

**Arun Kumar Vs. State**

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**Court :** Allahabad

**Decided On :** Mar-16-2000

**Reported in :** 2000CriLJ3369

**Judge :** J.C. Gupta and ;S.K. Agarwal, JJ.

**Acts :** Evidence Act - Sections 2; [Indian Penal Code \(IPC\), 1860](#) - Sections 302, 304, 307 and 394; Code of Criminal Procedure (CrPC) - Sections 161

**Appeal No. :** Criminal Appeal No. 3140 of 1981

**Appellant :** Arun Kumar

**Respondent :** State

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Amar Saran, ;G.S. Chaturvedi and ;P.K. Tewari, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

ORDER

1. Appellant Arun Kumar alias Kalu Ram son of Sant Ram has preferred this appeal against the order dated 21-12-1981 passed by the then VI Addl. Sessions Judge, Meerut in Sessions Trial No. 425 of 1980 whereby the appellant has been convicted under Section 394, I.P.C. and sentenced to undergo 5 years R.I. and

under Section 302, I.P.C. with the sentence of imprisonment for life. Both the sentences are to run concurrently.

2. The deceased of this case was Smt. Amarjeet Kaur. Till 1978 her husband Sardar Joginder Singh had been in service in Jaswant Sugar Mill and he had been provided quarter No. 15B within the mill campus. He has two grown up sons. During the relevant days one of the sons was employed in Ghaziabad while the other in Bombay. Sardar Joginder Singh himself had started living at Ropan while Smt. Amarjeet Kaur was alone living in quarter. No 15B. Just in front of this quarter lived Khairati Ram Kapoor, PW 10 in quarter No. 14. Vir Singh, PW 5 lived in neighbored of Smt. Amarjeet Kaur, Sant Ram, the father of the appellant was also serving in the same mill and for sometime lived in the house adjacent to the quarter of Amarjeet Kaur and their family members were on visiting terms and had known each other well. The appellant from his childhood was thus well known to Smt. Amarjeet Kaur and the witnesses of the case.

3. The case of the prosecution is that in the morning of 22-8-1980, the appellant along with his two associates entered into the house of Smt. Amarjeet Kaur and committed robbery and when resistance was put by Smt. Amarjeet Kaur, the appellant stabbed her with knife as a result of which she sustained a number of injuries. Harvinder Singh PW 2 who was then staying in the quarter of Sardar Vir Singh PW 9 heard cries and shrieks coming from the quarter of the deceased. He came out of the quarter of Vir Singh and saw three persons running from the quarter of Smt. Amarjeet Kaur. Out of whom he identified the appellant who was then holding a blood stained knife. In the meantime Vir Singh, PW 9 K.R. Kapoor, PW 10 and others also arrived at the quarter of Smt. Amarjeet Kaur. All these persons found that the western door of the quarter was open and Smt. Amarjeet Kaur was lying on the floor in her house in a pool of blood. Smt. Amarjeet Kaur told these witnesses that she has been stabbed by the appellant and his two associates and has also been robbed of her jewellery which she was wearing on her person. She also asked K.R. Kapoor, PW 10 to call the doctor whereupon Vir Singh, PW 4 was sent for that purpose. In the meantime, K.R. Kapoor informed Jagtar Singh, PW 1 on phone of this and also that Smt. Amarjeet Kaur has been stabbed by the appellant and his associates. It may be mentioned here that Sardar

Joginder Singh, the husband of the deceased is the first cousin of Jagtar Singh, that is, she was Bhabhi (sister-in-law) of Jagtar Singh. Before Jagtar Singh could arrive at the scene of occurrence a car was arranged for taking the injured to hospital and when she was being removed in the car, Jagtar Singh PW 1 arrived there and inquired from her whereupon Smt. Amarjeet Kaur told him that the appellant along with his two associates had assaulted her with knife when she tried to put resistance. Smt. Amarjeet Kaur was then taken to Pyare Lal Hospital where she was admitted at 7.15 a.m. Dr. S.K. Tyagi PW 7 medically examined and found the following injuries :

1. Incised wound 2 cm. x 1 cm. x cavity deep, 6 cm. below navel at 8 O'clock position, bleeding present and bowel loops coming out of wound.
2. Incised wound 2 cm. x 1 cm x cavity deep, 6 cm. below navel at 4 O'clock position, bleeding present.
3. Incised wound 1 cm. x 0.5 cm. x cavity deep, 5 cm. left to injury no. 2, bleeding present.
4. Incised wound 0.5 x 0.2 cm x muscle deep, 4 cm. above the navel vertically placed, bleeding present.
5. Incised wound 2 cm. x 0.5 cm. x cavity deep, 3 cm. above and right to injury No. 4 bleeding present.
6. Incised wound 1 cm. left side x 0.3 cm x cavity deep, 2 cm right to injury No. 5, bleeding present.
7. Incised wound 3 cm x 0.5 cm x cavity deep with a tailing of 15 cm on the left side.
8. Lacerated wound 5 cm. x 2 cm. x bone deep right index and middle finger, bleeding present.
9. Incised wound 2 cm x 2 cm . x bone deep 0.8 cm. below left eye, bleeding present.

