

*Before V. K. Bali & Nirmal Singh, JJ.*

AMRIK SINGH & OTHERS,—*Appellants*

*versus*

STATE OF HARYANA,—*Respondent*

CRL.A. No. 342/DB OF 2003

1st February, 2005

*Indian Penal Code, 1860—Ss. 302 and 34—Conviction of appellants for setting a person on fire after pouring kerosene of him on the basis of dying declarations—Deceased making two dying declarations—Absolute clarity with regard to deceased naming appellant No. 4 as one of the culprits—No clarity/certainty with regard to the other appellants—Identity of these persons is not definite—They cannot be convicted on the basis of dying declarations and deserve to be acquitted by giving them benefit of doubt—Conviction and sentence recorded against appellant No. 4 held to be perfectly legal.*

*Held*, that conviction can be based upon dying declaration alone without any corroboration, even though as a matter of prudence, the Court may look in for corroboration but the same has to be absolutely unambiguous, pin-pointing the culpability of an accused with certainty. Reading of the two dying declarations, would manifest that whereas the same are unambiguous with regard to involvement of Gurbax Singh, there cannot be any certainty with regard to the others, even though, it has to be said that there were, indeed, one or more persons alongwith Gurbax Singh. Once, identity of these one or two out of the three appellants, who are sons of Gurbax Singh, is not definite, they cannot be convicted on the basis of dying declarations.

(Para 9)

*Further held*, that dying declaration is believed primarily for the reason that in normal circumstances, the last word of a person who knows that his death is imminent, would not be false. Tested on that anvil, it appears that Ram Parkash had not named Dalip Singh and yet Vijay Kumar in his anxiety to involve all the sons of Gurbax Singh, named him as well. Once it is to be held that Dalip Singh was

---

not named by Ram Parkash, it would rather fit in with the dying declaration made by him before the Doctor and Executive Magistrate wherein no specific name but for Gurbax Singh was mentioned. Further, if Ram Parkash would have named Gurbax Singh specifically, we do not find any reason why he would not name others also likewise, if he was sure about their involvement.

(Para 10)

*Further held*, that conviction on dying declarations insofar as appellants other than Gurbax Singh are concerned cannot possibly be sustained. Even though, it is true that Gurbax Singh was not the lone culprit and was certainly accompanied by one, if not two or more persons, who, in all probability, would be out of the appellants only, but, inasmuch as it is not certain as to who specifically out of the three sons of Gurbax Singh, were accompanying him, they all have to be given benefit of doubt and acquitted of the charges framed against them.

(Para 12)

Baldev Singh, Sr. Advocate with Arshwinder Singh, Advocate,  
*for the appellant.*

Sanjay Vashisht, Sr. D.A.G., Haryana, *for the respondent.*

## JUDGMENT

**V. K. BALI, J.**

(1) Whether dying declaration made by Ram Parkash before the Doctor and Executive Magistrate, which was recorded and the oral dying declaration made by him before Vijay Kumar, PW-6, and Krishan Lal, PW-10, in the facts and circumstances of the case, is enough to secure conviction of the appellants or some of them, is the sole but significant question that is involved in the present appeal filed by the appellants against the order of conviction and sentence recorded by learned Sessions Judge, Yamunanagar, dated 27th/28th March, 2003,—*vide* which, all of them have been held guilty for an offence under Section 302 read with Section 34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for life.

---

The appellants are Gurbax Singh and his three sons, namely, Amrik Singh, Jarnail Singh and Balbir Singh. They are said to have set ablaze Ram Parkash on the intervening night of 18th/19th July, 2001 at 3.30 A.M. F.I.R. with regard to the incident came to be recorded on the statement of Vijay Kumar, nephew (sister's son) of deceased, which was recorded by Dhanna Ram, Inspector, PW-12, at 11.15 A.M. on 19th July, 2001. Special report with regard to the incident reached the concerned Magistrate at 3.00 P.M. on the same day.

