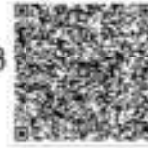


2026:PHHC:005514-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. NO.104

CRA-D-564-DB-2004 (O&M)
RESERVED ON:11.11.2025
DATE OF PRONOUNCEMENT:15.01.2026
UPLOADED ON:21/01/2026

TEJA SINGH & ANOTHER

...APPELLANTS(S)

VERSUS

STATE OF PUNJAB

...RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT
HON'BLE MRS.JUSTICE SUKHVINDER KAUR

Present: Mr.K.S. Kahlon, Advocate with
Ms. Manveen Kahlon, Advocate
for the appellants.

Mr. M.S. Bajwa, DAG, Punjab.

N.S. SHEKHAWAT, J.

1. The appellants have preferred the present appeal against the impugned judgment and order dated 04.05.2004 passed by the Additional Sessions Judge, Mansa, whereby accused-appellant Teja Singh was convicted for the commission of offence under Section 302 IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/-, whereas accused-appellant No.2-Baljit Singh @ Goga was convicted for the commission of offence under Section 302 read with Section 34 and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5,000/- along with stipulated condition.

2. The criminal prosecution in the present case was initiated on the main allegation that Virpal Kaur (since deceased), wife of Teja Singh (accused-appellant No.1), was set on fire by both the brothers, i.e. the appellants. The following statement of Virpal Kaur Ex.PD was recorded by PW-10 ASI Paramjit Singh in the presence of PW1 Dr. Jagtar Singh, Medical Officer, PHC Joga on 11.07.2002:-

"Stated that I am daughter of Teja Singh of village Akli. I was married with Teja Singh son of Dhan Singh about three years back. I do not have any issue. Now for the last six months, I am pregnant. They are having a dispute of wall of the house with elder brother of her husband Goga Singh (Baljit Singh @Goga Singh accused). Today on 11.7.2002 at 9.00 pm, I was sitting on the bed in my house. Then elder brother of my husband, Goga Singh and my husband, Teja Singh dragged me outside the bedroom. I entered my room, then my husband sprinkled kerosene oil on me and my husband's elder brother, Goga Singh, set me ablaze by igniting a matchstick. While I was burning, both of them continued beating me, with intention to kill me. I raised noise 'burnt-burnt'. Then on hearing my noise, my father-in-law's brother Ran Singh and my husband's sister's husband, Ardas Singh son of Banta Singh resident of Malri, who is permanently residing in village Joga, came and saved me from them. Both of them ran away from the house. Thereafter, Ran Singh and my husband's sister's husband, got me admitted in Govt. Hospital, Joga, where Doctor provided me first aid. The motive is that I wanted to raise a wall in my house, but they had been preventing me and for that reason, both brother's set me at ablaze. Strictest action be taken against them and I may be given justice. I am sufferer. I have heard my statement, which is correct. (Thumb impression) RTI Virpal Kaur aforesaid"

3. After recording the statement Ex.PD, an endorsement Ex.PD/1 was signed by PW-1 Dr. Jagtar Singh that Virpal Kaur had made her

statement in his presence and she was fully conscious during the statement. Thereafter, Paramjit Singh, ASI made his endorsement Ex.PD/2 under Ex.PD/1 and on the basis of same, the formal FIR Ex. PD/3 was recorded in the police station.

4. ASI Paramjit Singh also conducted the initial investigation by inspecting the spot and prepared a rough site plan with correct marginal notes. He recovered one empty plastic bucket Ex.P2, one handkerchief Ex. P3, one fancy lady's chappal Ex.P4, one half burnt curtain Ex.P5, one broken matchstick Ex.P6 vide recovery memo Ex.PY. Half-burnt clothes of Virpal Kaur were also converted into a sealed parcel and were taken into possession vide memo Ex.PZ. A cane plastic Ex.P8 containing about one nip kerosene oil was also taken into possession vide memo Ex. PAA. During treatment, Virpal Kaur expired at Christian Medical College (CMC), Ludhiana on 12.07.2002 and the offence under Section 302 IPC was added in the present case. Thereafter, the post-mortem examination on the dead body of Virpal Kaur was conducted and both the accused were arrested by SI Bhupinder Singh, SHO on 17.07.2002. After necessary investigation, a challan under Section 302/34 IPC was presented against both the appellants before the Court of Area Magistrate. Since the offence was triable by the Court of Sessions, the case was committed to the Court of Sessions Judge, Mansa.

5. After committal, the challan and accompanying documents were considered by the trial court and the trial Court found that the appellants had committed the offence. The trial Court was of the *prima facie* opinion that appellant No.2 had committed the offence punishable under Section 302 IPC, whereas appellant No.1 had committed the offence

punishable under Section 302/34 of IPC. The charge was read over and explained to both the appellants, however, both the appellants abjured their guilt and claimed to be tried by the trial Court.

6. In order to prove the charge against both the appellants. the prosecution had relied upon and examined 11 witnesses before the trial Court.

