

PETITIONER:
BHAGIRATH

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 30/10/1996

BENCH:
G.N. RAY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY, J.

This appeal is directed against judgment dated 21.2.1984 passed by the Punjab and Haryana High Court in Criminal Appeal No. 691-DB of 1981. By the impugned judgment, the High Court has set aside the order of acquittal dated 27.05.1981 passed in favour of the appellant by the learned Additional Sessions Judge, Sirsa in Sessions Trial No. 59 of 1980 and has convicted the appellant Bhagirath, accused No. 1 in the Sessions Trial under Section 302 IPC and sentenced him to suffer imprisonment for life and also to pay a fine of Rs. 20,000/- with a direction that if the fine was realised, it would be paid to the next heirs of the deceased as compensation.

The appellant and four other accused were committed to Sessions trial No. 59 of 1980 for offence under Section 302 read with Section 34 IPC and section 120 B IPC. The prosecution case in short was that on 29.05.1980 in Mandi Dabwali. The accused Bhagirath was individually charged for offence under Section 302 IPC for causing the murder of Nihal Singh in the area Mandi Dabwali. According to prosecution case, at about 2.50 P.M. on 29.05.1980 PW 25, Head Constable Dharambir of police station Dabwali received a telephone message for Dr. S. Gulati (PW 17) of Civil Hospital. Dabwali that Nihal Singh was admitted in the said hospital with gunshot injuries. Such message was entered in Daily Diary Roznamacha being Entry No. 19 (Ex. PJJ). Dharam Singh, H.C. of P.S. Dabwali (PW25) with constable Vijay Kumar (PW10) came to the Civil Hospital at 3.10 P.M. and moved an application (Ex.PZ) for obtaining fitness certificate of the said injured and the doctor gave certificate that the injured was in a position to make statement (Ext. PA/1). The said Dharam Singh also requisitioned the service of S.D.J.M. Dabwali and S.D.M. (C) for recording dying declaration of the injured Nihal Singh, Dharam Singh recorded the statement of Nihal Singh (Ex PAA). Nihal Singh in his statement stated that there was enmity between him and Chhotu. Chhotu and the accused Bhagirath were on a look out for Nihal Singh to get him murdered. On the date of incident at about 2 P.M., Nihal Singh was going

to Dabwali Mandi after being free from Court and Sohan Lal (PW19) and Manswarup were ahead of him and PW 20 Kishan Lal was following him. When Nihal Singh reached in front of the shop of Lekh Ram, Tobacco dealer then the accused Bhagirath being accompanied by another person, whose description was given by Nihal Singh in his statement, was standing there. When Nihal Singh crossed Bhagirath, he fired a shot from a country made pistol at his back which hit him and when Nihal Singh turned around and raised a lalkara, Bhagirath and the person accompanying him had run away. Kishan Lal (PW 20) Sohan Lal (PW 19) and Man Swarup came running and Man Swarup and Kishan Lal brought Nihal Singh to the civil hospital. After the statement was recorded by Dharambir, the same was read over to Nihal Singh and having admitted that the Statement was correctly recorded, Nihal Singh signed the said statement in presence of Dr. Gulati (PW 17). The said doctor also attested the said statement. Such statement was sent to the police station with the endorsement of the said Dharmbir and on the basis of such statement, FIR (Ex. PAA/2) was recorded by PW 9 Gulzari Lal, a head constable. Prior to recording of the said statement by Dharam Singh, Dr. Gulati had prepared a ruga (Ex. Py) AT 3.10 P.M. and medico-legal report (Ext. PX) was also prepared at 4.00 P.M. However, the constable Vijay Kumar returned to the hospital at 4.45 P.M. with a report (Ex. PKK/1) that both S.D.J.M. and S.D.M. (C) were away.

The investigating officer took into possession of the shirt Ex. P5, and vest Ext. P-6 of the injured from the said doctor and the sealed parcel of such shirt and vet in Ext. PD. The investigating officer took Man Swarup and Sohan Lal (PW 19) and reached the place of occurrence and recovered one empty cartridge (Ext. P-7) from the said place and such cartridge was sealed and the recovery memo (Ext. PEE) was attested by Sohan Lal and Man Swarup. The statements of Man Swarup and Sohan Lal and Kishan Lal were also recorded by the investigation officer. The investigating officer went to the house of Chhotu on the next day and recorded the statement of Pokkar (PW 22). In view of such statements, offence under Section 120B IPC was added. The accused Bhagirath was arrested from his house.