(2) While unfolding the prosecution version, Vijay Kumar, PW-6, stated that he was resident of Ladwa and was running a shop in the said village. His maternal uncle Ram Parkash, son of Shankar Dass was running a grocery shop in village Ghillaur. He had two sons, namely, Surinder Kumar and Bittu. Surinder Kumar was residing in Delhi alongwith his wife and children, whereas, Bittu was residing along with his maternal uncle in the village. His maternal uncle had gone to Delhi on 30th June to solemnise the marriage of his daughter. After marriage, they came to village Ghillaur. Gurbax Singh was residing in neighbourhood of his maternal uncle and he and his family members used to harass his maternal uncle and would pick up quarrels with him so that his maternal uncle, being fed up, may sell his house and property to them and settle at Delhi. His maternal uncle had told him on telephone on two-three occasions regarding this matter. He used to counsel him. Gurbax Singh and his family members, however, kept on pastering him. In the morning at about 4-30 he was present in his house at Ladwa when he received a telephonic message from village Ghillaur that his maternal uncle had been set on fire and was brought to Ladwa Hospital for treatment. After hearing the said message, he reached Ladwa Hospital. His maternal uncle had received serious burns but was able to speak. He made conversation with him whereupon, he disclosed that in the morning at about 3.30 A.M. Gurbax Singh and his sons, Jarnail Singh, Amrik Singh, Dalip Singh and younger boy Billa, poured kerosene oil over him and set him ablaze. Ladwa Police was informed in this regard. Ladwa Police came to the hospital and Naib Tehsildar, Ladwa, was also called. His maternal uncle, in the presence of the Doctor and Naib Tehsildar, disclosed that he had been set on fire by Gurbax Singh and his family members by pouring kerosene oil. The Doctor referred his maternal uncle to Civil Hospital, Kurukshetra, where he took him. But he succumbed to his

---

burn injuries. He further stated that he had a definite doubt that his maternal uncle had been done to death by Gurbax Singh, Jarnail Singh, Amrik Singh, Dalip Singh and Billa, residents of Ghillaaur, by setting him on fire after pouring kerosene oil on him. During investigation, the police found Dalip Singh, who was in Army, to be innocent, being present in his Unit at the time and date of occurrence and unable to be present at the scene of crime. The appellants, thus, were tried for an offence under Section 302 read with Section 34 of Indian Penal Code and sentenced, in the manner, referred to above.

(3) During the course of trial, the prosecution examined Dr. Surinder Kumar, Medical Officer, L.N.J.P. Hospital, Kurukshetra, as PW-1, who stated that on 19th July, 2001, he alongwith Dr. G.D. Mittal conducted post-mortem examination on the dead body of Ram Parkash. The Doctors found rigor mortis all over the body. They also found smell of kerosene oil. They also found superficial burns all over the body sparing some area of soles. Singing of scalp hair, facial hair and eye brow were present. Blackening of skin was present. Skin was peeled off at most of the places and exposing underlying raw area at remaining areas skin could be peeled out easily. Perianal region was also burnt and blackend. Singing of public hair was also present. In the opinion of the Doctors, cause of death was shock as a result of extensive burns, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Probable interal between injury and death was within few hours and between death and post-mortem within 24 hours. There was 100% burns over the dead body. Dr. C. R. Khatri, Medical Officer, who was examined as PW-2, stated that on 19th July, 2001, Ram Parkash was admitted in casualty with 100% burns. He expired and regarding the death of patient, he sent intimation (Ruka) Ex. PD, to Police Post Third Gate, Kurukshetra University. He attended the patient, who expired at 7.15 A.M. Dr. Ashwani Kumar, Medical Officer, CHC. Ladwa, who was examined as PW-7, stated that on 19th July, 2001 at about 5.00 A.M., he had medico legally examined Ram Parkash, who was brought by Jeet Singh and Billu of the same village. There was alleged history, which the patient was saying, that his neighbours Gurbax Singh and others had put kerosene oil on his body and burnt him. He was conscious and in senses. His BP was 100/70 mmhg but the pulse was not recordable. His pupils were normally sluggish, reacting to both the sides. The patient was in agony of pain and crying in pain. He was