7. The prosecution examined PW-1 Dr. Jagtar Singh, Medical Officer, who had medico legally examined Virpal Kaur at 9.55 PM on 11.07.2002. She was brought by Ran Singh son of Puran Singh and Ardas Singh son of Banta. The injured was conscious, BP was 70/mm hg, pulse 50 p.m. and feeble and found the following injuries on her person:-

1. Flames superficial to deep burns upto 99% (present) involving face neck, chest, back, abdomen and back (right and left upper and lower limbs with severe respiratory burns. The skin was blackened and the hair were singed at the scalp and pubic area;
2. The height of uterus 12 inches (6-7 month old) present; and
3. Smell of kerosene oil from the clothes was present and clothes were sealed and handed over to Paramjit singh ASI, P.S. Joga.

8. PW-1 observed nature of the injuries were dangerous to life and the probable duration of injuries was within 6 hours and the kind of weapon was flames/burns. He exhibited the MLR Ex.PA and pictorial diagram as Ex.PA/1, showing the seats of the injuries. He sent ruqa Ex.PB at 10 p.m. on 11.07.2002 to SHO Police Station Joga. On police application Ex. PC, he declared Virpal Kaur fit to make statement on the same day at 10.36 p.m. vide his endorsement Ex.PC/1. Thereafter, ASI Paramjit Singh

recorded statement (Ex.PD) of Virpal Kaur in his presence and whatever was stated by her, was correctly recorded by said ASI. It was read over to her by ASI, who after admitting the same to be correct affixed her RTI (Right Thumb Impressions) on it. Thereafter, he appended his certificate to the effect that Virpal Kaur had made her statement in his presence in the state of sound mind vide certificate Ex.PD/1. The patient was immediately referred to CMC Ludhiana as she was in very serious condition. As the patient was being referred to higher institution, so her bed-head ticket was not prepared. In his cross examination, he admitted that he did not observe marks of beating on the person of the injured. There could be distance of about 2/3 kilometers between PHC Joga and Aklia. He did not know the parents of Virpal Kaur. He could not say if other residents of village Aklia had also reached PHC Joga by that time. He did not state in his statement under section 161 Cr.P.C. that ASI Paramjit Singh had recorded dying declaration of Virpal Kaur without any addition or omission. He did not state in his statement that the contents of dying declaration were read over to Virpal Kaur and she had affixed RTI after admitting the same to be correct in his presence. The certificate Ex.PD/1 under the statement of Virpal Kaur (Ex.PD) was not in his hand and the same was written by ASI Paramjit Singh. The distance between PHC Joga and PS Joga was about 150 yards. It is correct that at point 'A' on the back of Ex. PD the time 12.25 p.m. was mentioned but there was no signature or initial thereunder. He did not record any certificate under Ex.PD that Virpal Kaur remained conscious and fit throughout when her statement Ex.PD was recorded. He also admitted that an application was moved against him for giving beating to Kala Singh son of Jagdev Singh resident of village Joga for plucking Jamun fruit from

Jamun tree and the inquiry was held, but he could not say if Baljit Singh accused had appeared against him as a witness in that inquiry.

9. The prosecution further examined PW-2 Dr. Sandeep Singh from Department of Surgery, CMC Ludhiana, who had examined Virpal Kaur on 12.07.2002. She was admitted in CMC Ludhiana with diagnosis of 99% flame burns with respiratory burns and she was having deep burns involving face, neck, chest, back, abdomen and back, right and left upper and lower limbs with severe respiratory burns at the time of admission. The nature of injuries were declared dangerous to life. She expired at 9.15 p.m. on 12.07.2002. PW-2 Dr. Sandeep Singh admitted that Gurjit Singh, Kartar Singh, Jarnail Singh, Baljit Singh (appellant No.2) and Chatin Kaur (mother of both the appellants) had signed the agreement at the time of admission of Virpal Kaur in CMC Ludhiana.

10. The prosecution further examined Surjit Kaur (mother of Virpal Kaur) as PW-3. She stated that Virpal Kaur wanted separate residence after getting the house partitioned and both the accused had common joint house and were residing jointly in it. Virpal Kaur was having a dispute with Baljit Singh (appellant No.2) and his wife. Teja Singh (appellant No.1) did not want to live separately from his brother. At about 11 p.m. on 11.07.2002, they came to know that Virpal Kaur was lying in a burnt condition in Civil Hospital, Joga and thereafter, she along with her husband Sahaba Singh and others went to Civil Hospital, Joga and found her daughter in a serious condition. They inquired from Virpal Kaur and she stated that she was sitting in her room at 9 p.m. and her husband and appellant No.2 dragged her from the bedroom and brought her outside. She wanted to get rid of the appellants and came back to her room. However, appellant No.1 sprinkled kerosene oil

on her body and appellant No.2 had set her ablaze with the help of a matchstick with an intention to kill her. Ran Singh, brother of her father-in-law and Hardas Singh, son-in-law of Ran Singh, got her admitted in Civil Hospital, Joga. As per him, her daughter had also disclosed that after setting her on fire, the accused continued beating her. Kartar Singh, mediator in the marriage of her daughter, was also present at that time, when her daughter disclosed this incident to her. In her cross-examination, she stated that Ran Singh and Hardas Singh were present in Civil Hospital, Joga. She did not know if Gurjant Singh was also present there. She spent all the expenses on treatment of her daughter in the hospitals. Baljit Singh was not present in the hospital at Joga, but he was at some other place. Even Chatin Kaur, mother of the accused, was not present in CMC, Ludhiana.