Further investigation in the case was undertaken by PW 24. SI Ram Singh on 30.5.1980. The accused Om Prakash and Balwant were arrested at Bus Stand in village Goriwala at 1.30 P.M. on 9.6.1980 and on search, a country made pistol of .12 bore was recovered from Om Parkash (Ext. P-8) with a cartridge inside (Ext. P-9). Such pistol and cartridge were sealed after preparing rough sketch map of the pistol. A separate case under Arms Act was initiated against Om Prakash because he had no license for possessing the said pistol. The injured Nihal Singh was taken to Civil Hospital, Sirsa where he was examined in O.P.D. by Dr. Garg and referred to bigger hospital at Rohtak. The injured was admitted and underwent operation by Dr. Verma, Registrar, Surgery (PW 1). The doctor had removed bullets (Ext. P1/1 to 3) from the body of the injured after performing operation. The injured Nihal Singh, however, succumbed to his injuries in the hospital on 30.5.1980 at 3.45 P.M. PW 3, Dr. Bhupinder Singh held post-mortem examination vide report Ext. PC. It was noted by PW 3. Dr. Singh, that there were 10 punctured wounds on the back of right side of abdomen.

It appears that learned Sessions Judge entertained doubt about the correctness of the statements contained in the dying declaration recorded by PW 25 Dharambir, Dharambir has deposed that he had recorded the statement not as dying declaration but for recording the statement for registering

a case and such recording was made in the presence of doctor Gualti (PW 17) and after recording the statement, he had read over the statement twice to Nihal Singh. The learned Sessions Judge was of the view that there was no necessity of reading the said recorded statement twice to Nihal Singh. That apart, Dharambir did not give any endorsement that the statement was read over by him to Nihal Singh. Doctor Gulati only endorsed the recorded statement out he was not asked by Dharambir to write that the statement was read over to the injured Nihal Singh. The learned Sessions Judge has also indicated that although Dharambir has deposed that when the statements made by Nihal Singh were not clear to him, the injured again made statement and he had recorded such statement out he did not remember at the time of giving deposition, on what points, he had asked the injured to again make the statement. The learned Sessions Judge has also indicated that Dr. Gulati has deposed that the statement was not recorded within his hearing as he was not attentive when the statements were recorded by Dharambir because he was busy with preparing Medico legal Report. The learned Sessions Judge has also indicated that after about three months from the date of the incident i.e. on 22.08.1980 on police query, Dr. Gulati stated that he had signed the statement recorded by Dharambir after enquiring from Nihal Singh whether he had given the Statement and the reply of Nihal Singh was in the affirmative. The learned Sessions Judge has observed that such statement of Dr. Gulati only indicates that the statement was not read over to Nihal Singh in his presence otherwise such enquiry by Dr. Gulati was not necessary. In view of the aforesaid facts, the learned Sessions Judge has held that the dying declaration was not a convincing document.

It may be stated that the learned Sessions Judge has also entertained doubt about the genuineness of the said dying declaration because such dying declaration was recorded at 4 P.M. at Dabwali Civil Hospital at 5 P.M. by Dr. Gulati but PW. 4 Dr. Garg, the Medical Officer of Rohtak, Civil Hospital Sirsa has deposed that the said injured came to the hospital at 2.15 P.M. to 3 P.M. which was 35 miles away from Dabwali Civil Hospital, the dying declaration could not have been recorded at 4 P.M. at Dabwali Hospital.

The learned Sessions Judge has also entertained doubt about the MLR Ext. PX of the injured recorded by Dr. Gulati. The learned Sessions Judge has observed that the first part of the report containing the name of the injured was written in thick lead marking but the contents were recorded in thin lead marking out at the bottom of the report the doctor had again signed in thick lead marking. Dr. Gulati has deposed that he first recorded the name position at the top and then sharpened the lead of the pencil and had written the middle portion containing his signature at the bottom. The learned Judge has observed that if the pencil was sharpened, the signature of the doctor should also have been with sharpened lead with thin impression. The learned Sessions Judge has also doubted the genuineness of the MLR because addresses and other particulars of the persons who accompanied the injured Nihal Singh were correctly mentioned out in other MLRs prepared by Dr. Gulati, such particulars of the accompanying persons were not mentioned.