10. Incised wound 2 cm. x 0.5 cm. x bone deep, 5 cm. above the left eye, bleeding present.

11. Bruise 8 cm. x 2 cm. in front of left ear redish.

4. All the injuries were fresh, caused by sharp weapon except injuries No 8 and 11 which were caused by blunt object. Copy of injury report is Ex. Ka 9.

5. Smt. Amarjeet Kaur was then referred to medical college and was admitted there at 11.30 a.m. She was given treatment and then the medical officer of the casualty ward sent an information in writing to the Station Incharge, Police Station Medical College, Meerut to make arrangement for recording her dying declaration as early as possible. The Executive Magistrate, Shri Prem Sagar PW 6 reached the medical college for recording the dying declaration of Smt. Amarjeet Kaur and on the same day i.e. 22-8-1980 at 4.30 p.m. he recorded the dying declaration of Smt. Amarjeet Kaur, Ex. Ka 8, in the presence of Dr. Rakesh Mohan Kaushik, PW 11. In her dying declaration Smt. Amarjeet Kaur stated that she got up at about 5 in the morning and when she came out in the verandah, a boy Kalu Ram son of Sant Ram Sahgal who was living in the mill area came towards her put a towel on her mouth and started dragging her towards the drawingroom. She fell down whereupon accused sat on her neck. In order to save herself she caught hold of testicles of the accused. Two companions of the accused were then standing in the verandah. Accused asked them to bring knife which the accused immediately got from them and thereafter accused appellant inflicted 5-6 knife blows on her and robbed her of her four gold bangles, one ear ring and one gold ring from her person and also assaulted her by a blunt object on her head. The statement was read over to Smt. Amarjeet Kaur and thereafter her thumb mark was obtained over the same by the Magistrate. Dr. Rakesh Mohan Kaushik, PW 11, appended certificate Ex. Ka8 certifying her mental state to be fit for making the dying declaration.

6. It may be mentioned here that in the meantime Sardar Jagtar Singh submitted a written report Ex. Ka 1 at the police station, railway road, Meerut at 7.20 a.m. on the basis of which chick F.I.R. Ex. Ka 10 was prepared by constable clerk Ramesh Dayal PW 8 who also registered the case under Section 307, I.P.C. in G.D. No. 13

whose copy is Ex. Ka 11.

7. An operation was performed and adequate treatment was given to Smt. Amarjeet Kaur but after surviving for about 6 days she ultimately died in the medical college hospital on 28-8-1980 at 5.15 p.m. Her dead body was sent for post mortem examination which was performed by Dr. Fariduddin, PW 4 and he found following ante mortem injuries :

1. Stitched wound 22 cm in length on right side abdomen 1 cm away from umbilicus with fourteen stitches, vertical in direction 8 cm above and 14 cm. backward the umbilicus.

2. Stitched wound 4 cm in length with four stitches on right horizontal and just near injury No. 1 and middle.

3. Sticked wound 1 cm long @ one stitch on right side at 7 O' clock position to umbilicus 14 cm away umbilicus tailing present to left side also.

4. Stitched wound 2 cm in length O. x 0.5 cm x cavity deep, two stitches present (drainage also not present) 10 cm away intestines at 9 O'clock position to umbilicus on right side in oblique direction.

5. Stitched wound 2.5 cm in length with 2 stitches 12 cm above umbilicus on right side and upper at 11 O'clock position, horizontal in direction.

6. Stitched wound 1 cm in length @ one stitch in midline and middle leg 2 cm above the umbilicus at 12 O'clock position.

7. Stitched wound 9 cm in length @ five stitches in oblique direction left side of abdomen 10 cm away from umbilicus at 4 O'clock position to umbilicus.

8. Stitched wound 1.5 cm in length @ one stitch 17 cm away umbilicus left side and at 5 O'clock position.

9. Stitched wound 1 cm in length @ one stitch on left side also 20 cm away umbilicus at 4 O'clock position in oblique direction.

10. Cut open mark present on both legs.

11. Stitched wound 6 cm long on right palm in between index and middle finger.

12. Stitched wound 2 cm long @ two stitches on left side forehead 5 cm above the left eye brow.

8. On internal examination membrane and brain were found congested. There was clotted blood on right side of heart and in the opinion of the doctor cause of death was syncope.