11. The prosecution further examined Kartar Singh, mediator as PW4, who supported the testimony of PW-3 Surjit Kaur. He stated that on 11.07.2002, Virpal Kaur in a burnt condition was lying admitted in a hospital at Joga. Gurjit Singh and others were present in the hospital, when he went there. Surjit Kaur, Sahaba Singh, and Teja Singh, father of the deceased, also came there. In his cross examination, he admitted that both the accused, being brothers, had already partitioned their property and land and they were separate. But the dispute was only for providing separate residence to Virpal Kaur. Both the accused were having cordial relations and were living jointly and wanted to stay together. He did not ask the police of Ludhiana for getting the statement of the deceased recorded from a magistrate. He admitted that the deceased was his maternal grand daughter.

12. The prosecution further examined PW-5, Dr. S.K. Sharma, who

had conducted the post-mortem examination on the dead body of Virpal Kaur at 3:15 p.m. on 14.07.2002 and found the following:

“The length of body was 5'5". It was a naked dead body of a female about 22 years old with burns. Rigor mortis was present in all the limbs. Post mortem staining was present on the back. There were superficial to deep burns all over body, except pubic region.

The brain, pleurae, larynx tracheae, both lungs. were congested. Stomach was congested & empty. Liver, spleen, kidneys were also congested. There was a male fetus of 12" length in the uterus (6-7 months old). The cause of death in this case in our opinion, was due to shock as a result of extensive burns, which were ante mortem & sufficient to cause death.”

13. He admitted that he exhibited the copy of post-mortem report as Ex.PH and pictorial diagram as Ex.PH/1. Inquest report Ex. PK was also received along with the request Ex.PJ in police papers.

14. The prosecution further examined PW-6, HC Gurtej Singh and PW-7 HC Kesar Singh and their testimonies were formal in nature.

15. The prosecution further examined PW-8 Ardas Singh (mentioned as Hardas Singh by some witnesses), who stated that house of Dhan Singh adjoins with the house of Ran Singh. Baljit Singh @ Goga and Teja Singh, both appellants are sons of Dhan Singh. Teja Singh was married to Virpal Kaur at village Akliya about 4 years ago. No child was born from this wedlock. At the time of incident, Virpal Kaur was having pregnancy of about 6 months. There was no dispute between Teja Singh and Goga Singh. About 1 year and 2 months ago, at about 9:30 p.m. he was present in his house and heard a noise from the house of Teja Singh. He rushed to their house and saw that Teja Singh, Goga Singh and Ran Singh were pushing the flank of the door. He also helped them in breaking the door of the room and

saw that Virpal Kaur was burning. They extinguished the fire and took Virpal Kaur to Civil hospital, Joga and she was referred to Ludhiana. He did not know as to what happened with Virpal Kaur. In his cross examination, he admitted that when they took out Virpal Kaur after extinguishing fire, Virpal Kaur was unable to speak. She was unconscious at that time. Virpal Kaur was a literate lady and was teaching in a private school.

16. The prosecution further examined PW-9 SI/SHO Bhupinder Singh, who had been part of initial investigation and arrested the accused in the present case. After completion of investigation, challan was prepared by him. In his cross examination, he admitted that no external injuries of burning on the person of accused were found. The prosecution further examined PW-10 ASI Paramjit Singh, who on receipt of ruqa, Ex.PB went to PHC Joga and moved request Ex. PC seeking opinion of the doctor regarding fitness of Virpal Kaur, who was declared fit to make statement by the doctor vide endorsement, Ex.PC/1. He obtained MLR of injured Ex.PA and recorded the statement of Virpal Kaur Ex.PD correctly. The same was read over and explained to her and she affixed her thumb impression on it, as a token of its correctness. He verified thumb impression of Virpal Kaur. After making his endorsement, he sent the same to police station for the registration of formal FIR Ex. PD/3. He conducted the initial investigation and also took into possession various articles from the spot. After death of Virpal Kaur, he enhanced the offence under section 302 IPC on 13.07.2002. He also prepared inquest report Ex. PK on 14.07.2002 and sent the dead body of Virpal Kaur for post-mortem examination. In his cross examination, he admitted that at the time of recording of statement of Virpal Kaur, she was crying with pain. He admitted that Hardas Singh and Ran Singh were

the witnesses of occurrence. He admitted that the photograph Ex.DA was taken according to the spot. This photo is about the gate of that room, in which Virpal Kaur was burnt. The bolt (aarl) of the gate shown in the photograph Ex.DA was not straight and it was having a bend.

17. The prosecution further examined PW-11 Billu Singh, who produced the death certificate Ex. PF to the police.

18. After the closure of the prosecution evidence, the entire incriminating evidence was put to both the appellants in the shape of their statements under Section 313 Cr.P.C.