The learned Sessions Judge has also held that the said dying declaration was not admissible because death was not due to injuries sustained by Nihal Singh but on account of toxemia resulting from peritonitis as deposed by PW 3 Dr. Bhupinder Singh of Rohtak Hospital. As the death was not

directly on account of injuries, the statement of the injured was not admissible as dying declaration. The learned Sessions Judge has also held by relying on the observation of this Court at page 852 paragraph 53 in the decision in Chidambaran Singh Vs. State (1974 SCC (CrL.) Page 837 also reported in 1971 Cr. L.J. 14), that the investigating officer is keenly interested in the fruition of his efforts and though this Court did not suggest that any assumption would be made against veracity of investigating officer, it was observed that it was not prudent to base conviction on a dying declaration made to an investigating officer.

The learned Sessions Judge has also not placed reliance on the depositions of eye-witnesses PW 19 Sohan Lal and PW 20 Krishan Lal. It has been pointed out by the learned Sessions Judge that both the said eye-witnesses had deposed that Nihal Singh was on foot when he was shot at but Munshi Ram a panch witness to stated in the hospital that he was sitting on rickshaw when he was fired at the back side. The other witness to the inquest report Sohan Ram has also supported Munshi Ram, who is stated to be brother of the deceased Nihal Singh. The learned Sessions Judge has indicated that although the incident had taken place in the main bazar at 2 P.M. but no shopkeeper or disinterested witness has been examined. Sohan Lal (PW 19) is a relation of the deceased and is inimical to the accused and he is resident of a place which is about 14 miles away from the place of occurrence. The other witness (PW 20) Krishan Lal is also not trustworthy and he hails from a village which is 100 kms. away from the place of occurrence.

The learned Sessions Judge has indicated that PW 22 Pokkar who has deposed about the conspiracy hatched by Chhotu and the accused Bhagirath for murdering Nihal Singh has deposed that in the village there were two groups one led by the deceased Nihal and the other led by Chhotu. PW 22 has also deposed that Rawat Takki and Saheb Ram were relations of Nihal Singh and PW 19 Sohan Lal has admitted that Rawat and others were murdered long back and in that case, Kalu, brother of Chhotu and husband of accused Kalawati was challenged.

The learned Sessions judge has also held that PW 22 Pokkar deposed falsely when he denied that Chhotu was involved in the case for causing gun shot injuries on his brother Ram Rattan. The learned Judge has held that Ext. D5 which is the copy of the judgment dated 22.2.1986 passed by Addl. Sessions judge, Hisar shows that the brother of Pokkar (PW 22) was injured by the firearm at the hands of Chhotu and others.

The learned Sessions Judge has further held that PW 19 Sohan Lal is illiterate and he cannot say what was inscribed on the seal in which the spent up cartridge recovered from the spot in his presence was seized and kept in a sealed packet with inscription 'D' S.R. PW 19 has state that at the time of recovery of cartridge, Krishan Lal was also present but PW 20 Krishan Lal does not state that he was present at the time of recovery of empty cartridge. The learned Sessions Judge has not placed any reliance on the deposition of the eye-witness Sohan Lal because he was a resident of place about 14 miles away from Dabwali. Sohanlal has deposed that he had come to purchase some articles of use in Dabwali but he could not name the shop from where he had purchased such articles. He even could not state what articles and of what quantity were purchased by him. Even to the police, he did not tell that he had gone to Dabwali for some purchase.