9. The investigation of the case was conducted by S.I. Kunwar Pal Singh. PW 12. The case was registered at the police station in his absence and at that time he was busy in completing inquest on the dead body of another person and when he came back to the police station at 9.10 a.m. papers of this case were entrusted to him for investigation. After the F.I.R. was copied out by him he went to the hospital and there he met the first informant, Jagtar Singh and Amarjeet Kaur in Emergency ward. Doctors were busy in treating Amarjeet Kaur and they did not permit him to record the statement of Smt. Amarjeet Kaur. However, he interrogated Jagtar Singh and then went to the place of occurrence with him. After making inspection of the scene of occurrence he prepared site plan Ex. Ka 12 and also collected plain and blood stained pieces of floor Ex. 3 and 4. He also took into his possession blood stained Dupatta Ex. 11 of Amarjeet Kaur through recovery memo. Ex. 10. He also recorded the statement of K.R. Kapoor, Harvinder Singh, Narendra, Vir Singh, Mohan Lal and others. He also made search of the accused but he was not found at his house. On 24-8-1980 he went to the Medical College and recorded the statement of Smt. Amarjeet Kaur in her own words whose copy has been proved as Ex. Ka 13. From her statement he came to know that offence of robbery was also committed hence case was converted under that section also.

10. Accused appellant surrendered in Court on 25-8-1980. After completing the investigation charge sheet Ex. Ka 16 was filed against the appellant.

11. At the trial prosecution produced 12 witnesses in all. PW 1 Jagtar Singh is the first informant and he also stated about the oral dying declaration made to him by

the deceased while she was being shifted to car for being taken to Pyare Lal Hospital, PW 2, Harvindar Singh is a witness of fact who had seen appellant with his two associates running out of the house of Smt. Amarjeet Kaur and he also stated that Smt. Amarjeet Kaur was found lying injured inside her house and she told him that it was the appellant who had assaulted her with knife and robbed her of her jewellery which she was wearing, PW 3 is constable Surendra Sharma, he is a formal witness who had carried the dead body to mortuary, PW 4 Dr. Fariduddin conducted the autopsy and proved the post mortem report of Smt. Amarjeet Kaur as Ex. Ka 2, PW 5 is Dr. Shri Ram Nagar who was then posted as reader and he had performed operation on 22-8-1980 of Smt Amarjeet Kaur with the assistance of Dr. Rakesh Mohan Kaushik, PW 11, PW 6 is Prem Sagar, Executive Magistrate who recorded the dying declaration of the deceased in the presence of Dr. Rakesh Mohan Kaushik and proved the same as Ex. Ka 8, PW 11 is Dr. Rakesh Mohan Kaushik who was present at the time of recording of dying declaration and had certified about the fit mental condition of Smt. Amarjeet Kaur. He has proved the certificate as Ex. Ka 8A, PW 7 is Dr. S.K. Tyagi who initially examined the injuries of Smt. Amarjeet Kaur at the P.L. Hospital at 7.15 a.m. when she was brought at the hospital by Jagtar Singh, PW 1. Injury report has been proved as Ex. Ka 9. PW 8 is constable clerk Ramesh Dayal who registered the case at the police station on the basis of written report of Jagtar Singh. PW 9 Vir Singh and PW 10 Khairati Ram Kapoor are other witnesses of fact while PW 12 S.I. Kunwar Pal Singh is the Investigating Officer.

12. The case of the accused at the trial was of total denial. He stated that he was known only as Arun Kumar and had no alias name. He was never called as Kalu Ram. He produced two witnesses in defence. Constable Tanveer Haider DW 1 and Satish Kumar, DW 2.

13. On appraisal of the evidence the learned Sessions Judge came to the conclusion that the guilt against the accused is proved beyond doubt and accordingly he has convicted him under Section 302 and 304, I.P.C.

14. We have Shri P.N. Mishra, learned counsel for the appellant who has been assisted by Sri Amar Saran, Advocate and Shri A.K. Verma for the State.

15. The prosecution evidence adduced in this case may conveniently be divided in three parts. The first part of evidence is that accused appellant was seen running out of the house of Smt. Amarjeet Kaur with his two associates immediately after the incident. The second part of evidence relates to oral dying declaration made by Smt. Amarjeet Kaur to the witnesses and third piece of evidence which is most important and crucial is the recorded dying declaration Ex. Ka 8 prepared by Executive Magistrate, Prem Sagar, PW 6.

16. First of all we shall deal with the evidence of the witnesses who are said to have seen the appellant and his two associates coming out of the house of Smt. Amarjeet Kaur soon after she was assaulted and robbed and also of the evidence relating to the oral dying declaration made by the deceased to the witnesses. To prove the said circumstances we have on record evidence of PW 2 Harvinder Singh and PW 9 Vir Singh who both had stated about the said fact in their statements given to the Investigating Officer. Out of these two witnesses Vir Singh, PW 9 did not support the prosecution case fully when his evidence was recorded at the trial and for this reason he was declared hostile and was cross examined by the state counsel. This witness though at the trial denied to have seen the accused or any other person running out of the house of the deceased but he fully corroborated the prosecution story that the incident had occurred early in the morning and he was asked by K.R. Kapoor to call the doctor and when he came back with the doctor he found that many persons had collected at the door of Amarjeet Kaur. He also stated before the Court that he knows accused Kalu Ram who lived in his neighbourhood at a distance of 6-7 quarters from his quarter. It would thus follow that this witness who tried to support the accused has himself stated that the appellant is also known as Kalu Rm and no suggestion was given to him that he was not so called. PW 2 Harvinder Singh, however, fully supported the prosecution case. He stated that in the preceding night he had come to Jaswant Singh Sugar Mill campus and was staying in the quarter of Vir Singh alongwith Ved Prakash and when in the morning he was getting ready to leave the quarter he heard cries coming out from the neighbouring quarter of Smt. Amarjeet Kaur. As soon as he came out of the door of quarter of Vir Singh he saw that three persons were running out from the western door of the neighbouring quarter from where cries were emanating. The appellant was one of them and he was holding a