---

giving history of putting kerosene oil on him and burning him by his neighbours Gurbax Singh and others early in the morning while he was alone in his house. On examination, the patient was found having 100% epidermal burns. Clothes on the body were burnt. The patient was referred for Surgeon's opinion and further management to L.N.J.P., Kurukshetra. He proved original medico legal report. Ex. PH. He sent ruqa, Ex.PH1, to S.H.O. PS Ladwa in this regard. He had given telephonic message to Rajbir, Naib Tehsildar, Ladwa, for visiting the hospital to record the statement of the injured. Rajbir, Naib Tehsildar, visited the hospital. He recorded statement of injured in the presence of Naib Tahsilar, Ex. PK. Same was also signed by Naib Tehsildar in his presence. His statement was correctly recorded as stated by the injured. Same was recorded at 5.30 A.M. Patient was conscious when he gave statement, Ex. PK, and was fit to make the statement. In his cross-examination, he stated that Naib Tehsildar had come alongwith the police and Ex. PK was handed-over by them to the police official of Police Station, Ladwa, who were present in the hospital. He also stated that the patient had given his statement in his presence and the presence of Naib Tehsildar and the same was signed by both of them. He had not obtained the signatures or thumb impression of the patient as he already deposed that the patient was having 100% burns and hence he was not in a position to sign or put his thumb impression. The patient was not even in a position to give thumb impression of his foot. Staff Nurse on duty was also present when statement of the patient was recorded. He stated that he could not remember as to whether Jeet Singh and Billu, who had brought the patient, also told him anything about the occurrence. He, however, volunteered to say that normally, they did not allow any body to remain present near the patient while giving first aid and while examining the patient. He further stated that he would not know Vijay Kumar, brother of Vinod Kumar. He had not seen Vinod Kumar or Vijay Kumar and none of them had been introduced to him. Vijay Kumar, who appeared as PW-6, deposed in tune with the F.I.R. lodged by him. In his statement, he also mentioned that statement of his maternal uncle was also recorded by Naib Tehsildar and the Medical Officer but not in his presence. In his cross-examination, he stated that Jeet Singh of village Ghillaur had given telephonic message to him and that since he was residing at Ladwa, he reached the hospital before even the arrival of his maternal uncle and others. He also stated that Medical

---

Officer remained with his maternal uncle till he was taken to Kurukshetra at about 6.00 A.M. Medical Officer did not enquire from his maternal uncle in his presence, as he might have gone out to arrange for medicines. He had brought medicines from the shops situated outside the hospital. He, however, had not taken any bills of medicines from the Chemist as he was in a hurry to save his maternal uncle. His maternal uncle had told him about the occurrence as he deposed above in the presence of his brother Vinod Kumar and his uncle Krishan Lal even outside the hospital after he was brought from village Ghillaur. He, however, did not have any talk with Medical Officer, who was attending his maternal uncle as to what was told by him to them about the occurrence. He also did not talk with Naib Tehsildar in this regard. Krishan Lal and Vinod Kumar also did not have any talk in his presence, either with the Doctor or Naib Tehsildar. He did not disclose the facts told to him by his maternal uncle to any body else till his statement was recorded by the police in Civil Hospital, Kurukshetra. He did not tell the Police of Ladwa the facts allegedly told to him by his maternal uncle, as deposed by him. He also stated that he had enquired from Jeet Singh and Hari Krishan about the occurrence but they told him that they did not know anything as to how occurrence had taken place. Rajbir Singh, Naib Tehsildar, who was examined as PW-8, stated that on 19th July, 2001, a police official had come to his residence to call him. He reached Civil Hospital, Ladwa. Dr. Ashwani Kumar had also given him telephonic message. After reaching the hospital, he found Ram Parkash admitted there. He was having burn injuries. His statement was recorded by Dr. Ashwani Kumar in his presence, which was signed by the said Doctor and he also signed the same at 5.30 AM. In his cross-examination, he stated that police officials were present outside the hospital when statement of the injured was recorded. He also stated that Vinod Kumar, Press Reporter, was known to him as he was resident of Ladwa and that he had not seen Vinod Kumar or his brother Vijay Kumar in the hospital, when he visited the hospital. Krishan Lal, who was examined as PW-10 and supported the prosecution version, stated that on 19th July, 2001, he had received telephonic message at about 5.00 AM that his brother-in-law was set on fire by some body and that he was taken to Civil Hospital, Ladwa. He had gone to Civil Hospital, Ladwa and found that his brother-in-law was lying there with burn injuries. He asked his brother-in-law as to how he received burn