According to learned Sessions Judge. PW 20 also does

not inspire confidence. Apart from the discrepancy as the presence of PW 20 at the time of recovery of empty cartridge in the depositions of PW 19 and PW 20, PW 20 stated that after firing a shot on the deceased, accused Bhagirath reloaded that pistol but in his statement to the police, such fact of reloading was not mentioned. Though he deposed that he knew both Bhagirath and Om Prakash and he had stated such fact to police, in his statement to the police, there was no such statement. PW 20 Krishan Lal is a resident of a place 100 km. away from Dabwali but he has deposed that in those days he was living in a rented house at Dabwali and was on a long leave because of his illness. This witness however did not pay any rent to the landlord. He had not chit of any medical practitioner for the medicine which was stated to have been purchased by him on that day Dabwali Bazar. Even he could not give the name of the shop form where such medicine was purchased by him. The learned Sessions Judge has also indicated that PW 20 has deposed that in the hospital on their query the deceased Nohal had stated to him and Man Swarup that accused Bhagirath had fired on the deceased. The learned Judge has expressed doubt about the presence of PW 20 Krishan Lal by indicating that if he was present at the place of occurrence, there was no occasion for such enquiry as to who had fired on the deceased.

As the learned Sessions Judge could not accept the dying declaration as genuine or convincing and as he also could not place any reliance on the eye-witnesses PW 19 and PW 20 for the aforesaid reasons, the learned Sessions Judge acquitted all the accused by giving them benefit of doubt.

The State of Haryana preferred Criminal Appeal No. 691 DB of 1981 in the Punjab and Haryana High Court against the order of acquittal. The High Court by the impugned judgment has upheld the order of acquittal in favour of all the accused excepting the accused Bhagirath by holding that the reasoning given by the learned Sessions Judge in discarding dying declaration and also the depositions of PW 19 and PW 20 were wholly unsound and as such, reappraisal of evidences by the Court of Appeal is warranted. On such reappraisal of evidences, the High Court has held that it has been clearly established that the accused Bhagirath caused fatal injuries on the deceased by firing from a pistol and the deceased despite operation, ultimately succumbed to such injuries caused by Bhagirath. In that view of the matter, the High Court has set aside the order of acquittal in favour of Bhagirath and has convicted him for offence under Section 302 IPC and has sentenced him to imprisonment for life and also a fine of Rs. 20,000/-.

The High Court has accepted the dying declaration as genuine and reliable and has also indicated that if the dying declaration can be safely accepted to be genuine and if the statement in such dying declaration rings truth in it, a conviction can be based on the dying declaration itself without requiring corroboration from other evidences. The High Court has observed that although there was enmity between the deceased and accused, the deceased in his dying declaration did not make any attempt to rope in Chhotu or other accused persons by naming them. On the contrary, he had named only Bhagirath as his assailant being present in the company of an unidentified person. Such statement according to High Court only indicates that the deceased was not tutored to give a false statement nor he was impelled by any motive to make false accusation against his enemies.

The High Court has held that the deceased was

physically fit to make statement to Dharambir. Apart from the deposition of Dharambir to that effect, Dr. Gulati has given a certificate the deceased was fit to make statement. He has the prosecution case supported that the physical condition of the deceased was good enough to enable the deceased to make statement. The High Court has held that although there was no bar for Dharambir to record dying declaration but he has deposed that he requisitioned the service of SDJM and SDM (C) recording dying declaration and he recorded the statement of the injured for the purpose of sending such statement to the police station for drawing a FIR. That Dharambir was not keen in recording dying declaration is evident from the fact that service of SDJM and SDM (C) was requisitioned but unfortunately none of them was available at their respective residence. Such fact has also come out in the evidence of PW 10.

About the time of reporting of the injured Nihal Singh at Sirsa Hospital, the High Court has pointed out that Dr. Garg of Sirsa hospital just superficially examined the injured Nihal Singh at O.P.D without admitting him and referred him to Rohtak Hospital. The time of reporting at Sirsa hospital mentioned by Dr. Garg not with reference to any record but on the basis of his memory when he deposed after a long lapse appears to be wrong. But Dr. Gulati has mentioned the time of referring Nihal Singh to Sirsa Hospital. The distance of Rohtak hospital was about 102 miles from Sirsa, Nihal Singh reached Rohtak Hospital at 11.45 PM. Such timing of reporting at Rohtak Hospital tallies with the timing of reporting at Rohtak Hospital tallies with the time recorded by Dr. Gulati at Dabwali hospital. If the injured had left for Rohtak at about 2.30 P.M. from Sirsa, he would have reached Rohtak Hospital long before 11.45 P.M. The High Court has held that the time of coming at Sirsa Hospital as stated by Dr. Garg is erroneous because of his money failing after lapse of time.

