our thoughtful consideration to the arguments advanced by the parties, we are of the view that the case of the appellant-

accused lacks merit and that the prosecution has been able to prove its case beyond reasonable doubt by leading cogent, credible and trustworthy evidence. Reasons for coming to the said conclusion are as under:-

- (i) that the undisputed sequence of the events, as set out clearly establishes that the incident took place at around early hours in the intervening night of 7-8.10.1999;
- (ii) She was thereafter brought to the hospital and a medical ruqa was handed over by PW-1/Dr. Ved Parkash Gupta to the Investigating Officer at around 3.30 a.m. Thereafter, at around 4.30 a.m., the application was received by the Judicial Magistrate 1st Class, Panipat for recording of dying declaration of Anju. Prior thereto, the Investigating Officer had first approached the Chief Judicial Magistrate, Panipat for deputing a Duty Magistrate. After an officer was deputed by the Chief Judicial Magistrate, the Investigating Officer went to the Duty Magistrate and moved application for recording of the dying declaration. The aforesaid application is received by the Judicial Magistrate 1st Class at 4.30 a.m. and the Judicial Magistrate 1st Class, in his deposition said that he reached the hospital in about 10 minutes thereafter. The exercise as above, could have been taken about an hour and hence matches the time as recorded on the application by the Judicial Magistrate 1st Class.
- (iii) Subsequently, the fitness certificate was issued by the

attending doctor at 4.40 a.m. and the dying declaration was then recorded by the Judicial Magistrate 1st Class, Panipat which concluded at 4.55 a.m. A second certificate was also issued by the Doctor at 4.56 a.m. that deceased-Anju, remained fit during the period when her dying declaration was recorded. Hence, a mere discrepancy in the testimony of PW-10 would not be sufficient to disbelieve the documentary evidence prepared at the spot which goes in a complete uninterrupted sequence establishing the case of the prosecution and the timelines. Both the witnesses viz. the Judicial Magistrate 1st Class as well as the Doctor have also corroborated the times as mentioned in the documents generated or endorsement made by them. Both the witnesses are independent and had no ill-will against either party. Hence, the discrepancies of timelines in the oral deposition would not be given any higher weightage, rather, his deposition has to be seen in the context of the entire documentary and oral evidence;

- (iv) That the submission of the appellant-accused that the thumb marks of the deceased could not have been obtained on the dying declaration as she had suffered burn injuries is also unworthy of acceptance since the medical record as well as the PMR does not show that the hands and fingers/palm or thumb impressions had been

burnt or had been erased as a result of any fire injury. The PMR only shows that there were superficial as well as deep burn issues all over the body. The said statement would not be sufficient to assume that there were deep burns even on the hands and fingers of the deceased as would render it impossible to affix her thumb impression. The MLR does not suggest of any such injuries as well. PW-4/Sh. N.K. Singal, the then Judicial Magistrate 1st Class, Panipat has specifically deposed about recording of the dying declaration as well as the same having been read over to the deceased and she having affixed her thumb mark after having heard the same and having been found correct. The Judicial Magistrate 1st Class has attested the declaration and the same has been drawn as per the guidelines issued under the high Court rules and orders. There was also no suggestion put to the Doctor PW-1/Ved Parkash or even to the then Judicial Magistrate 1st Class, Panipat that the finger tips/thumb impressions had been erased or burnt on account of the fire injuries. The then Judicial Magistrate 1st Class, Panipat, who is an independent witness, has specifically stated that the thumb impressions had been affixed in his presence. The said testimony cannot be discarded merely on the basis of vague and uncorroborated suggestions that are being sought to be raised at this stage, for the

first time during the course of hearing of the appeal and which such aspects had never been set up as a defence during the course of the trial.

- (v) It has also come on record that the dying declaration was complete and the deceased did not want to say anything further. The translation was incorrectly typed and the vernacular has been perused by this Court to record the above finding.
- (vi) Apart from the above, it has also come forth from the deposition of PW-3/Jai Pal that deceased-Anju had also narrated the same sequence to him as well. Merely because the history of marital discord *inter se* between Anju and Mahender had not been disclosed by deceased-Anju to her father and had been confided by her in her Mausi-Krishna, who had not been examined as a witness is immaterial at this juncture. The contemporaneous evidence and the circumstances as well as the circumstantial evidence available on record establishes the presence of appellant-accused/Mahender at the place of occurrence soon before the incident took place followed by the deceased having been found in a state of having been set ablaze;
- (vii) It also flows from the reading of the deposition of all the witnesses that there was no such suggestion put forth by the appellant-accused to any of the witnesses that he was

not present at the place of occurrence or that he was at any other place. Since PW-9/Rajesh Kumar specifically overheard the appellant-accused fighting with deceased-Anju, hence, it would not open at this juncture for the appellant-accused to contend that the deposition of PW-9/Rajesh Kumar ought not to be accepted. The said deposition has also remained consistent and nothing conflicting or contrary has been elicited during the course of cross-examination.