---

injuries, who told him that he was set on fire by Gurbax Singh and his four sons. He also told him names of sons of Gurbax Singh as Jarnail Singh, Dalip Singh, Billa and Amrik Singh. In his cross-examination, he stated that he could not tell the name of person, who had given telephonic message to him as he did not ask his name, as he got perplexed after receiving the same. He then stated that when he reached Civil Hospital, his brother-in-law was laying in the verandah of Civil Hospital and was crying. There was only one nurse, who was giving medicines to him and was dressing the wounds of his brother-in-law. No medicine was given to him in his presence. He did not ask any doctor to give medicines to his brother-in-law as he was being attended even before his arrival there. Doctor had reached after his brother-in-law had already stated the facts to him. However, Nurse was present at that time. He again stated that he would not remember as to whether Doctor was also present when his brother-in-law stated the facts before him. He did not tell the Doctor anything about alleged disclosure of facts of occurrence to him by his brother-in-law. The police was already there, when he reached Civil Hospital, Ladwa. His statement was however, not recorded in Civil Hospital, Ladwa. When he reached Civil Hospital, Ladwa, his nephew Vinod Kumar was already present there. He did not see Hari Krishan and Jeet Singh, residents of Ghillaur, in the hospital. Surinder Kumar son of Ram Parkash, who was examined as PW-11, deposed with regard to the appellants having not good relations with his father and harassing him as they intended that he may sell his residential house to them and leave the village and further that on 19th July, 2001, he received a telephonic message from Ladwa that his father had received burn injuries and was set on fire by Gurbax Singh and his sons. Dhanna Ram, Inspector, who was examined as PW-12, deposed with regard to the steps that he had taken while investigating the case.

(4) Appellant Jarnail Singh when examined under Section 313 of Code of Criminal Procedure, while denying incriminating material put to him, further stated that he had been falsely involved in this case. One of his brother Dalip Singh was employed in Military and on the day of alleged occurrence, he was away at his place of posting. He, his other brothers and his father were residing separately in the village, having their separate ration cards. He, his brother and father never wanted to purchase residential house of Ram Parkash. He was having no other immovable property in the village. Neither

---

he, nor his brothers nor his father ever harassed Ram Parkash. None of them ever harassed him under the influence of liquor. Neither he nor brothers nor his father was having any grudge or motive for committing murder of Ram Parkash. Wife and sons of Ram Parkash did not like him and they used to harass him and he used to be left alone and hence, Ram Parkash was unhappy with his own family members. Previsouly beating was also given to him by his sons Surinder Kumar and Bittu and Ram Parkash also tried to commit suicide. There was previous civil litigation between his family and father and uncle of Vijay Kumar and Vinod Kumar, because his aunt (Tai) Pritam Kaur, who was residing with them, filed a civil suit against the father of Vijay Kumar and Vinod Kumar and uncles Shankar and Gurdas. There was also previous civil litigation between his father and Surinder Kumar son of deceased and the suit filed by Surinder Kumar against his father was dismissed on 25th August, 1999. They, thus, have a motive and grudge to falsely implicate him and his brothers and father. Statement made by other appellants was also similar to the one made by appellant Jarnail Singh. In defence, they examined Om Parkash, Inspector, Food and Supply, as DW-1, who stated, on the basis of the records, the ration cards were issued to Gurbax Singh, Balbir Singh, Amrik Singh and Jarnail Singh, Darshan Singh, Member Panchayat, who was examined as DW-2, stated that Ram Parkash deceased and the appellants were known to him. On 19th July, 2001, Ram Parkash had caught fire. He had also visited the residential house of Ram Parkash when he came to know that he had caught fire. He had enquired from Ram Parkash as to how he caught fire and he told him that only God knows as to how he caught fire. Some other villagers were also present there. They were also enquired from Ram Parkash about the cause of fire. Ram Parkash did not name any of the accused before him or before any other person present there. He was taken to hospital by Hari Krishan and Jagjit Singh in a car. He also proved on record copy of order, Ex.D-9 which proves that a suit for permanent injunction was filed by Surinder Kumar against Gurbax Singh and one of his sons Balbir Singh, restraining them from interfering in the peaceful use/enjoyment of the passage by the plaintiff as well as restraining them from raising any construction or changing the existing nature of the property in that case. The suit was dismissed in default due to non-apperance of the plaintiff or his counsel on 25th August, 1999. He also proved Ex.D-10, which shows that suit for



---

possession through pre-emption was filed by Lachhman Singh and Pritam Kaur and the same was decided on 24th March, 1972. The suit was filed against the father of PW Vijay Kumar and others as they were the vendors in that case.

(5) The crucial question involved in the present case, as mentioned above, is with regard to the authenticity and reliability of dying declaration made by deceased Ram Parkash before Dr. Ashwani Kumar, PW-7, and Executive Magistrate Rajbir Singh, PW-8, and if the same is proved to inspire confidence, as to whether on the basis of the same, all the appellants can be held guilty for the crime stated to have been committed by them.

(6) Before, we, however, recorded our findings on the aforesaid issue, it would be appropriate to advert to the documents that have partaken the character of dying declaration. Ex. PH is medico legal report of Ram Parkash prepared by Dr. Ashwani Kumar. On the top of right hand side it is mentioned as follows :—

“Alleged H/O Homicidal Burns as pt. says neighbours put kerosene oil on his body & burn him (Mr. Gurbax Singh & others).”

(7) Relevant part of medico legal report, Ex.PH, mentioned in the body, runs thus :—

“The individual aged 61 years/ in giving history of put kerosene oil on him and burn him by his neighbours Mr. Gurbax Singh and another today early morning while he was alone in his house.”

(8) Statement of the injured, Ex.PK, said to have been made by him, when translated into English, reads as follows :—

“My neighbour Gurbax Singh and his family set me on fire after pouring Kerosene oil on me. Nobody was present on my house. Everybody was at Delhi on account of solemnisation of marriage of my daughter.”

(9) We would deal with the two oral dying declarations said to have been made by Ram Parkash to Vijay Kumar, PW-6 and Krishan Lal, PW-10, later. Insofar as, however, statement made by Ram Parkash, which was recorded by Dr. Ashwani Kumar on two

---

occasions is concerned, it would clearly manifest that whereas, in Ex. PH, medico legal report of Ram Parkash, at one place, culprit have been mentioned to be "Gurbax Singh and others", in the body of the said report, it has been mentioned "Gurbax Singh and another". Learned trial Judge has read tahe words "and another" as "others". We have, however, put this question to learned counsel representing the parties and asked them to examine documents, Ex. PH and Ex. PK. We have examined these documents ourselves also. It appears that in Ex. PH. the words mentioned are "and another" and not "others". In Ex. PK, the words mentioned are Gurbax Singh and his family". From the reading of two dying declarations, as mentioned above, whereas, there is absolute clarity with regard to Ram Parkash naming Gurbax Singh as one of the culprits; there is no clarity as to who were the others, although, it is further clear that there was certainly some one with Gurbax Singh, may be one or more. Whereas, on the top right hand side of Ex.PH. mention is of Gurbax Singh and others, meaning thereby, more than one, in the body of MLR, Ex. PH, the words are Gurbax Singh and another, meaning thereby, Gurbax Singh with one more. In Ex. PK, the words mentioned are "Gurbax Singh and his family", meaning thereby, Gurbax Singh and two or more. It is too well settled that conviction can be based upon dying declaration alone without any corroboration, even though as a matter of prudence, the Court may look in for corroboration but the same has to be absolutely unambiguous, pin-pointing the culpability of an accused with certainty. Reading of the two dying declarations, as mentioned above, would manifest that whereas, the same are unambiguous with regard to involvement of Gurbax Singh, there cannot be any certainty with regard to the others, even though, it has to be said that there were, indeed, one or more persons along with Gurbax Singh. Once, identity of these one or two out of the three appellants, who are sons of Gurbax Singh, is not definite, in our considered view, they cannot be convicted on the basis of dying declaration, Exs. PH and PK.

(10) Insofar as, oral dying declaration made by Ram Parkash to Vijay Kumar is concerned, the same also cannot be relied upon for variety of reasons. While lodging F.I.R., it may be recalled, Vijay Kumar had named Dalip Singh also as one of the persons accompanying Gurbax Singh when Ram Parkash was set ablaze. Dalip Singh is admittedly in Army and the police, after investigation, found him innocent as all the enquiries made by the police from the

---

concerned Army authorities revealed that he was in the Unit, where he was posted and could not be present at the scene of occurrence on the date and time when Ram Parkash was set on fire. If Dalip Singh was not present, surely, Ram Parkash would not have named him. Dying declaration is believed primarily for the reason that in normal circumstances, the last word of a person, who knows that his death is imminent, would not be false. Tested on that anvil, it appears to us that Ram Parkash had not named Dalip Singh and yet Vijay Kumar in his anxiety to involve all the sons of Gurbax Singh, named him as well. Once, it is to be held that Dalip Singh was not named by Ram Parkash, it would rather fit in with the dying declaration made by him before the Doctor and Executive Magistrate wherein, it may be recalled, no specific name but for Gurbax Singh was mentioned. Further, if Ram Parkash would have named Gurbax Singh specifically, we do not find any reason why he would not name others also likewise, if he was sure about their involvement. At no given time, be it when he made statement before the Doctor and when medico legal report was prepared or when he made statement otherwise before the Executive Magistrate in the presence of Doctor, name of any other accused was mentioned by Ram Parkash. Whereas, in Ex. PH. at one place, it is mentioned Gurbax Singh and others, in the body of Ex. PH, it is mentioned Gurbax Singh and another. Likewise, in Ex. PK, words mentioned are "Gurbax Singh and his family". That apart, it rather appears strange that Ram Parkash disclosed the name of his assailants to him and Krishan Lal, PW-10, and not Jeet Singh and Billu, who, as per prosecution version, had taken him to the hospital at Ladwa. Insofar as Vijay Kumar, PW-6, and Krishan Lal, PW-10, are concerned, admittedly, they are related to the deceased and in view of background of the litigation between them and their family members, they were certainly interested witnesses. The prosecution, in our view, ought to have recorded the statements of Jeet Singh and Billu, who were the persons, who attended upon Ram Parkash and admitted him in the hospital. In normal circumstances, Ram Parkash must have disclosed to them as to what had happened to him. It appears to us that these two persons were not made prosecution witnesses in all probability for the reasons that they were not to support the entire prosecution case. Still further, it appears to us that Vijay Kumar was not present in the hospital at Ladwa at least and appears to have reached the hospital at Kurukshetra, where

---

Ram Parkash ultimately died. It has come in evidence in unequivocal terms that the police had arrived in the hospital at Ladwa. If Vijay Kumar would have come to know about the names of all the appellants, in normal course, he would have made a statement before the police. Vijay Kumar himself stated, even though in his cross-examination, that Medical Officer remained with his maternal uncle till he was taken to Kurukshetra. If that be so, in case Vijay Kumar was present in the hospital at Ladwa, he ought to have met Dr. Ashwani Kumar. Vijay Kumar admits that he did not have any talk with the Medical Officer, who was attending his maternal uncle, nor he did have any talk even with Naib Tehsildar in that regard. Dr. Ashwani Kumar, PW-7, in his cross-examination, stated that they would normally not allow anybody to remain present near the patient while giving first aid and while examining the patient. He also stated that he would not remember as to whether any medicine was called from outside the hospital or not. He also stated that he did not know Vijay Kumar brother of Vinod Kumar and had not seen Vinod Kumar or Vijay Kumar and none of them had been introduced to him. If Vijay Kumar was present in Civil Hospital, Ladwa, it is not possible to believe that he did not meet the Doctor and, naturally, if he was to meet him, he would have introduced himself to him being related to the injured. It does not appear to us that any medicine was required and that Vijay Kumar had actually gone to fetch the medicine.

(11) Presence of Krishan Lal, PW-10, at Civil Hospital, Ladwa, again appears to be doubtful. In his cross-examination, he stated that he could not tell the name of the person, who had given telephonic message to him. It does not appear to be probable as such an information is normally given by a known person or in any case. It is not acted upon or believed till such time the recipient of the information knows, at least, the name of the person giving the said information. When further cross-examined, he admitted that he had not stated in his statement before the police that he had received the information on telephone and had simply stated that he had come to know that his brother-in-law was taken to Civil Hospital, Ladwa. He admits that no medicine was given to his brother-in-law in his presence. He even did not ask any Doctor to give medicines to his brother-in-law as he was being attended even before his arrival there. He further stated that he had not seen Hari Krishan and Jeet Singh, residents of Ghillaur, when he reached Civil Hospital, Ladwa, which again does not appear

---

to be correct as those, who had brought Ram Parkash to Civil Hospital, Ladwa, would have not left the hospital immediately after admitting him. This witness also, like Vijay Kumar, wrongly named Dalip Singh as one of the culprits. He appears to be toeing the line of Vijay Kumar simply with a view to prop-up the prosecution case and to secure conviction for all the appellants. Further in the facts and circumstances of this case, credence has to be given to the statements made by the Doctor and Executive Magistrate, who are independent witnesses than those who were related to deceased and had litigation with appellants or their family members.

(12) In totality of the facts and circumstances of this case, we are of the firm view that conviction in the present case on dying declarations, as mentioned above, insofar as, appellants other than Gurbax Singh are concerned, cannot possibly be sustained. Even though, it is true that Gurbax Singh was not the lone culprit and was certainly accompanied by one, if not two or more persons, who, in all probability, would be out of the appellants only, but, inasmuch as, it is not certain as to who specifically out of the three sons of Gurbax Singh, were accompanying him, they all have to be given benefit of doubt and acquitted of the charges framed against them. So ordered.

(13) Insofar as, appeal preferred by Gurbax Singh is concerned, the same has absolutely no merit. Careful scrutiny of the two dying declarations recorded by Dr. Ashwani Kumar would clearly manifest that the same are true and free from any effort to prompt the deceased to make a statement and is coherent and consistent. Insofar as, complicity of Gurbax Singh is concerned, in view of the ratio laid down by Hon'ble Supreme Court in **Kusa and others versus State of Orissa**, (1) dying declaration made by Ram Parkash needs no corroboration. In the present case, however, there is a corroboration as well insofar as, at least, motive of Gurbax Singh in committing the crime is concerned. Order of conviction and sentence recorded against him by learned Sessions Judge, Yamunanagar, is perfectly legal and calls for no interference. The appeal preferred by him is, thus, dismissed, whereas, the appeal filed by the others, as mentioned above, is allowed.

---

**R.N.R**

---

(1) AIR 1980 S.C. 559