The High Court has also indicated that Dharmbir made requisition for SDJM and SDM(C) at 3.10 P.M. at Dabwali. Such fact also indicates that the injured in the Dabwali Hospital was present at that time. The High Court has also held that it cannot be accepted that Dr. Gulati and the Head Constable Dharambir conspired to fabricate dying declaration by manipulating records. The High Court has also held that no adverse inference against genuineness of Medico-legal Report concerning the injured as prepared Dr. Gulati need be drawn simply because names and particulars of the person bringing the injured to the hospital were recorded. The High Court has observed that there is a special column for recording such particulars and if the requirement has been complied with, no exception should be taken. With regard to non-mention of such particulars in other M.L.Rs the High Court has observed that there is no record to indicate what was nature of injuries were simple the persons might have come on their own accord to the hospital for treatment.

The High Court has also held that the learned Session Judge erred in holding the dying declaration as inadmissible on the finding that as the death was due to toxemia resulting from peritonitis, the death had not happened directly due to injuries suffered by the deceased. The High Court has pointed out that the facts in the said decision in Chidambaran Singh's case (supra) since relied on by the trial court are quite different. In that case, the injured had received two gun shot wounds on the abdomen but he left hospital either because the wounds had healed up that time or was healing up and two weeks thereafter, the injured died in such circumstances, it was held that the proximate cause

of death was not the gun shot injury.

The High Court has also not approved the reasoning of the learned Sessions Judge in discarding the evidence of PW 19 Sohan Lal. The High Court has held that only because this witness who is illiterate had mentioned on one occasion Ram Swarup in place of Man Swarup and could not explain why some english word as D'SR was given in the seal containing empty cartridge recovered from the place of occurrence, his deposition was required to be discarded by doubting his presence. In the Medico-Legal Report of Dr. Gulati the name of Sohan Lal was mentioned as the person bringing the injured Nihal Singh. Such recording suggests that Sohan Lal was likely to be present when Nihal suffered gun shot injuries. The High Court has also disapproved discarding the testimony of PW 20. It has been indicated by the High Court that it was not unusual in not remembering the name of the shop from which some articles were purchased by a person and on such account the testimony should not be disbelieved.

As the High Court was of the view that the dying declaration was recorded by Dharambir for the purpose of recording the statements of the injured so that the case could be registered and as the injured was physically fit to make such statement and as there was no occasion to disbelieve both Dr. Gulati and Dharambir without being influenced or tutored that the injured made the statement to Dharambir and as it appeared that the deceased was not impelled by any motive to falsely implicate his enemies in the dying declaration which was demonstrable from the fact that the name of Chottu or the accused was not mentioned by the injured Nihal in his statement to Dharambir, the dying declaration has been held by the High Court as fully reliable. The High Court has also held that on the basis of such reliable dying declaration alone, the accused Bhagirath can be convicted for the offence of murder without the need of any other evidence. In that view of the matter, the High Court has allowed the State's appeal only in respect of Bhagirath and after setting aside, his order of acquittal passed by the trial court, Bhagirath has been convicting under Section 302 IPC.

Mr. B.S. Malik, learned Senior Counsel appearing for the appellant, has submitted that the trial court has passed an order of acquittal after considering the materials on record and the evidences adduced in the case great detail by giving very cogent reasons for his finding. The law is well settled that if on appreciation of evidence the view taken by the trial court is not a perverse one, but is also a possible view, then no interference by the appeal Court is called for by reappreciating the evidence and taking another view, even if the other view intended to be taken by the appeal court is also a possible view. Mr. Malik has submitted that the view taken by the learned Sessions Judge is not at all perverse but quite consistent with the evidence adduced in the case. Therefore, in any event, there was no occasion for the High Court to interfere with the well-reasoned order of the acquittal passed by the trial court. Mr. Malik has also submitted that on the basis of dying declaration, a conviction can be based provided the Court can come to a clear finding that such dying declaration was made honestly without any motive to falsely implicate any accused and the dying declaration has been correctly recorded. In the instant case, the trial court has given cogent reasons why the dying cannot be accepted to be free from doubt and a genuine one. The dying declaration was recorded by the Head Constable Dharamvir. The said Head Constable deposed that on some occasions the injured was