blood stained knife in his hand. This witness also stated that the real name of the appellant is Arun Kumar but he is also called as Kalu Ram, He along with other witnesses went inside the quarter No. 15B and found that Smt. Amarjeet Kaur was lying injured on the floor and was profusely bleeding. On being inquired she told that the appellant entered into her house with his two associates and on having been identified he stabbed her with knife and also robbed of her jewellery which she was then having on her person. He has categorically stated that Smt. Amarjeet Kaur and the appellant were known to him from before the incident. In cross examination the witness stated that he stayed in the house of Vir Singh throughout the night and in the next morning after the incident he stayed there upto 12 noon. It has further come in his statement that he had sent Ved Prakash to Ghaziabad to call the son of Smt. Amarjeet Kaur. He denied the defence suggestion that he had accompanied Ved Prakash to Ghaziabad on his motor cycle. The fact that this witness had sent Ved Prakash to Ghaziabad to call the son of the deceased goes to show that he was on visiting terms with the family of Smt. Amarjeet Kaur. Nothing has been brought on record from the side of the accused as to why this witness has deposed against him. Since this witness has been visiting Jaswant Sugar Mill quite often and had been knowing the persons living in the neighbourhood of Vir Singh, there is nothing unnatural if the appellant was also very well known to him. It has also been stated by him that the Investigating Officer had come at the place of occurrence at about 10 in the morning and inspected the scene of occurrence in his presence. Blood was also collected by the Investigating Officer in his presence. It has further come in his evidence that on the third day of the occurrence he went to the medical college to inquire about the welfare of Smt. Amarjeet Kaur. This fact also indicates that in all probability he was present at the time of occurrence and he was anxious to know about the health and condition of Smt. Amarjeet Kaur. It has also come in his evidence that Sardar Vir Singh is the son of maternal uncle Narendra Singh and used to stay at his house frequently. The presence of this witness at the house of Vir Singh at the relevant time was thus not unnatural. He also testified that when Smt. Amarjeet Kaur was being removed to car, Jagtar Singh had also arrived there. Sardar Jagtar Singh stayed there for 1-2 minutes and had talked to Smt. Amarjeet Kaur. He denied the defence suggestion that the appellant was not known to him from

before the incident. As already pointed out above there is absolutely no reason for this witness to depose falsely against the appellant and the fact that this witness has given a detailed statement about all that which had happened at the relevant time goes to support his claim that he was present at the time of incident and had seen the appellant with his two associates coming out of the house of Smt. Amarjeet Kaur. The defence has failed to muster enough courage to claim any identification from him. We find his evidence to be trustworthy and reliable.

17. The next witness is PW 10 K.R. Kapoor who was admittedly residing in quarter No. 14 which was situated just in front of quarter No. 15B of the deceased. It may not be out of place to mention here that it is not disputed from the defence side that the deceased Amarjeet Kaur was not living in quarter No. 15 on the date of occurrence. This witness in his statement before the court testified that on 22-8-1980 he was awakened by the shrieks and cries of Smt. Amarjeet Kaur at about 5.30 a.m. in the morning whereupon he went to her quarter and saw her lying on the floor in a pool of blood. He further stated that Amarjeet Kaur asked him to call the doctor and she also stated that, she wished to give her statement. He came out of the house of Smt. Amarjeet Kaur and asked Vir Singh to call the doctor. Thereafter he informed on phone Jagtar Singh, PW 1 about the incident and asked him to come to the house of Smt. Amarjeet Kaur immediately and when he came back to the quarter of Smt. Amarjeet Kaur after giving information on phone he found that Smt. Amarjeet Kaur was being removed to a car for being taken to hospital. This witness, however, did not support the prosecution story that he had seen the appellant and his two associates running away from the house of Smt. Amarjeet Kaur and, therefore, he was confronted with his statement recorded under Section 161, Cr.P.C. It is, however, significant to note here that even this witness admitted that Harvinder Singh, PW 2 used to come to the house of Smt. Amarjeet Kaur with Ravindrajeet and he could not deny categorically that at the place of occurrence PW 2 Harvinder Singh was present and he simply avoided this by pleading ignorance. Had Harvinder Singh PW 2 been not present this witness could have straight away denied his presence. The evidence of this witness, therefore, does not at all affect the veracity of the testimony of Harvinder Singh PW 2. In his statement he stated that before the car had left for hospital Jagtar Singh, PW 1 had also arrived there. Learned counsel for the appellant has