19. Teja Singh (appellant No.1) got his statement recorded under Section 313 Cr.P.C. and ending part of the said statement is reproduced below:

“I am innocent. Myself and my brother Baliit Singh living separately. I used to drink liquor and my wife prevents me and I promised her that I will not drink in future. On the day of occurrence, I took little liquor. Due to my consuming of liquor, my wife Birpal Kaur became annoyed with me and went inside the room of my house and bolted the door of room and set ablaze herself. I raised hue and cry. On hearing my cries, my elder brother Baljit Singh, my uncle Ran Singh and Ardas Singh came there and we all pushed the door as a result of which inner bolt(Aral) was twisted and door was opened and we all tried to save Birpal Kaur and she was immediately taken to hospital at Joga and she was not in a position to narrate anything and doctor advised us to take her to Ludhiana, we took her to CMC, Ludhiana where she succumbed to her injuries in spite of our best efforts. My brother Baljit Singh alias Goga and my mother Chatin Kaur were also there and also signed the papers in the CMC, Ludhiana.

20. Similarly, Baljit Singh (appellant No.2) got his statement recorded under Section 313 Cr.P.C. and ending part of the said statement is reproduced below:

“I am innocent. I was living in my separate house, when I heard the cries of my brother Teja Singh I reached to his house. My uncle Ran Singh and Ardas Singh were there and we all pushed the door as a result of which inner bolt (aral) was twisted and door was opened and we all tried to save Birpal Kaur and she was immediately taken to Hospital at Joga and she was not in a position to narrate anything and doctor advised us to take her to Ludhiana. We took her to CMC Ludhiana when she succumbed to her injuries in spite of our best efforts. I and my brother Teja Singh, my mother Chatin Kaur were also there and signed the papers in the CMC, Ludhiana.”

21. After recording the statement under section 313 Cr.P.C., the accused produced Hakam Singh, DSP (H), Mansa, as DW-1. He produced the inquiry file in respect of Dr. Jagtar Singh of PHC, Joga. During inquiry, he recorded the statement of Baljit Singh son of Dhan Singh resident of Joga as Ex. DB. Baljit Singh had given a statement on 05.07.2002 against Dr. Jagtar Singh of PHC Joga. The defence further examined Rajinder Singh son of Baldev Singh resident of Village Joga as DW-2. He stated that his house was in front of house of appellant No.1 in village Joga. At 9:30 p.m. on 11.07.2002, he along with his family was taking rest on the first floor of their house after taking dinner. They saw that 3-4 persons including the appellants were pushing the door of bedroom of their house. He also helped Teja Singh etc. in pushing the door and due to pressure, the door of bedroom of accused was opened by the twisting of bolt (aarl). They found Virpal Kaur in a burnt condition. Baljit Singh put a cloth on the body of Virpal Kaur and she was shifted to a hospital at Joga. Jagtar Singh was the Medical Officer

present at PHC Joga. The doctor referred Virpal Kaur to CMC Ludhiana as most of the body of Virpal Kaur was burnt. Due to burn injuries, Virpal Kaur was not in a position to speak. The police had already arrived at PHC Joga and police obtained thumb impressions on 4/5 papers at the spot. The appellants and DW-2 shifted Virpal Kaur to CMC Ludhiana and they reached CMC Ludhiana at 1:00 a.m. in the night. Next day, she died. The expenses of the treatment in CMC, Ludhiana were incurred by Baljit Singh (appellant No.2). In his cross-examination, he admitted that the accused were his neighbours. They were mehand and accused were Jat by caste.

22. Learned counsel for the appellants vehemently argued that in the present case, Virpal Kaur had never made the dying declaration as alleged and was manipulated by the police in collusion with PW-1 Dr. Jagtar Singh. Admittedly, Virpal Kaur was having 99% burns on her body and was having severe respiratory burns. This clearly shows that even in breathing, she might be having difficulty and was having severe pain. Consequently, there is no question of her making this statement in sound state of mind and she might have been incapacitated to make a dying declaration. Learned counsel further argued that it is also not understandable as to why the statement was not made either before a judicial magistrate or an executive magistrate. Even there is no explanation as to why the dying declaration was not recorded in a question answer form. Apart from that, even the endorsement Ex.PD/1 was written by PW-10 ASI Paramjit Singh himself and the doctor had just appended his signatures under it. Still further, ASI Paramjitt had manipulated the dying declaration in collusion with PW-1, Dr. Jagtar Singh, who was already inimical towards the family of the appellants. It is apparent from the testimonies of DW-1 Hakam Singh, DSP(H), Mansa

that just a week prior to the occurrence, appellant No.2 had made a statement against Dr. Jagtar Singh, PW-1 in enquiry which was being conducted by DSP(H), Mansa. Even PW-1 Dr. Jagtar Singh had admitted that an enquiry was conducted against him by the police for plucking jamun fruit from jamun tree and witnesses were recorded against him.