required to speak again for recording his statement but he did not remember on what points such request for restating was made. P.W.17 Dr. Gulati has also deposed that though dying declaration was recorded by P.W.25 Dharamvir, he had not listened to the statement as he was busy in preparing his medical report. There is also no endorsement on the statement recorded by Dharamvir that such statement was read over to the deponent in the presence of the said Dr. Gulati and the deceased after accepting the statement to be correct, signed it. Mr. Malik has also submitted that even in respect of the timing of the said alleged dying declaration, there is enough scope to doubt as the learned Sessions Judge has indicated that the dying declaration is alleged to have been recorded at 4.00 P.M. at Dabwali Civil Hospital when in fact the injured was not in the said hospital at that time, because Dr. Garg has deposed that by 2.00 to 2.15 P.M. he had occasion to examine the injured at Sirsa Civil Hospital which is about 35 miles away from Dabwali, Mr. Malik has also submitted that both the eye witnesses, namely, Sohanlal P.W.19 and Krishanlal P.W.20, could not be accepted as reliable witnesses for the reason indicated by the learned Sessions Judge. Hence, their depositions cannot be accepted to be reliable. As a result, the statement contained in the dying declaration also does not get corroboration from the depositions of the said witnesses. Mr. Malik has further submitted that though a rule it cannot be held that the dying declaration recorded by an Investigating Officer should be scrapped but rules of prudence dictate that no reliance shall be placed on such dying declaration unless the same is corroborated by other reliable evidences as indicated in the decision of this Court in Dalip Singh Vs. State of Punjab (1979 (4) SCC 332).

Mr. Malik has further contended that both PW 19 and P.W. 20 are partisan witnesses. It has also come out in the evidence that there are two factions in the village one being led by the deceased Nihal Singh and the other being led by the accused Chhotu. PWs. 19 and 20 were admittedly not the residents of Dabwali and normally their presence at the place of occurrence is not excepted. Although PW. 20 Krishanlal tried to explain his presence at Dabwali by stating that he was on long leave and at the relevant time was living in a rented house at Dabwali but the said witness miserably failed to satisfy the Court as to whether he was really a tenant by making payment of rents to the landlord, So far as P.W.19 Sohanlal is concerned, although the said Sohanlal deposed that he came to Dabwali bazaar for making some purchases but the said witness also failed to state what articles were purchased and of what quantity. Considering the fact that the said witnesses were partisan witnesses and they were inimical to the accused party, the learned Sessions Judge has not rightly placed any reliance on the depositions of PWs. 19 and 20.

Mr. Malik has submitted that unfortunately the High Court has not considered the reasoning given by the learned Sessions Judge in discarding the depositions of the said two witnesses and by referring one or two aspects of the finding of the learned Sessions Judge, the High Court has practically glossed over the infirmities in the depositions of the said witnesses which were cogently pointed out by the learned Sessions Judge. Mr. Malik has submitted that the incident had taken place in a broad day light in the bazaar area but no independent witness or any shopkeeper has been examined by the prosecution in support of this case. If on the aforesaid facts the learned Sessions Judge had entertained a reasonable doubt about the complicity of the

appellant in committing the murder, there was no occasion to take any exception to the finding of the learned Sessions Judge. He has, therefore, submitted that the appeal should be allowed by setting aside the conviction passed against the appellant and the order of acquittal should be maintained.

Mr. Rao Ranjit, learned counsel appearing for the respondent, has, however, disputed the submissions made by Mr. Malik. He has contended that the Head Constable Dharamvir recorded the statement not for the purpose of treating it as dying declaration because at that time it was not apprehended that the injured would die shortly. Such statement recorded by the police officer can be treated as dying declaration if such declaration is made by the deceased about the causes for the injuries sustained by him and also about the person causing such injuries on the person of the deceased. In support of this contention the learned counsel has relied on the decision of this Court in Munnu Raja and another vs. State of Madhya Pradesh (1976 (3) SCC 104). Mr. Ranjit has also submitted that the Head Constable Dharamvir made genuine attempts to get the dying declaration recorded by a Magistrate. For the said purpose, he requisitioned the services of both S.D.J.M and S.D.M. (C) but both of them were not available in the respective house. Such attempt getting the statement recorded by Magistrate is amply corroborated by the requisition in writing made by the Head Constable and also by the deposition of the police constable PW.10 who went with such requisition but could not meet the learned Magistrates. Mr. Ranjit has also submitted that even in the decision of Dalip Singh (supra) it has been indicated by this Court that it is better to leave dying declaration recorded by police officer during the course of investigation even though the same is admissible under Section 32 of the Indian Evidence Act until and unless the prosecution satisfies the Court as to why it was not recorded by the Magistrate or by doctor. Mr. Ranjit has submitted that in the instant case, it has been clearly established as to why the dying declaration could not be recorded by a Magistrate despite genuine attempts made for recording by a Magistrate. Mr. Ranjit has also submitted that the injured was in a fit condition to make the dying declaration which is evident from the certificate issued by Dr. Gulati. The contents of the dying declaration were read over to the injured who accepted such recorded statement to be correct. The endorsement to that effect has been attested by Dr. Gulati. It has also come out in the evidence that shortly after the incident when an enquiry was made to Dr. Gulati as to whether he was satisfied that the injured had made statement to the said Head Constable Dharamvir, the doctor gave note to the effect that he had asked the injured by putting question to him and the said injured told that he had made the statement which was recorded by the said Head Constable.

Mr. Ranjit has submitted that there is no evidence to suggest that Dr. Gulati had any reason to depose falsely or to be party to a false dying declaration concocted by PW.25 Dharamvir. Similarly, there is no evidence to indicate that PW 25 was inclined to fabricate a false dying declaration. There was, therefore, no occasion to discard the deposition of PW.17 Dr. Gulati and PW 25 Dharamvir, Mr. Ranjit has submitted that from the records of the Civil Hospital, Dabwali, it has been clearly demonstrated that the injured was in the said Hospital upto 5.00 P.M. After that he was taken to Sirsa Civil Hospital where he was examined in the O.P.D. Department without admitting him and no record has

been maintained in the said hospital at Sirsa. Since he was referred to the Civil Hospital at Rohtak, the injured was immediately rushed to the said hospital where he was admitted at 11.45 P.M. Such timing of admission at Rohtak hospital appears from the records maintained in the civil hospital at Rohtak. The High Court in the aforesaid facts, has very rightly said that as Dr. Garg who had hurriedly examined the injured at Sirsa Hospital without admitting him in the said hospital, must have been confused about the time of depositing after a long lapse of time. On the contrary, the time of admission in the Rohtak Hospital clearly supports the prosecution case that the patient was in the Dabwali Civil Hospital upto 5.00 P.M. and after undertaken journey via Sirsa, the injured was admitted in the Civil Hospital at Rohtak at 11.45 P.M.

Mr. Ranjit has also submitted that the learned Sessions Judge has also erred in holding that the dying declaration was not admissible in evidence because the death was not attributable to the injuries caused on Nihal Singh but he died of toxemia resulting from peritonitis. Mr. Ranjit has submitted that it has come out from the medical evidence and also from the post mortem report that Nihal Singh had suffered 10 punctured wounds for which he was ultimately referred to a bigger hospital at Rohtak where the deceased had undergone an operation but within two days he succumbed to such injuries. It is quite apparent from the post-mortem report and also from the deposition of the doctor that the injuries suffered by the deceased were serious and were likely to cause death in the ordinary course. Simply because attempt to save his life had been taken by performing operation on the injured but such attempt ultimately failed because he developed toxemia resulting from peritonitis on account of the injuries suffered by him, it cannot be held that the death is not due to the injuries sustained by the deceased. The dying declaration is, therefore, admissible in evidence and the rejection of the same on the score of being not admissible is illegal. Mr. Ranjit has also submitted that if the view taken by the trial court in passing the order of acquittal is not in conformity with the evidence adduced in the case and such view does not appear to be reasonable view which can be taken in the facts of the case, interference with the order of acquittal after appreciating evidence on record is fully justified. The High Court has analysed in detail as to how the learned Sessions Judge had gone wrong and has taken the view against the weight of the evidence. Hence, interference by the High Court in exercise of the power of the court of appeal should not be interfered and this appeal should be dismissed.

After giving our careful consideration to the facts and circumstances of the case and the judgments passed by the learned Sessions Judge and also by the High Court and on consideration of the materials on record and evidences through which we have been taken by the learned counsel for the parties, it appears to us that the dying declaration which was recorded by the Head Constable PW 25 Dharamvir is fully convincing and can be safely relied upon. The Head Constable, on getting message from Dr. Gulati that a person with gun shot injuries had been admitted in the Civil Hospital at Dabwali, immediately rushed to the said place and after making entry in the police register and after obtaining certificate from Dr. Gulati about the condition of the injured, took statement from the injured Nihal Singh for the purpose of registering a case. At the time of recording such statement, the said Head Constable had no intention to record the statement as dying declaration. On the contrary,

he genuinely made an attempt to get dying declaration recorded by a Magistrate and for the said purpose he requisitioned the services of both S.D.J.M. and S.D.M. (C). Unfortunately, both the said Magistrates were not available in their respective house. Such facts have been clearly proved with reference to the records and also from the depositions given by PW 10 and P.W.25. Simply because Dr. Gulati did not listen to the statement made by the injured Nihal Singh to Dharamvir, it cannot be held that the statement recorded by Dharamvir was unfounded and no reliance should be placed on the same. Dr. Gulati has attested the statement recorded by Dharamvir wherein it was specifically stated that the statement was read over to the patient who had admitted that same to be correct. It has been rightly indicated by the High Court that even in answer to query made to Dr. Gulati as to whether he was satisfied about the correctness of the statement recorded by the Head Constable Dharamvir, the said Dr. Gulati had recorded that he had satisfied himself about the correctness of the statement recorded by Dharamvir by putting questions to that effect to the injured Nihal Singh. It may also be indicated here that although there was inimical relation between the accused Chhotu and his followers and the deceased Nihal Singh, Nihal Singh did not implicate Chhotu or the other accused Kalawati but he had only implicated the appellant Bhagirath in his dying declaration by indicating that it was Bhagirath who was then accompanied by an unidentified person, had fired a shot on him from a pistol. In our view, the High Court has rightly held that Dr. Garg had no occasion to examine the injured Nihal Singh at 2.00 to 2.15 P.M. on the said date because Nihal Singh was in the Civil Hospital at Dabwali upto 5.00 P.M. The statement as to time of examination of Nihal Singh was made by Dr. Garg from his memory after a long lapse of time because no record had been kept in the Sirsa about the time of examination by Dr. Garg. The prosecution case that Nihal Singh made statement to Dharamvir at Dabwali Civil Hospital and the injured Nihal Singh was in the said hospital upto 5.00 P.M. has been clearly established from the deposition of Dr. Gulati and of the said Dharamvir and also from the records of Dabwali Civil Hospital. In our view, that trial court has also gone wrong in proceeding on an erroneous view that the dying declaration was not admissible in evidence because the death was not due to injuries sustained by the injured in the hands of the accused Bhagirath. Although ultimately toxemia had developed because of peritonitis, all such complications are directly attributable to the injuries suffered by the deceased Nihal Singh by the gun shot in the hands of the accused Bhagirath.

So far as the two eye witnesses PW.19 and PW.20 are concerned, it has however transpired from the evidence that both of them had occasions to be partisan witnesses for being inimical against the accused Chhotu and the other accused person. The learned Sessions Judge has also rightly indicated that there are some contradictions in the depositions of PW19 and PW20 but in our view such contradictions are not very material for which their depositions are to be discarded. Both the said witnesses have clearly stated that the accused Bhagirath had fired a shot from the pistol from a close range. Such deposition gets corroboration from the medical evidence as to the nature of the injuries suffered by the deceased and also from the dying declaration given by the deceased Nihal Singh.

As it appears to us that the view taken by the learned

Sessions Judge in passing the order of acquittal in favour of the accused Bhagirath is not consistent with the evidence adduced in the case, it cannot be held that the trial court has taken a view which is also a reasonable view for basing the order of acquittal in favour of the accused Bhagirath. In our view, the High Court has rightly place reliance on the dying declaration on the basis of which warranted. The statements contained in the said dying declaration also get corroboration form other evidences adduced in the case. Hence, the order of conviction and sentence passed against the accused Bhagirath by the High Court are just and proper and the same need not be interfered with. This appeal, therefore, fails and is dismissed. The appellant has been released on bail. His bail bonds will stand cancelled and he would be taken into custody to serve out the sentence.

JUDIS