tried to make much capital out of that piece of the statement of this witness wherein be stated that in his presence Smt. Amarjeet Kaur had not told to Jagtar Singh the name of any assailant as no talks had taken place between them in his presence. Therefore, according to the learned counsel for the appellant, the statement of Jagtar Singh that when he inquired from Smt. Amarjeet Kaur at the time when she was being removed to car she had told the name of the appellant as her assailant should not be given any credence. We find no substance in this submission of the learned counsel inasmuch as in cross examination this witness admitted that Jagtar Singh arrived at the scene of occurrence on a scooter before Smt. Amarjeet Kaur had left for the hospital. It may be that when Jagtar Singh had talked to Smt. Amarjeet Kaur, K.R. Kapoor might be busy with some other work or might not have paid attention as to what had transpired between Smt. Amarjeet Kaur and Jagtar Singh who is admittedly a close relative of the deceased. Jagtar Singh, PW 1 has not stated that when Smt. Amarjeet Kaur told him about the incident and the name of the assailant, K.R. Kapoor was also present with him at that place. The witness had stated before the Investigating Officer of all these facts including the fact that the deceased had told him the name of the appellant as her assailant but at the trial he turned back and did not support the prosecution story in full and it appears that to this extent he has been manoeuvred. Be that as it may, from this evidence also it is fully established that Smt. Amarjeet Kaur was stabbed in the early morning of 22-8-1980 inside her house and he had informed Jagtar Singh, PW 1 of the incident on phone whereupon Jagtar Singh also arrived at the scene of occurrence before Smt. Amarjeet Kaur was sent to the hospital. It is noteworthy that Jagtar Singh, PW 1 immediately went to the police station and lodged written report Ex. Ka 1 at 7.20 a.m. wherein he had specifically mentioned that he was informed of the incident by Kapoor Sahib on phone at 6.10 a.m. that Smt. Amarjeet Kaur had been stabbed by the appellant. It is also mentioned in that report that when he reached the scene of occurrence, the persons residing in the neighbourhood were shifting Smt. Amarjeet Kaur to hospital in a car. He inquired from Smt. Amarjeet Kaur whereupon she told him that Kalu Ram son of Sant Ram Sahgal along with his two associates had stabbed her and he took her to Pyare Lal Hospital where she was admitted at 7.10 a.m. If, in fact this witness has not been so informed on phone by K.R. Kapoor or had not been told by Smt. Amarjeet

Kaur about the name of the appellant as the assailant of Smt. Amarjeet Kaur , it is not understandable why PW1 would have named the appellant falsely as the assailant of the deceased in his report which was promptly lodged, specially when this witness had no axe to grind against the accused. Nothing has been brought on record to indicate that this witness has any animosity or grudge against him or his father.

18. After having gone through the evidence of the aforesaid witnesses thoroughly we find no infirmity in their evidence which may discredit them and we are fully satisfied that the appellant along with his two associates had entered into the house of Smt. Amarjeet Kaur and she was stabbed by the appellant with knife and was also robbed of her jewellery which she was then wearing and the appellant was also identified amongst his associates when they were running away from the house of Smt. Amarjeet Kaur and that Smt. Amarjeet Kaur orally disclosed to the witnesses including Vir Singh PW 2 and Jagtar Singh, PW 1 that it was the appellant who stabbed her with knife and robbed her.

19. The next piece of evidence is the statement given by the deceased to the Investigating Officer when she was interrogated by him in the hospital on 24-8-1980. Even as per the prosecution case dying declaration of the deceased Ex Ka 8 had already been recorded by the Executive Magistrate on 22-8-1980, therefore, we are not inclined to attach much value to the statement of the deceased alleged to have been recorded by the Investigating Officer on 24-8-1980.

20. However, the dying declaration Ex. Ka 8 recorded by PW 6, Shri Prem Sagar, Executive Magistrate is an important and reliable piece of evidence to connect the appellant with the crime in question. It is in the evidence that immediately after the incident Smt. Amarjeet Kaur was removed to Pyare Lal Hospital where she was admitted at 7.10 a.m. and was medically examined by Dr. S. K. Tyagi PW 7. Her injury report has been proved as Ex. Ka 7 by Dr. Tyagi who has specifically stated that all the injuries found on Smt. Amarjeet Kaur were fresh and could be caused on the same morning at about 5 a.m. Her injuries were noted down in the accident register and police was also informed. A perusal of the injury report Ex. Ka 7 shows that Smt. Amarjeet Kaur at the time of medical examination was not

unconscious. In the cross examination of Dr. Tyagi, the defence could not even dare to suggest to this witness that when Smt. Amarjeet Kaur was examined by him she was unconscious or was unable to speak. Undisputedly she was removed from Pyare Lal Hospital to the Medical College Hospital on the same day at 11.30 a.m. by the attendance of Smt. Amarjeet Kaur at the medical college she was admitted in the casualty ward and the medical officer attending her immediately sent an information in writing to the Officer in charge of Police Station, Medical College, Meerut to the following effect as is apparent from paper No. 22 Ka/2 of the lower court's record.