23. Learned counsel further argued that even from the admitted case of the prosecution, PW-8 Ardas Singh was an eyewitness of the occurrence. He clearly admitted that Virpal Kaur had closed her room and set herself on fire. He saw the appellants and Ran Singh pushing the flank of the door and he also helped them in breaking the door of the room. Virpal Kaur was found burning and they had extinguished the fire and she was taken to the Civil hospital, Joga and thereafter to CMC, Ludhiana. In his cross examination, he admitted that, when they took her out of the room after extinguishing the fire, Virpal Kaur was unconscious and was unable to speak. The testimony of PW-8 Ardas Singh is duly corroborated by statement of DW-2, Rajinder Singh (neighbour), who made a similar statement

24. Learned counsel further admitted that even there was no motive on the part of the present appellants and to commit such a heinous offence. In fact, PW-4 Kartar Singh, who was the mediator of the marriage and maternal grandfather of the deceased, himself admitted that both the appellants, being brothers, had already partitioned their property and land and they were separate. Still further, it is also an admitted fact that Virpal Kaur, deceased was having dispute only with Baljit Singh @ Goga, appellant No. 2, and Teja Singh had no reason to join hands with his brother, in killing his own wife. Thus, there was no motive on the part of the appellants to commit the crime.

25. Learned counsel for the appellants further argued that apart from the above, the version of the defence seems to be more probable and the appellants were liable to be acquitted by this court. Even PW-10 Paramjit Singh admitted in his cross-examination that the photograph Ex.DA was taken according to the spot and this photo was about the gate of that room in which Virpal Kaur was burnt. The bolt of the door shown in the photograph Ex.DA was not straight and it was having a bend. The said statement is clearly corroborated by the testimony of PW-8 Ardas Singh, an eyewitness and DW-2 Rajender Singh, a labour of both the appellants, who had also rushed to the spot and had rescued Virpal Kaur (since deceased). Thus, the present appeal deserves to be accepted.

26. On the other hand, learned State counsel has vehemently opposed to the submissions made by learned counsel for the appellants and contended that the dying declaration Ex.PD was made by Virpal Kaur (since deceased) in the presence of a doctor and it was duly certified by PW-1 Dr. Jagtar Singh that she remained conscious in making of her statement to PW-10 ASI Paramjit Singh. Even otherwise, the accused could not allege anything against ASI Paramjit Singh, who had reached to the hospital, immediately after the occurrence and had no reasons to join hands with Dr. Jagtar Singh. Still further, both the brothers had even though partitioned their land and property, still the dispute was related to grant of separate residence to Virpal Kaur and due to the said reason they had committed her murder by setting her ablaze. Still further, the trial court had recorded detailed reasons while convicting the appellants and the impugned judgment and order are liable to be upheld by this court.

27. We have heard the learned counsel for the parties and perused the record carefully.

28. ***“Nemo moriturus praesumitur mentire”***, which means “no one at the point of death is presumed to lie” is the philosophy of law, which admits in evidence a dying declaration. In Indian Judicial system, a dying declaration made by a person who is on the verge of his death has a special sanctity as in that solemn moment, a person is not likely to make any false statement. In fact, a dying declaration enjoys almost a sacrosanct status as a piece of evidence, as it comes out from the mouth of a deceased victim. Once a dying declaration passes the test of careful scrutiny of the court, it becomes a reliable piece of evidence and a judgment of conviction can be safely based on the same. However, such dying declaration is relevant and admissible in evidence provided it has been made by the deceased, while in a fit and sound mental condition and is free from any embellishments, tutoring or external influence. It is equally settled that a dying declaration as a piece of evidence, stands on the same footing as any other evidence and it has to be judged and appreciated in the light of surrounding circumstances. Still further, a dying declaration made to a police officer is also admissible in evidence, however the practice of dying declarations being recorded by investigating officers has been discouraged and courts have urged the IOs to avail the services of a Magistrate for recording the dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious condition that there was no other alternative left except the statement being recorded by the investigating officer or police officer, later on relied on as a dying declaration.

29. While discussing the relevance of a dying declaration, the Hon'ble Supreme Court in the matter of *Smt. Laxmi v. Om Parkash and others, 2001(3) RCE (Criminal) 358: 2001 AIR (Supreme Court) 2383* has held as follows:-

"30. A dying declaration made to a police officer is admissible in evidence, however, the practice of dying declaration being recorded by investigating officer has been discouraged and this Court has urged the investigating officers availing the services of Magistrate for recording dying declaration if it was possible to do so and the only exception is when the deceased was in such a precarious being recorded by the investigating officer or the police officer later on relied on as dying declarations. In *Munnu Raja and another v. The State of Madhya Pradesh, AIR 1976 SC 2199*, this Court observed. "Investigating officers are naturally interested in the success of the investigation and the practice of the investigating officer himself recording a dying declaration during the course of an investigation ought not to be encouraged". The dying declaration recorded by the investigating officer in the presence of the doctor and some of the friends and relations of the deceased was excluded from consideration as failure to requisition the services of a Magistrate for recording the dying declaration was not explained. In *Dalip Singh v. State of Punjab, AIR 1979 SC 1173* this Court has permitted dying declaration recorded by investigating officer being admitted in evidence and considered on proof that better and more reliable methods of recording dying declaration of injured person' were not feasible for want of time or facility available. It was held that a dying declaration in a murder case, though could not be rejected on the ground that it was recorded by a police officer as the deceased was in a critical condition and no other person could be available in the village to record the dying declaration yet the dying declaration

was left out of consideration as it contained a statement which was a bit doubtful".