(viii) This Court further notices that even though a vehement effort has been made by the learned Senior counsel for the appellant-accused to contend that the accused was not present at the spot, we find ourselves in agreement with the submission made by the learned State counsel that in the absence of any such cross of any of the prosecution witnesses or suggestions put during the deposition or the said stand having been taken in the statement recorded under Section 313 Cr.P.C., the contention cannot be accepted as the appellant-accused is now wanting to raise a fresh factual dispute which cannot be gone into at this stage. Besides, it invariably flows that in the event the appellant-accused wants to suggest that he was not present at the place of occurrence, the onus would shift upon him to prima facie show that he was present at a place other than the place of occurrence and could not

have been present at the place of occurrence when the incident took place. The aforesaid aspect becomes important considering the fact that the incident in question took place at very odd hours i.e. at nearly past midnight on the night of 7-8.10.1999. This would generally not be the time when the persons would not be back home. Even otherwise PW-9 testifies the presence of the accused having overheard him.

21. The fact also remains undisputed that once the appellant raises an issued that he may not be home, he is required to offer a valid explanation. As per Section 106 of the Indian Evidence Act, 1872, the onus lay upon the appellant. There was no other person who could have better explain as to where he was, but for the appellant himself. He having failed to offer any explanation, an adverse inference is being drawn against him.

22. Still further, it remains undisputed that there are seemingly three persons whom the facts and cause of death is narrated by the deceased-Anju. While one dying declaration witnessed by the Judicial Magistrate 1st Class and the Doctor is in writing, the second narrative is oral and to her father Jai Pal (PW-3). The testimony has been identical and corroborated on all material counts.

23. Section 32 of the Indian Evidence Act, 1872 does not mandate that a person has to be under an expectation of death while giving a statement about the cause of death. The provision is specifically explanatory on the above. The same reads thus:

“Section 32: Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.

Statements, written or verbal, or relevant facts, made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured, without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases:

- (1) *When it relates to cause of death. - When the statement is made 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, in cases in which the cause of that person's death comes into question.*

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

xxxxxxxx ”.

24. While law generally disregards a hearsay evidence, however, the dying declaration is an exception to the same. The Hon’ble Supreme Court summed up the principles governing dying declaration in the matter of **‘Atbir Vs. Govt. of NCT of Delhi’** reported as **(2010) 9 SCC 1**. The same are as follows:

- “(i) *Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.*
- (ii) *The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- (iii) *Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- (iv) *It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.*
- (v) *Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.*
- (vi) *A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*
- (vii) *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
- (viii) *Even if it is a brief statement, it is not to be discarded.*
- (ix) *When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
- (x) *If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”*

It is evident that the dying declaration satisfies all the

above tests prescribed and is thus sufficient to convict the appellant.

25. The appellant has nowhere been able to impeach the dying declaration and the facts narrated therein. Instead, his entire thrust has been to ask for more evidence such as why neighbour have not been joined or why the child when has not joined or why the child witness has not been examined. The same is not a suspicious circumstance to disbelieve the dying declaration but an attempt to ask for a much higher degree of proof despite the dying declaration being liable.

26. Even though counsel had agreed that child witness too should have been examined by the prosecution but even the appellant did not seek production of child as a witness in his defense. There is no such reason why he did not lead his defense.

27. The appellant also did not bring any record or whereabouts of his presence at a place other than the place of occurrence.

28. There is nothing on record that Moti Ram, who brought Anju to the hospital, had any reason to tutor her against the appellant. No other person, who had accompanied the deceased to the hospital has also been indicted by the appellant to incite the deceased against him. Hence the dying declaration was a truthful account of the incident given her fitness having been certified and no eyewitness testifying to the contrary.

29. A mere failure to join other neighbours or their not deposing is not a ground to discard an otherwise plausible prosecution case where all the other witnesses stood the ground.

30. We are of the view that the case of the prosecution is to be determined not by the quantity but by the quality of evidence that had been brought on record. Once, the witnesses available on record have testified to the effect that they have established the case, merely because of other persons in the immediate neighbourhood have not been joined during the course of investigation or they have not deposed before the Court of law would not render the investigation faulty or render the investigation devoid of any merit or admissibility.

31. In view of the above, we find that the judgment of conviction dated 09.09.2004 passed in case SC-51 of 2002 arising out of FIR bearing No.332 dated 08.10.1999 registered under Section 302 of the Indian Penal Code, 1860 at Police Station Model Town, Panipat and order of sentence dated 10.09.2024 by the Additional Sessions Judge, Panipat suffers from no illegality, perversity, infirmity or misreading of evidence and the same is accordingly affirmed.

32. The appeal is *dismissed*, lacking in merit.

33. CRM-27493-2005 stands disposed of.

(VINOD S. BHARDWAJ)
JUDGE

(SUKHVINDER KAUR)
JUDGE

06.07.2026
Mangal Singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No