It is to inform you that Smt. Amarjeet Kaur wife of Joginder Singh R/o 15 B Jaswant Singh Mill Meerut, a case of stab wound abdomen, admitted in Emergency Ward today at 11.45 a.m. This case was admitted in P.L.S Hospital and her attendant brought her to this place for treatment. She is going to be operated in the evening today. It is, therefore, requested to kindly arrange for her D.D. as early as possible.

21. It would thus appear that Smt. Amarjeet Kaur was not unconscious and was in a position to give her statement. This is the only deduction available from the request made to the police to make arrangement for recording her dying declaration as early as possible because she was going to be operated in the evening on that very day and after the operation it was not certain whether she would survive or not.

22. It appears that thereafter PW 6, Prem Sagar Executive Magistrate was sent to the Medical College to record the statement of Smt. Amarjeet Kaur . Shri Prem Sagar stated before the Court that he went to the medical college hospital and recorded the statement of Smt. Amarjeet Kaur at 4.30 p.m. on 22-8-1980 in the presence of Dr. Rakesh Mohan Kaushik, PW 11 .The statement has been proved as Ex. Ka 8. The Magistrate stated on oath that Smt. Amarjeet Kaur was fully conscious and was in a fit condition to make her statement and after obtaining a certificate to this effect from the doctor attending on her, he recorded the statement in her own words. The statement was then read over to Smt. Amarjeet Kaur and thereafter her thumb mark was obtained. He categorically stated that Dr.,

Kaushik remained present from the beginning to the end throughout the time when her statement was recorded. He further stated that before recording her statement, he got removed the relatives of the deceased and other persons from the room excepting the attending doctor and the nurses.

23. Dr. Rakesh Mohan Kaushik, PW 11 has deposed that he had examined Smt. Amarjeet Kaur at 4.30 pm. in the presence of Magistrate Shri Prem Sagar and found her conscious and she was mentally fit to have her statement. Her statement was then recorded by the Magistrate and he remained present there throughout. He proved the certificate which he had appended with Ex. Ka 8 regarding the mental condition of the declarant. In cross examination he specifically stated that when her statement was recorded she was in pre operative ward and the bed head ticket further indicates that she was operated in the evening. There is no reason to disbelieve the statements of these two responsible officers that Smt. Amarjeet Kaur had given statement Ex. Ka8 to Sari Prem Sagar Executive Magistrate at 4.30 p.m. and at that time she was in a fit mental condition. We find absolutely no basis whatsoever to doubt the testimony of the Magistrate and the Doctor and have no hesitation in rejecting the argument of the learned counsel for the appellant that Ex. Ka 8 is a fabricated document. It is inconceivable that for no ostensible reason PW 6, Shri Prem Sagar holding a responsible post of Magistrate would go to the extent of fabricating the dying declaration of the deceased putting his service at stake.

24. The possibility of the dying declaration being the result of tutoring is also completely ruled out in the present case inasmuch as it has been stated clearly by the Magistrate that all the relatives and other outsiders have been turned out of the room where the dying declaration of the deceased was recorded. It may again be repeated that none of the relative who has accompanied the deceased to the hospital had any enmity or ill will against the appellant. After closely examining the entire evidence on record we are clearly of the opinion that the dying declaration Ex. Ka 8 is true and voluntary and answers every test which is required to be applied for acceptance by the Court.

25. The next question that arises for our consideration is whether the dying declaration Ex.Ka8 suffers from any infirmity and whether any corroboration is required before basing conviction of the appellant thereon. It is well settled that a statement, written or oral, made by a person who is dead, as to the cause of death or as to any of the circumstances of the transaction which resulted in his or her death, cases in which the cause of dead person's death comes into question, becomes admissible under Section 2 of the Evidence Act. Such statement made by the deceased is commonly termed as 'dying declaration'. What evidenciary value the same has or what weight is to be attached to such a statement depends on the facts and circumstances of each particular case and no hard and fast rule or formula can be laid down in this regard.

26. In *Kaushal Rao v. State of Bombay* AIR 1958 SC 22 : (1958 Cri LJ 106) the Hon'ble Supreme Court held that it cannot be laid down as an absolute rule of law that dying declaration cannot form the sole basis of conviction unless it is corroborated, each case must be determined on its own facts keeping in view the circumstances in which the dying declaration was made; it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence than other pieces of evidence a dying declaration stands on the same footing as any other piece of evidence and has to be judged in the light of surrounding circumstances and with reference to the principles governing the weighing of evidence.

27. It was further held in the same decision that in order to pass the test of reliability, a dying declaration has to be subjected to a very close scrutiny keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity of testing the veracity of the statement by cross-examination. But once, the Court has come to the conclusion that the dying declaration was the truthful version as to the circumstances of the death and the assailant of the victim, there is no question of further corroboration. If, on the other hand, the Court, after examining the dying declaration in all its aspects, and testing its veracity, has come to the conclusion that it is not reliable by itself, and that it suffers from an infirmity, then, without corroboration it cannot form the basis of a conviction. Thus, the necessity for corroboration arises not from any inherent

weakness of a dying declaration as a piece of evidence, but from the fact that the Court, in a given case, has come to the conclusion that that particular dying declaration was not free from the infirmities.

28. In the case of *Ramavati Devi v. State of Bihar* (1983) 1 SCC 211 : (AIR 1983 SC 164) the Apex Court upheld the conviction of the accused solely based on dying declaration on the findings that the dying declaration had been properly proved and no question was put during cross-examination regarding the condition of the deceased at the relevant time and the medical evidence was not adverse and the statement was corroborated.

29. The Apex Court in the case of *State of U.P. v. Ram Sagar Yadava* 1985 ACC 19 : (AIR 1985 SC 416) (SC) observed that it is well settled that, as a matter of law a dying declaration can be acted upon without corroboration. There is not even a rule of prudence which has hardened into a rule of law that a dying declaration cannot be acted upon unless it is corroborated. The primary effort of the Court has to be to find out whether the dying declaration is true. If it is so, no question of corroboration arises. It is only if the circumstances surrounding the dying declaration are not clear or convincing that the Court may, for its assurance, look for corroboration to the dying declaration. The Apex Court on facts of that case found that there was no doubt that the dying declaration made by the deceased was true in every respect and based conviction on the basis of the said statement.

30. In *Suraj Rao Oza v. State of Bihar* AIR 1979 SC 1505 : (1979 Cri LJ 1122) it was held that merely because the dying declaration is a brief statement, it is not to be discarded for that reason on the contrary, the shortness of the statement itself guarantees truth. Similarly in the case of *State of Maharashtra v. Krishna Murthi Laxmipati Naidu* AIR 1981 SC 617 : (1981 Cri LJ 9) it was held by the Apex Court that on the mere fact that dying declaration does not contain the details as to the occurrence, the same cannot be rejected.

31. The Supreme Court in peculiar facts of the case of *Kake Singh v. State of M.P.* AIR 1982 SC 1021 : (1982 Cri LJ 986) rejected the dying declaration as it was found that the deceased was all along unconscious and could never make any dying declaration. However, in the case of *Nanahan Ram v. State* AIR 1988 SC

912 : (1988 Cri LJ 936) the trial Court relying upon the dying declaration as well as on appreciation of evidence came to the conclusion that the two accused persons were present in the dacoity which resulted in the death of two persons and accordingly convicted them. The appeal preferred by them was also dismissed by the High Court. Before the Apex Court it was contended on behalf of the convict-appellant by referring to the deposition of the doctor that a person getting such injuries could not survive and as such the deceased could not make the dying declaration. The Supreme Court approved the finding of the High Court that the medical opinion could not wipe out the direct testimony of number of witnesses that the deceased chanced to live after receiving the injuries and was in a conscious state to make the oral dying declaration. It was held that the medical opinion cannot prevail upon the reliable testimony of eye-witnesses that the deceased was in a fit and conscious state to make the dying declaration.

32. In the case in hand learned counsel for the appellant attacked the veracity of the dying declaration urging that since the deceased Smt. Amarjeet Kaur had suffered serious stab injuries she could not be in a fit and conscious state to make the dying declaration. This argument of the learned counsel for the appellant must be rejected as baseless. As already pointed out above when Smt. Amarjeet Kaur was first brought to Pyare Lal Hospital at 7.15 a.m. she was in a conscious state. Even when she was brought to medical college in the casualty ward at 11.30 a.m. the Medical Officer attending her had immediately sent an information to the Station In charge, Police Station, Medical College to make arrangement for recording her dying declaration at the earliest. This also shows that she was fully conscious and was in a fit mental and conscious state to make her dying declaration. Both the Magistrate and the Doctor PW-6 and PW-11 have categorically stated before the Court that when dying declaration Ex. Ka-8 was recorded, Smt. Amarjeet Kaur was examined by the doctor and she was found in a fit mental condition to give statement and this part of their statement is fortified by the certificate Ex. Ka-8 given by the doctor on the dying declaration Ex. Ka-8. We, therefore, find no substance in the argument of the learned counsel of the appellant that Smt. Amarjeet Kaur was not in a fit and conscious state to make dying declaration, both oral and written.

33. It was then vehemently argued by the learned counsel for the appellant that even on the basis of these two dying declarations the identity of the appellant as the assailant of the deceased is not established beyond reasonable doubt because both these dying declarations made a reference to Kalu Ram son of Sant Ram as the assailant of the deceased whereas the appellant is known only by the name of Arun Kumar and he had no other alias name. It was not disputed before us that the father's name of the appellant is Sant Ram PW-1, Jagtar Singh, whose father had also worked in Jaswant Sugar Mill and had stayed in the mill campus for sometime has clearly stated that accused Arun Kumar was also known as Kalu Ram whose father Sant Ram has also served in the factory and was living in the same factory campus. Kalu Ram alias Arun Kumar is known to him from his childhood. It has also come in his evidence that Sant Ram father of the appellant lived for sometime in the adjacent quarter of Smt. Amarjeet Kaur and their families had good relations with each other. It was nowhere suggested to this witness that any other Kalu Ram with parentage of Sant Ram Sehgal lived in the mill campus. It is significant to note that in the dying declaration Ex. Ka-8 Smt. Amarjeet Kaur had stated that when she got up in the morning and came out in the verandah one boy of the mill area Kalu Ram son of Sant Ram Sehgal came towards her from under the table where he had concealed himself and stabbed her when she put resistance. It could not be dissented that the full name of applicant's father is Sant Ram Sehgal. It also could not be denied or disputed that Sant Ram Sehgal had served in the same mill and lived in the neighbourhood of Smt. Amarjeet Kaur. Similarly, Harvindar Singh, PW-2 also testified that Kalu Ram appellant was known as Arun Kumar son of Sant Ram. Even Vir Singh, PW-9, who turned hostile and supported the defence to a large extent by denying to have seen the appellant running out of the house of Smt. Amarjeet Kaur, has stated that he knows accused Kalu Ram who lives in his neighbourhood after about 6-7 quarters. Significantly this part of his statement has not been assailed by the defence counsel nor any suggestion was put to him that the accused was not known as Kalu Ram. Even to K.R. Kapoor PW-10 no suggestion was put that the accused was not known by the name of Kalu Ram. From the evidence on record it is thus clearly established that accused-appellant was also known as Kalu Ram and the deceased knew her by that name. The learned Sessions Judge while reaching to the same conclusion

has also pointed out certain circumstances which in our opinion cannot be ignored easily. After the F.I.R. had been lodged on 22-8-1980 accused-appellant appeared before the Magistrate and moved surrender application on 25-8-1980 stating therein 'the appellant has come to know that he is wanted in the above-noted case and is named in the F.I.R.' Even at the time of hearing of bail application it was never contended that he was not known as Kalu Ram. As the appellant had lived in the neighbourhood of Smt. Amarjeet Kaur there was every possibility of her knowing him by his alias name. The words used by her in the statement are significant 'Mill ka ek ladka Kalu putra Sant Ram Sehgal mej ke nichey se nikal kar meri taraf aaya'. As already pointed out above Sant Ram Sehgal, the father of the appellant had lived in the neighbourhood of Smt. Amarjeet Kaur and was still residing in the mill campus and for that reason Smt. Amarjeet Kaur had clearly mentioned that one boy living in the mill area known as Kalu Ram son of Sant Ram Sehgal stabbed her. The identity of the appellant has been fully established from the evidence of the witnesses examined in the trial court and we have not the least doubt in our mind that the assailant referred to in the Dying Declaration was none else than the appellant. At this stage we would also like to make a comment on the evidence of the defence witnesses examined on behalf of the appellant in the trial Court. DW-1 is a constable clerk Tanveer Haidar. His evidence is of a formal nature and does not have any effect on the evidence of the witnesses examined from the side of the prosecution. DW-2 Satish Kumar is the younger brother of the accused Arun Kumar has no alias name and he was never called as Kalu or Kalu Ram. The learned Sessions Judge has given cogent reasons for discarding his evidence and we find those reasoning to be convincing and valid. In cross-examination the witness admitted that on the very next day of the occurrence police came to his house as the police had come to know of the name of his brother as the assailant of the deceased. He pleaded ignorance that he moved any application to any higher authority that his brother Arun Kumar has been falsely implicated in the case. As has been pointed out above significantly no suggestion was put to any of the prosecution witnesses including the one who turned hostile that the appellant was not known as Kalu Ram. DW-2 Satish Kumar also could not state that any other boy with the same parentage of Sant Ram Sehgal was living in the mill area, on the other hand, he stated that he did not

know if any such person was living in sugar mill area. In cross-examination he stated that he had told the counsel who had prepared the bail application of the accused that Arun Kumar was not known as Kalu or Kalu Ram but he was unable to state the reason as to why that fact was not mentioned in the application. To us also DW-2 Satish Kumar appears to be a got up witness and his evidence cannot be given any credence and it appears that he gave statement before the Court simply to save his brother from the clutches of law.

34. In the present case thus we find that the dying declaration Ex. Ka-8 is true and voluntary and does not suffer from any infirmity. Even otherwise also the same is corroborated in material particulars by evidence of independent, natural and probable witnesses and the identity of the appellant as the assailant of the deceased is also fully established beyond reasonable doubt. The order of the learned Sessions Judge holding the appellant guilty of the offences under Sections 394 and 302, I.P.C. therefore, requires no interference and the conviction of the appellant under those counts has to be upheld so also the sentences awarded to him by the learned Sessions Judge.

35. For the reasons stated above we find no force in this appeal and the same is dismissed. The conviction and sentence of the appellant as recorded by the learned Sessions Judge are upheld. The appellant is on bail, he shall be taken into custody forthwith to Serve out the sentence imposed upon him.

36. A copy of this judgment shall be sent to the C.J.M. Meerut at the earliest for making immediate compliance.