30. Still further, the Hon'ble Supreme Court in the matter of *Jayamma and another v. State of Karnataka 2021(3) RCR (Criminal) 50: 2021 AIR (Supreme Court) 2399* and its connected case titled as *Lachma s/o Chandyanaiika and another v. State of Karnataka* has summed up the law relating to the admissibility and credibility of a dying declaration in a criminal case and held as follows:-

"14. Before we advert to the actual admissibility and credibility of the dying declaration (Ex.P5), it will be beneficial to brace ourselves of the case law on the evidentiary value of a dying declaration and the sustenance of conviction solely based thereupon. We may hasten to add that while there is huge wealth of case law, and incredible jurisprudential contribution by this Court on this subject, we are consciously referring to only a few decisions which are closer to the facts of the case in hand. We may briefly notice these judgments.

A. In P.V. Radhakrishna. v. State of Karnataka, (2003) 6 SCC 443, this Court considered the residuary question whether the percentage of burns suffered is a determinative factor to affect the credibility of a dying declaration and the probability of its recording. It was held that there is no hard and fast rule of universal application in this regard and much would depend upon the nature of the burn, part of the body affected, impact of burn on the faculties to think and other relevant factor.

B. In Chacko v. State of Kerala, (2003) 1 SCC 112, this Court declined to accept the prosecution case based on the dying declaration where the deceased was about 70 years old and had suffered 80 per cent burns. It was held that it would be difficult to accept that the injured could make a detailed dying declaration after a lapse of about 8 to 9 hours of the burning, giving minute details as to the motive and the manner in which

he had suffered the injuries. That was of course a case where there was no certification by the doctor regarding the mental and physical condition of the deceased to make dying declaration. Nevertheless, this Court opined that the manner in which the incident was recorded in the dying declaration created grave doubts to the genuineness of the document. The Court went on to opine that even though the doctor therein had recorded "patient conscious, talking" in the wound certificate, that fact by itself would not further the case of the prosecution as to the condition of the patient making the dying declaration, nor would the oral evidence of the doctor or the investigating officer made before the court for the first time, in any manner improve the prosecution case.

*C. In **Sham Shankar Kankaria v. State of Maharashtra. (2006) 13 SCC 165** it was restated that the dying declaration is only a piece of untested evidence and must like any other evidence satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Further, relying upon the decision in **Paniben v. Gujarat, (1992) 2 SCC 474** wherein this Court summed up several previous judgments governing dying declaration, the Court in **Sham Shankar Kankaria (Supra)** reiterated.:*

*(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (See **Munnu Raja v. State of M.P. ((1976) 3 SCC 104)***

*(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (See **State of UP. v. Ram Sagar Yadav (1985) 1 SCC 552 and Ramawati Devi v. State of Bihar [(1983)1 SCC 211]**).*

(iii) The Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination the deceased had an opportunity to observe and identify the assailants and was in a

*fit state to make the declaration. (See **K. Ramachandra Reddy v. Public Prosecutor [(1976) 3 SCC 618]**):*

*(iv) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence. (See **Rasheed Beg v. State of M.P. ((1974) 4 SCC 264]**):*

*(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (See **Kake Singh v. State of M.P. [1981 Supp SCC 25]**).*

*(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (See **Ram Manorath v. State of U.P. [(1981) 2 SCC 654]**):*

*(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (See **State of Maharashtra v. Krishnamurti Laxmipati Naidu [1980 Supp SCC 455]**).*

*(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (See **Surajdeo Ojha v. State of Bihar (1980 Supp SCC 769]**):*

*(ix) Normally the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make the dying declaration, the medical opinion cannot prevail. (See **Nanhau Ram v. State of M.P. [1988 Supp SCC 152]**):*

*(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (See **State of UP. v. Madan Mohan ((1989) 3 SCC 390))**):*

(xi) Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. (See

Mohanlal Gangaram Gehani v. State of Maharashtra ((1982) 1 SCC 700J)".

31. In the present case, the trial Court found the dying declaration Ex.PD made by Virpal Kaur (since deceased) to be trustworthy and reliable and the judgement of conviction was primarily based on the said dying declaration itself. However, after carefully considering the submissions raised by learned counsel for the parties and perusing the record, we are not in agreement with the findings recorded by the trial Court.

32. Before proceeding any further, we would highlight certain facts, culled out from the evidence led by the prosecution, which raised serious questions about veracity, admissibility and reliability of the dying declaration made by Virpal Kaur (since deceased).

33. The dying declaration Ex.PD was recorded by PW-10 ASI Paramjit Singh in the presence of Dr. Jagtar Singh, PW-1. We would express our anguish at the manner in which the doctors in government hospitals have been systematically and contemptuously disregarded the directions passed by the Hon'ble Apex Court and this Court in relation to recording of dying declarations. Where the victim is in a position to make a statement narrating the facts as to who caused injuries and how the occurrence took place, the doctor before whom it is being recorded has to therefore realize how extremely strategic his/her role is in reassuring the court about the condition of the patient at that very moment of time, when the dying declaration was being recorded. The doctors have been repeatedly directed to ensure that there is a contemporary endorsement on the dying declaration itself, first of all completely certifying the physical and mental condition of a victim. It is equally essential that a doctor certifies that the victim was fully conscious,

the victim was able to fully hear, understand and comprehend the questions put and that the victim was in a sound mental condition to give cogent answers to the questions put. Secondly, the doctor is also under a legal duty to record the date and time of starting and finishing the recording of the statement and above all, the persons, who were present during the recording of the statement.

34. Since in the present case, the dying declaration was being recorded by a police officer, it was incumbent upon the doctor to ensure that the dying declaration was recorded by him, in absence of any other person and he was under a duty to further ensure that the statement was free from any external influence/embellishments/alterations/additions. Apart from that, when the victims are in a serious condition, the doctor has to personally satisfy himself that victim was not only conscious, but was in a fit physical and mental condition to understand and comprehend the questions being put to him and is able to give the cogent answers to him. Apart from that, as far as possible, the dying declaration may be recorded in question and answer form and it must be recorded in the exact words and the language of the victim. The certifying doctor should remain present and should countersign the dying declaration and must specify that the statement was recorded in his presence. However, it appears that while recording the statement, the doctor could not perform his duty, as prescribed by the law. The dying declaration of Virpal Kaur, Ex.PD was recorded by ASI Paramjit Singh and it is apparent from the statement that no such certification, as indicated above was made by PW-1 Dr. Jagtar Singh. Rather, he admitted in his cross-examination that the endorsement Ex.PD/1 under the dying declaration regarding the fitness certificate of Virpal Kaur was written by ASI Paramjit Singh and he

appended his signatures under it. It is shocking to note that PW-1 Dr. Jagtar Singh casually performed his duties and there was no certificate in his handwriting to show that the maker of the dying declaration was in a fit mental and physical condition at the time of making statement and remained so throughout, while making her statement. Rather, it is apparent from Ex. PD/1 that no such endorsement was made by the doctor himself and he simply appended his signatures on the endorsement, which was written on his behalf by PW-10 ASI Paramjit Singh.

35. We also find substance in the argument raised by learned counsel for the appellants that the dying declaration Ex.PD of Virpal Kaur (since deceased) was manipulated by PW-1 Dr. Jagtar Singh and PW-10 ASI Paramjit Singh. PW-1 Dr. Jagtar Singh himself admitted that an application was moved against him for beating up Kala son of Jagdev Singh, resident of Joga, for plucking Jamun fruits from Jamun tree and an inquiry was held by the police. However, he feigned his ignorance as to whether Baljit Singh, appellant no. 2 had appeared as a witness against him during the said inquiry. However, in defence, the appellants examined DW-1 Hakam Singh, DSP (H) Mansa, who brought the inquiry file in respect of Dr. Jagtar Singh of PHC Joga. He stated that during the inquiry, he recorded the statement of Baljit Singh son of Dhan Singh resident of Joga (appellant No.2). He further admitted that Baljit Singh had given statement against Dr. Jagtar Singh, PW-1 on 5.07.2002 i.e. just 6 days prior to the occurrence and it is quite possible that PW-1 Dr. Jagtar Singh might have joined hands with PW-10 ASI Paramjit Singh to ensure the false implication of the appellants in the present case.

36. Apart from that, it is also apparent from the dying declaration Ex.PD of Virpal Kaur that she herself alleged that both the appellants had set her ablaze by sprinkling kerosene oil on her, with an intention to kill her. Once both the appellants had poured kerosene oil on her, there was no need to further beat her up. It has been stated in the dying declaration by Virpal Kaur that after setting her on fire, she was beaten up by both the appellants. However, from the testimony of PW-1 Dr. Jagtar Singh, it is apparent that he did not observe the marks of beating on the person of the injured. The prosecution further examined PW-2 Dr. Sandeep Singh from Department of Surgery, CMC Ludhiana, who had further examined Virpal Kaur in the hospital as well as PW-5 Dr. SK Sharma, who had conducted the post-mortem examination on 14.07.2002 that no such injuries were noticed by both the doctors also on the person of Virpal Kaur. This fact alone raises serious question mark with regard to the genuineness of the dying declaration made by Virpal Kaur.

37. We also agree with learned defence counsel that the alleged dying declaration of Virpal Kaur was manipulated by the police in collusion with the family members of the deceased herself. It is an admitted fact that the parents of Virpal Kaur (since deceased) were residents of village Aklia, which was at a distance of about 2/3 kms from PHC Joga, where Virpal Kaur was first admitted by the accused. It is also admitted by PW-3 Surjit Kaur, mother of the deceased, that at about 11 p.m., they had come to know that Virpal Kaur was lying in a burnt condition in Civil Hospital, Joga and they had immediately rushed to the hospital. She further admitted that her husband Teja Singh and Sahaba Singh had accompanied her to the hospital. Apart from that, it is also admitted case of the prosecution that the dying

declaration of Virpal Kaur was recorded after that only. Consequently, it is equally possible that the family members of Virpal Kaur might have influenced her and may have tutored her, before making the alleged dying declaration. Still further, it is also apparent from the testimony of PW-1 Dr. Jagtar Singh that at the time of her examination on at 9:55 p.m. on 11.07.2002, Virpal Kaur was having BP 70/mmHg, pulse 50 p.m. and feeble and she had suffered superficial to deep burns up to 99% involving face, neck, chest, back, abdomen, back (right and left upper and lower limbs) with severe respiratory burns. Even Dr. Sandeep Singh PW-2, who had attended Virpal Kaur at CMC Ludhiana had also specifically stated that Virpal Kaur had suffered deep burns involving the same limbs and severe respiratory burns were present on her person. Consequently, it is highly unbelievable that with this kind of burn injuries, Virpal Kaur was able to make a detailed dying declaration before the police. Apart from that, in case Virpal Kaur was in a position to make a statement before the police, nothing prevented the police from calling a judicial magistrate to get her statement recorded from him, so that some authenticity may be attached to her dying declaration. However, admittedly no such efforts were made by ASI Paramjit Singh, which again makes the prosecution case to be doubtful.

38. Apart from that, in the considered opinion of this court, the defense version appears to be more probable. All the prosecution witnesses have admitted the presence of PW-8 Ardas Singh son of Banta Singh and Ran Singh at the place of occurrence. Ardas Singh was examined as PW-8, whereas Ran Singh was given up by the prosecution. As per statement of PW-8 Ardas Singh, he was present in his house and he heard noise from the house of appellant No.1. He immediately rushed to the spot and witnessed

that Teja Singh (appellant No. 1), Goga Singh, (appellant No. 2) and Ran Singh were pushing the flank of the door and he also helped them in breaking the door of the room and found that Virpal Kaur was burning. They all extinguished the fire and shifted Virpal Kaur to Civil Hospital at Joga from where she referred to CMC, Ludhiana. In his cross-examination, he admitted that when they took out Virpal Kaur after extinguishing the fire, Virpal Kaur was unable to speak. She was unconscious at that time. At the same time, the appellants also examined DW-2 Rajinder Singh, who also made similar statement. He also had reached the place of occurrence and found that Virpal Kaur had committed suicide by bolting the room from inside. They had broken the door of the house and brought her out and shifted her to a hospital at Joga. Still further, even PW-10 ASI Paramjit Singh, the star witness of the prosecution, also admitted in his cross examination that the photograph Ex.DA was taken according to the spot. He further admitted that this photo was of the gate of the room, in which Virpal Kaur was burnt. The bolt of the gate shown in the photograph Ex.DA was not straight and it was having a bend. The above referred pieces of evidence clearly indicate and establish that Virpal Kaur had committed suicide inside a room and she was taken out by appellants and others, by breaking the door open and the version of the defense appears to be equally probable.

39. Still further, even the motive on the part of the appellants was very weak to commit such a heinous crime. It was alleged by the prosecution that Virpal Kaur wanted the partition of the property, whereas Teja Singh, appellant No. 1 wanted to reside with his brother Baljit Singh, appellant No. 2 and due to the said grudge, both the brothers had set her on fire. It is highly unbelievable that due to such a trivial dispute, a person would set his own

wife on fire, especially when he is not having any dispute with her. Even otherwise, as per the admitted stand of PW-3 Surjit Kaur, mother of the deceased, Virpal Kaur (deceased) was having a dispute with appellant No. 2 and his wife. Thus, it is apparent that appellant No. 1 had no dispute with his wife and he had no reason to join hands with his brother, i.e. appellant No. 2. Further, PW-4 Kartar Singh, mediator of the marriage/maternal grandfather of the deceased, himself admitted that both the appellants, being brothers had already partitioned their property and land and they were separate. However, the dispute was only for providing separate residence to Virpal Kaur. Thus, it is apparent that there was no dispute between brothers regarding partition of the land and the motive seems to be absent in the present case.

40. Moreover, it is also apparent from the testimony of various witnesses that Baljit Singh, appellant No. 2 and Chatin Kaur, mother of the appellants, had accompanied the deceased to various hospitals. PW-2 Dr. Sandeep Singh from CMC Ludhiana admitted in his cross-examination that appellants No. 1 and 2 and Chatin Kaur, mother of the appellants, had signed the papers at the time of admission of Virpal Kaur in CMC Ludhiana. Had the appellants set Virpal Kaur on fire, they had no reason to shift her to a higher and specialized medical institution to provide her treatment. Not only that, they had paid the expenses of treatment of Virpal Kaur also and the family of the deceased had not paid the expenses of treatment.

41. From the above referred discussion, it is apparent that the trial Court had placed wrongly reliance on the dying declaration made by Virpal Kaur. Rather, in view of the above discussion, it is apparent that, the statement Ex. PD was not trustworthy and credible and was liable to be

rejected by the trial Court. Still further, the prosecution has not been able to prove that the dying declaration was true, voluntarily and not influenced by any extraneous consideration.

42. The appeal qua appellant No.2-Baljit Singh @ Goga Singh, however, stood abated vide order dated 26.03.2025 passed by this Court in view of his death certificate dated 19.01.2015.

43. In view of the above discussion, the present appeal is allowed. Consequently, the impugned judgment of conviction and order of sentence dated 04.05.2004 passed by the Additional Sessions Judge, Mansa, are hereby set aside and the accused-appellant No.1-Teja Singh, is acquitted of the charges framed against him.

44. Pending application(s), if any, shall stand disposed off, accordingly.

(N.S.SHEKHAWAT)
JUDGE

(SUKHVINDER KAUR)
JUDGE

15.01.2026
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO