

**Surjit Singh Sher Singh Vs. the State**

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**Court :** Punjab and Haryana

**Decided On :** Jul-05-1968

**Reported in :** 1969CriLJ98

**Judge :** Gopal Singh and; B.R. Tuli, JJ.

**Appellant :** Surjit Singh Sher Singh

**Respondent :** The State

**Judgement :**

**Gopal Singh, J.**

1. Surjit Singh appellant and his brother Harnek Singh, sons of Sher Singh of village Kurar in the district of Sangrur were tried for the murder of Gurdial Singh of village Khiali. Surjit Singh was charged for offence under Section 302, Indian Penal Code, while Harnek Singh was charged under that section read with Section 84, Indian, Penal Code. Shri Sukhdev Singh Sidhu, Sessions Judge, Barnala, by his judgment dated 17th August 1966 convicted Surjit Singh, under Section 302, Indian Penal Code, and sent-enoed him to undergo imprisonment for life. Harnek Singh waa, however, acquitted.

2. Gurdial Singh deceased accompanying Hardial Singh of village Mom reached the house of Sher Singh in village Kurar on 7th, March 1963 for negotiation of the betrothal of the former with the sister of Surjit Singh appellant, Gurdial Singh, who

is a licence-holder of double-barrel gun Exhibit P. I was carrying it with him along with Jhola containing 21 live cartridges and licence of the gun. The gun was a loaded one.

8. In the evening Gurdial Singh and Hardial Singh started taking liquor in the outer house of Sher Singh where his cattle are tethered. They were served with hospice and 'Moth ki Daal'. While starting to take meal, Gurdial Singh tauntingly remarked that Hardial Singh should not have brought the-former to a house where Moth Ki Daal was served. Hardial Singh replied that in the house of a family of average status such type of meals were served. Thereafter followed an altercation between the two leading to a souffl. It appears, under the influence at liquor, Gurdial Singh fired a gunshot. Gurdial Singh pressed the trigger again. This time the barrel of the gun burst and its splinters and fragments flew away in different directions. The forearm and hand of Gurdial Singh were injured and radius bone was fractured. It is the case of the prosecution that Surjit Singh and his brother Harnek Singh, both armed with granddame, began inflicting blows to Gurdial Singh on his forehead. As a result of the injuries caused. he fell down and died. The occurrence of causing of injuries by Surjit Singh and Harnek Singh is claimed by the prosecution to have been witnessed by Natha Singh P.W. 5 resident of village Machhike at a distance of fifteen miles from village Eurar. He is the son of the sister of mother of Hardial Singh, He says that he came to village Eurar to join the occasion of the betrothal of Gardial Singh. He states that he saw the occurrence through the chinks of the window of the room in which the appellant and his brother were inflicting injuries. Kehar Singh P.W. 7 resident of Bajidke Kalan says that he new the coumarone through a window. Eehar Singh is brother-in-law of Natha Singh P.W. 5. He was informed by the latter and reached the spot soon after the receipt of the information. It may be straightaway stated here that these witnesses were examined by the police on 5th April 1966 consequent upon a complaint made to Shri M.S. Bawa, Superintendent of Police. There is no mention of their names in the first information report lodged by Arjan Singh, who himself has not appeared as a prosecution witness. It is strange that prosecution have chosen not to produce as a witness the informant of the first information report.

4. Two other witnesses, who have been relied upon by the prosecution are said to have reached the spot soon after the occurrence. One is Gajjan Singh P.W. 8, Sarpanch of village Kurar. The other is Nand Singh P.W. 4, Sarpanch of village Khiali of which Gurdial Singh is a resident. The case of the prosecution goes on to say that when Gajjan Singh P.W. arrived Surjit Singh appellant was also present there and 15 minutes or so after his arrival, Nand Singh reached there. According to the evidence of these two witnesses it was confessed by the appellant that he had caused injuries with gandasa to Gurdial Singh deceased. It is also the case of the prosecution that Hardial Singh made a statement to these two witnesses described by the prosecution as dying declaration saying that Surjit Singh caused injuries to the deceased Gnr dial Singh, as a result of which Gurdial had died.

5. On bearing gunshots, Sher Singh father of the appellant came to the place where the visitors were staying. Finding that one of them was dead and the other was lying injured, he proceeded to the house of Arjan Singh, Panch of village kurar and informed him of the incident as given in the first information report. This report of the occurrence, which took place at about 10 p.m. on March 7, 1966 was lodged at Police Station Mahal Kalan on March 8, 1966 at 1.50 a.m. Mangat Rai, Station House Officer of the Police Statutory proceeded at 3.20 a.m. to the place of occurrence and started investigation. When the police arrived at the place of occurrence, Hardial Singh also had expired. When Mangat Rai P.W. 11 Sub-Inspector of Police arrived at the place of occurrence, Nand Singh and Gajjan Singh P.Ws. were present. Surjit Singh and Harnek Singh were not found in the village. Inquest Reports Exhibits PA and PB respectively of Gurdial Singh and Hatdial Singh were drawn up by Mangat Rai. The burst gun Exhibit P. 8 and fragments and splinters Exhibit P. 4, which were lying scattered at the place of occurrence were taken into possession. The burst gun, its fragments and splinters, a spent up cartridge. Jhola containing 16 live cartridges. Chapaties, Thali, Bati containing Moth Ei Dal, and a bottle containing few drops of liquor were recovered from the place of occurrence. Recovery memo in respect thereof is Exhibit PF. It is attested by Nand Singh and Gajjan Singh PWa. Bloodstained earth underneath, the not on which Hardial Singh deceased was lying and also from the place where Gnr dial Singh deceased was lying was collected and sealed into a parole Surjit Singh appellant was produced by Sher Singh on March 12, 1966 before the police

whereas Harnek Singh was taken in custody on April 6, 1966. The dead bodies of the deceased were sent for post-mortem examination.

6. Dr. Des Raj Dua, P.W. 1 Incharge Civil Hospital, Barnala, who performed the post-mortem examination on the dead body of Hardial Singh at 8.15 p.m. on March 8, 1966, found a out wound on the thornier eminence of the left hand, a lacerated wound on the back of left forearm and a lacerated wound on the anterior aspect of the upper part of left arm 4' in length, 3' in breadth and 2' in depth with radius bone broken into many pieces. The margins on the middle side of the wound were inverted. The margins on the outer side of the wound were torn and irregular. He found that stomach contained about 8 ounces of brownish cruddy fluid. The doctor gave the opinion that death was due to shook and hemorrhage cavity by injury No. 8. Dr. Des Raj Dua also performed autopsy of the body of Gurdial Singh at 5.17 p.m. on that day. He found the following injuries on his parson:

1. A out wound 4' X ' bone deep on the left side lower part of the forehead cutting the eye-brow. It was oblique in direction of the bone underneath i.e. frontal was out over the frontal sinus and socket on the left eye-ball. The eye-ball had ruptured from its medial Bide at a junction of the cornea with sclera.

2. A out wound 2' x 1' x ' in depth on the left aide of the face cutting lower jaw completely underneath. It was oblique in direction.

3. A out wound 2' x 1' x laryngeal cavity deep on the left Bide upper part of the neck. The larynx, the blood vessela underneath were cut. It was oblique in direction.

4. A contused wound ' x 1/4' x ' in depth going downwards and medially and backwards in the left lower abdomen. On exploration, a metalic piece was found. The piece was removed and handed over to police. There were corresponding tears on the Kurta and Bunyan which were initialed and handed over to the police.

7. The stomach of Gurdial Singh was found to contain about 18 ounces of greenish dark thick fluid smelting pungently. Death in his opinion was due to injury

to brain and hemorrhage and shock caused by injuries Nos. 1, 2, 8, and 4. All the injuries were found to be sufficient to cause death in the ordinary course of nature. He also located fracture of anterior original paces under injury No. 1. In his statement before the Committing Court, the doctor while referring to the above four injuries stated that injuries Nos. 1, 2 and 3 could be the result of a sharp edged weapon and injury No. 4 could be caused by a gunshot or any other projectile which could penetrate with metallic piece inside the body. In his cross-examination at the trial before the Sessions Judge. Dr. Dua stated that in case gun's left barrel burst, as had been shown to him along with broken piece of the barrel and butt etc., then it is possible that one or two injuries like injuries Nos. 1, 2 and 8 on the person of Gurdial Singh could be caused to the person who may have fired the cartridge from the left barrel of this gun resulting in the bursting of the left barrel. He added that ordinarily some lacerated wound along with wounds, if the injuries were caused in that manner, could be expected. He, however, added that a cut wound will be a rare possibility if the barrel burst in that manner and the fragments of the burst portion struck the man using the gun. In his cross-examination before the Sessions Judge while referring to injury No. 1 of Hardial Singh, he added that it could be caused by a sharp-edge of a burst fragment of gun barrel.

8. The appellant and his brother Harnek Singh were charged and tried on the basis of evidence as referred to above. Both the accused pleaded ignorance about the commission of the crime and stated that not only the eye-witnesses were interested and had falsely deposed against them but also the recoveries were faked and the evidence regarding the making of extra-judicial confession by the accused and that of dying declaration to Gajjan Singh P.W. 8 and Nand Singh P.W. 4 was cooked up.

9. The trial Court disbelieved the evidence of the three eye-witnesses, namely Natha Singh P.W. 5, Ghumand Singh P.W. 6 and Kehar Singh P.W. 7 in so far as the complicity of Harnek Singh along with his brother in commission of crime by causing injuries to Gurdial Singh deceased is concerned. The trial Court found that Natha Singh P.W. 5 and Ghumand Singh P.W. 6 hail from villages different from the village Kurar where the occurrence took place. They were related to and

interested in the party of the deceased and were merely chance witnesses at that odd hour. It is strange that Natha Singh and Kehar Singh P.Ws. saw the occurrence through the chinks of the window and yet they did not care to stop there. They have assigned the reason of their attraction to the room to the reports of the gunshots heard. Extra judicial confessional statement, which was made by Harnek Singh to Ghumand Singh P.W. was also disbelieved by the trial Court. The eye witnesses implicated both the brothers equally by way of joint participation in the commission of the crime and yet the trial Court has chosen to acquit Harnek Singh and not to acquit Surjit Singh on the ground of unreliability of the evidence of these witness sea. Natha Singh Kehar Singh and Ghumand Singh P.Ws. are got-up witnesses. Their evidence shows the extent to which the prosecution have gone in manufacturing evidence in course of investigation. The trial Court found that these three witnesses did not exist for the prosecution until a complaint was made to Shri H.S. Bawa, Superintendent of Police to the effect that Harnek Singh was also involved in the commission of the crime. These witnesses were examined as late as April 5, 1966 about four weeks after the occurrence took place.

10. The trial Court for the purposes of conviction of Surjit Singh relied upon the evidence of Gajjan Singh P.W. 8 and Nand Singh P.W. 4, who deposed to the facts pertaining to the making of dying declaration by Sardial Singh deceased and extra-judicial confessional statement by Surjit Singh accused, recovery of blood-stained gandasa Exhibit P. 1. along with pyjama Exhibit P. 9 made in pursuance of disclosure statement Exhibit P. J., made by Surjit Singh appellant and recovery of blood, stained shirt Exhibit P. 8 from the person of Surjit Singh soon after his arrest. Surjit Singh appellant was taken in custody by the police on March 12, 1968. As a result of interrogation, he made disclosure statement Exhibit P. J., which led to the recovery of blood-stained gandasa Exhibit P. 1 and Pyjama Exhibit P. 9 lying hidden in fodder in a room of the house where Surjit Singh was staying with his mother and the key of which was supplied by the latter. In respect; of these three articles recovery memo Exhibit P.K. was drawn up. It is attested by Gurdev Singh P.W. 9 Panch of Mahal Kalan and Hari Ram. The latter has not been produced by the prosecution as a witness.

11. Shri J.R. Verma, who appeared on behalf of the appellant urged the following points:

1. Evidence of Nand Singh and Gajjan Singh as P.Ws. was not at all reliable inasmuch as the discrepancies from which their evidence Buffers suggested that the witnesses could not be present when the dying declaration was made. In any case he submitted that the dying declaration made by Hardial Singh could not be availed of for conviction of Surjit Singh in so far as it refers to the death of Gurdial Singh deceased.

2. The extra-judicial confession was a weak type of evidence. Gajjan Singh and Nand Singh P.Ws. being untrustworthy, no evidentiary value could be attached to the confession.

3. Recoveries made by the police to connect the appellant with the commission of the crime were faked and nothing but padding up by the police.

4. Medical evidence was quite consistent with the hypothesis of the injuries having been caused to Gurdial Singh deceased either with gandasa or with the splinters which upon bursting of the gun could have struck the deceased and caused him injuries.

5. The investigation by the Police was tainted and dishonest as is clear from the introduction of three false witnesses like Natha Singh, Kehar Singh and Ghumand Singh and also from the abandonment of several witnesses by the prosecution which the prose, option in the interest of justice should have produced and not given up in order to secure conviction of the appellant.

12. The dying declaration made by Gurdial Singh suffers from two infirmities. Firstly, the two prosecution witnesses Hand Singh and Gajjan Singh, to whom it was made, have made contradictory statements in respect of certain material particulars pertaining to the making of dying declaration and no reliance could be placed upon their testimony. Secondly, the dying declaration made by Hardial Singh in so far as it pertains to the cause of death of Gurdial Singh and the circumstance which led his death is inadmissible in evidence. As the dying

declaration and the extra-judicial confession have been assailed on the common ground of Gajjan Singh and Hand Singh prosecution witnesses being got-up witnesses and having not made true and correct statements, the scrutiny of their evidence pertaining to both the dying declaration and the confession will be dealt with together.

13. At the stage of trial, Gajjan Singh, P.W. 8 said that Hand Singh, P.W. 4 and Bant Singh arrived 15/20 minutes after his own arrival. Before the Committing Court, he stated that they arrived half an hour or one hour after his arrival. In his examination-in-chief before the trial Court, Gajjan Singh stated that Surjit Singh was there when Hand Singh, P.W. and Bant Singh arrived at the spot. In his cross examination, he contradicted himself by saying that Surjit Singh had slipped away when Hand Singh and Bant Singh arrived there. If Surjit Singh, according to the statement of Gajjan Singh, was not there when Nand Singh and Bant Singh arrived, Hand Singh could not have heard the confessional statement being made by Surjit Singh. Hand Singh's presence at the time of making of dying declaration has thus been repudiated by Gajjan Singh. Gajjan Singh in his evidence before the trial Court unambiguously stated that Gurdial Singh fired shot in the air. He however, never stated any such fact in his statement before the police or in his statement before the Magistrate recorded under Section 164, Criminal P.C. or in that made before the Committing Court. Firing of first shot introduced by this witness for the first time at the trial not only goes counter to his earlier statements but also suggests adjustment in line with the medical evidence in be far as the number and nature of injuries caused to the deceased are concerned. Thus the witness has scanty respect for truth. His aim is to help the prosecution by introduction of fresh facts if the situation be demands. Gajjan Singh in his statement before the police did not state that Surjit Singh appellant told him that the gun had fallen on the ground. On the other hand, in his statement before the trial Court, he averred that Surjit Singh had said so. When this witness made several statements contradictory to those made to the police, the Public Prosecutor requested the Court that he may be allowed to cross examine the witness. Having asked hardly one or two questions, the Public Prosecutor did not pursue the cross-examination further. According to the evidence of Gajjan Singh, police arrived 15/20 minutes after the arrival of Bant Singh and Nand Singh

whereas Nand Singh contradicts this witness by Saying that police arrived 2 hours after their arrival. If as a result of the discrepant statements made by Gajjan Singh, it is held that Nand Singh and Bant Singh arrived there after confessional statement was made by Surjit Singh appellant as he is stated to have left that place before their arrival, the prosecution case that confession was made in the presence of Nand Singh falls to the ground.

14. Nand Singh, P.W. 4, in his statement under Section 164, Criminal P.C., which was recorded by the Magistrate 6/7 days after the occurrence, stated that apart from Hardial Singh, Surjit Singh appellant was also present. It is stated that Gajjan Singh arrived after the arrival of Nand Singh. On the other hand at the trial in examination-in-chief, it was stated by Nand Singh that Gajjan Singh and Surjit Singh were already present and he arrived later. According to this material contradiction Gajjan Singh cuts the presence of Nand Singh and Nand Singh disclaim that of Gajjan Singh at the relevant time. One excludes the presence of the other. It is a case of the prosecution house divided against itself. While reproducing the dying declaration said to have been made by Hardial Singh, Nand Singh, P.W. gave at the trial a detailed version as to the firing of gunshot and bursting of the gun preceded by a scuffle between Gurdial Singh and Hardial Singh. In his statement before the trial Court, Nand Singh deposed to the fact of the causing of injuries by Surjit Singh with gandasa to Gurdial Singh. In his statement before the Magistrate under Section 164, Code of Criminal Procedure, he does not mention anything except the admission on the part of Surjit Singh appellant that he had given a gandasa blow to Gurdial Singh. He Bays that when Hardial Singh was asked as to what had happened. Hardial Singh told him that what had happened, was by a stroke of chance. He is positive in his statement before the Magistrate that beyond that Surjit Singh did not utter a word. On the other hand, at the trial, he repeats in detail the version of the confessional statement saying that Surjit Singh appellant had sent for Hardial Singh in connection with the matrimonial alliance of his sister, that Gurdial Singh was brought by Hardial Singh with him, that meals were served to them, that Gurdial Singh tauntingly remarked to Hardial Singh that he had brought him there for being served with Moth Ki Daal, that Haridial Singh replied to Gurdial Singh that in families of average status such like meals are served, that they were drunk, that

Gurdial Singh fired his gun in the air, that Hardial Singh tried to snatch the gun from Gurdial Singh, that another shot was also fired from the gun with the result; that the barrel of the gun burst and the gun was broken into pieces, that gun fell on the ground from the hands of Gurdial Singh, that Surjit Singh gave gandasa blows to Gurdial Singh saying as to why he had injured his relative Hardial Singh by firing a shot from his gun and that on receipt of gandasa blows Gurdial Singh died at the spot. If such essential particulars of the case of the prosecution are missing in his state, mend made before the Magistrate, the confessional statement made by Surjit Singh and so also the contents of the dying declaration made by Hardial Singh, were so meager and scanty as contrasted with the subsequently embellished and improved statement giving further details of the dying declaration and of the confession, little reliance can be placed upon his testimony at the trial.

15. Gajjan Singh and Nand Singh P.Ws have by process of improvement deviated from the case of the prosecution as it initially existed by making additions and effecting Improvements. They are not trustworthy witnesses. The contradictions referred to above leave no doubt that these witnesses were never actually present on the spot when the dying declaration was made by Hardial Singh and the confessional statement was made by Surjit Singh appellant. Their service as witnesses seem to have been secured by the police in order to overcome the difficulty of want of ocular evidence. If their evidence is given a go by as, in the face of inherent improbabilities of material particulars of their depositions it has to be, the fabric of dying declaration and confessional statement constructed by process of padding up by the police in course of investigation must crash.

16. It may be added that it is not a case in which either the dying declaration or the confessional statement has been reduced into writing. Both are oral and said to have been made to witnesses of doubtful veracity. According to the case of prosecution, Nand Singh, P.W. 4 hails from village Khiali. This village is at a distance of one mile from village Kurar, the village where the place of occurrence is situate. It is stated that Bant Singh brother of Gurdial Singh deceased informed Nand Singh in village Khiali that Gurdial Singh had been murdered in the house of Sher Singh. On receiving this information Nand Singh along with Bant Singh is said to have reached the place of occurrence. Considering the time that would

have been taken in conveying the information to Bant Singh by a messenger from village Kurar and by him to the said witness and in their coming to village Kurar, it is most unlikely that the witness along with Bant Singh could have arrived soon after the occurrence at a time when Surjit Singh could be present at the spot and could have made confessional statement and also the dying declaration could have been made by Hardial Singh especially when it is said that Hardial Singh expired within 15/20 minutes of the causing of injuries.

17. Arjan Singh informant, who lodged the first information report and whose version of the prosecution case is materially different although that was the earliest version as stated to have been known to him, was not called to be produced by the prosecution even to prove the first information report. The prosecution have not only been unfair in refraining from examining in Court Arjan Singh but also should not have withheld from production in Court Bant Singh, in whose presence also with Nand Singh, the dying declaration and the confessional statement are said to have been made. Sher Singh, who was serving meals and whose guests Gurdial Singh and Hardial Singh had been murdered, was also not produced by the prosecution. Kalu, Chowkidar, who is one of the earliest arrivals on the scene of occurrence has also been kept back from disclosing the details of truth as to whether Gajjan Singh, Nand Singh and Bant Singh at all arrived and if arrived at what point of time and whether the dying declaration and the confession were made to these witnesses. Similarly, Arjan Singh, in the first information report, referred to the arrival soon after the occurrence at the spot of Bhajan Singh Panch, Bodha Ram and Harbans Lal. None of them has been called to be produced and altogether different witnesses like Gajjan Singh and Nand Singh P.Ws. have been made to go into the witness-box to provide support to the prosecution story.

18. It has been strongly urged on behalf of the appellant by Shri J.R. Verma that the dying declaration made by Hardial Singh pertaining to the cause of and the circumstances which resulted in the death of Gurdial Singh is not admissible against Surjit Singh to the extent to which Surjit Singh is sought to be implicated on its basis.

19. The relevant provision of law under which dying declarations are admissible and treated as evidence is Section 82(1) of the Evidence Act. By excluding the text of the Section which is not relevant for the present case, the Section may be reproduced as under:

Statements of relevant facts made by a person, who is dead are themselves relevant facts in the following cases:

(i) When the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.\*\*\*\*\*

20. The pronoun 'his' before the word, 'death' at two places and the expression, 'that person's death' clearly show that the cause of death must be the cause of death of the person making the statement and the circumstances resulting in death must be the circumstances which led to his death and the question involved in the case in which the cause of death comes up for consideration, must be the death of the person making the statement

21. The above construction of the section leaves no doubt as to the statement made by Hardial Singh in so far as it refers to the facts of death of Gurdial Singh having been caused by Surjit Singh appellant with gandasa blows is not covered by the section. Hardial Singh when he was saying is not referring to the cause of his own death nor to the circumstances which resulted in his death. The question involved in the present case is as to who were responsible for causing the death of Gurdial Singh deceased and what were the circumstances under which the death was caused, namely the motive of causing death, manner in which the death was caused, the weapon of offence responsible for the causing of death and the number and nature of injuries caused with that weapon. In the light of the language of Section 82(1) of the Act, it is clear that that portion of the dying declaration of Hardial Singh, which pertains to the causing of death of Gurdial Singh by Surjit Singh appellant with gandasa blows is beyond the scope of Section 82(1) and consequently inadmissible as evidence. Sanctity is attached to the truthfulness of a dying declaration because of the imminent idea of death hovering over the mind of the person making the dying declaration. The language employed

in Section 32(1) fortifies the view that in order that the dying declaration may constitute evidence under that provision, it must be a dying declaration relating to the facts and circumstances re. suiting in the death of the person making it. The above said question of admissibility or otherwise of a dying declaration made by one deceased person in relation to the cause of death of another deceased person came up for consideration before their Lordships of the Supreme Court in *Rattan Gond v. State of Bihar* reported in : 1959 CriLJ108 . In this case their Lordships excluded from consideration the portion of the dying declaration which pertained to the cause of death of the deceased other than the person making it. Their Lordships held as follows:

The only relevant clause of Section 32 which may be said to have any bearing is Clause (1) which relates to statements made by a person as to the cause of his death or as to any of the circumstances of the transaction, which resulted in his death. The case before us, the statements made by Aghani do not relate to the cause of her death or to any of the circumstances relating to her death; on the contrary, the statements relate to the death of her sister. We are, therefore, of the opinion that the statements do not come within Section 32(1) of the Evidence Act.

22. The question of relevancy of dying declaration made by one deceased person in respect of the cause of death of another again came up for consideration before the Supreme Court in *Moti Singh v. State of Uttar Pradesh* reported in : 1964 CriLJ727 . Their Lordships observed as follows:

the alleged dying declaration of Gaya Charan, Ex. Kha 75, cannot be admissible in evidence. Clause (1) of Section 32 of the Evidence Act makes a statement of a person who has died relevant only when that statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question. When Gaya Charan is not proved to have died as a result of the injuries received in the incident, his statement cannot be said to be the statement as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death.

23. Although, I have no doubt in my mind as to the unreliability of the above-named two witnesses to whom the dying declaration was made, the prosecution must also fail on the legal objection raised by virtue of the scope of Section 32(1) of the Evidence Act against the relevancy of the dying declaration for purposes of conviction of Surjit Singh appellant. The dying declaration has thus to be excluded altogether from consideration in be far as the criminal liability of Surjit Singh appellant has been made to rest on its basis.

24. The trial Court has not taken correct view in relying upon the evidence of these two witnesses as to the dying declaration having been made by Hardial Singh and the confessional statement by Bur jit Singh. It was pointed out to the trial Court that depositions of there witnesses were full of material discrepancies and consequently both the dying declaration and the confession bad to be eliminated from the prosecution case. The trial Court disposed of the point raised in a cryptic manner by saying that there is no force in it, without applying its mind to the details of contradictions specifically brought out in course of cross-examination of these two witnesses.

25. Now I come to the recoveries. After the arrest of the appellant, shirt Exhibit P.Ws. was removed from the person of Surjit Singh, It was found to be stained with blood. On the same day of arrest recovery of gandasa, Exhibit P. 1 and Pyjama Exhibit P. 9, both said to be stained with blood was made in pursuance-of disclosure statement Exhibit P. J. made by the appellant. Recovery memo drawn up by the Investigation Officer in respect of these articles is Exhibit P. E. The attesting witnesses of these two documents are Gurdev Singh P.W. 9 Punch of village Mahal Kalan and Hari Ram also resident of village Mahal Kalan. According to the prosecution, gandasa Exhibit P. 1 and Pyjama Exhibit P. 9 were recovered from underneath fodder lying in a looked room. The key of the look was supplied to the police by the mother of the appellant.

26. Ex-facie, it looks highly improbable that the appellant will continue wearing bloodstained Shirt Exhibit P. 8, which is claimed by the prosecution to hare been on his person at the time he inflicted gandasa blows to Gurdial Singh deceased and would choose to remove only blood attained Pyjama Exhibit P. 9 from his

person and keep it along with gandasa Exhibit P. 1 which is said to be the weapon with which the injuries on the person of Gurdial Singh deceased were said to-have been caused. It is equally surprising that no respectable witnesses from village Kurar were produced. Although the occurrence took place in the house of the appellant, the recoveries of the above said two articles were made from a room in his house. The investigation had been going on in village Knrar, yet no respectable person came forward to be a witness to the recoveries thus made and no resident of that village has attested the disclosure statement Exhibit P.J. and the recovery memo Exhibit P. K. It may be noticed that there exists a Panchayat in the village and there could be no dearth of Panches apart from a Sarpanch to join the investigation at the time of arrest of the appellant when disclosure statement was made by him and the-above articles were recovered from the person and the room of the house of the appellant. As indicated above, Gurdev Singh is a Panch of Mabal Kalan, the place where police station is situate and which is at a distance of five miles from village Kurar. It appears that Mangat Rai, SHO exploited his influence with the local Fanch at Mahal Kalan namely Gurdev Singh and secured his service for the-purpose. It is equally strange that as usual with the prosecution in the present case, they have altogether dropped from production in Court Hari Ram the second attesting witness, who again is not a resident of Tillage Kurar but resident of Mahal Kalan. The recoveries are thus padding up by the police, With the aid of these recoveries, the police have tried to make up the deficiency caused by inherent weaknesses of the prosecution case.

27. Lastly it was contended by the learned Counsel for the appellant that considering the nature of the injuries on the person of Gurdial Singh, the medical evidence is quite consistent with the hypothesis of the injuries having been caused either with the gandasa or with the broken fragments and splinters of the gun. He also urged that the latter cause of injuries was more probable than the injuries having been inflicted with gandasa blow. In course of cross-examination after the transfer of statement under Section 509, Code of Criminal Procedure, made by Dr. Des Raj Dua before the Committing Court, he states that it was possible that one or two injuries like injuries Nos. 1, 2 and 3 on the person of Gurdial Singh may be caused to the person who may have tired the cartridge from the left barrel of his gun resulting in the burst of the left barrel. He also says that ordinarily there can be

expected some lacerated wounds along with these out wounds if the injuries are caused in this manner. If according to the medical evidence, the injuries on the person of the deceased could be caused as a result of the burst of the barrel of the gun Ex. P. I, it is quite consistent with the hypothesis that the injuries were caused as such and not with gandasas blows by the appellant. The medical evidence as given in the case does suggest that one or more of the injuries out of injuries 1, 2 and 8 might have been caused consequent on bursting of the gun by striking of the fragments or splinters against the body of Gurdial Singh deceased.

28. I have already discussed that the investigation by the police in this case is tainted and full of garbled version subjected to improvements from the stage of investigation to the stage of trial. The police chose to introduce, more than three weeks after the occurrence, here eye-witnesses namely Natha Singh, Kehar Singh and Ghumand Singh P.Ws., whose names were never referred to in the first information report. They were examined more than three weeks after the occurrence. Be. cover memo Exhibit P.K. and disclosure statement Exhibit P.J. attested by Gurdev Singh, P.W. and Hari Ram have also been discussed above. There is no reason why the police should not have joined local respectable of village kurar where the occurrence took place and should have chosen to import both the attesting witnesses from a different village of Mahal Kalan. Large number of witnesses not less than half a dozen material to the prosecution in so far as their place and importance in the texture of the prosecution case goes, having been relied upon by the prosecution were given a go-by when they were to be examined before the trial Court. The witnesses given up cannot be described as additional or unnecessary. On the other hand for the prosecution case they had indispensable importance and should have, to enable the Court to ascertain the truth and in the interest of justice, been produced before trial Court.

29. It is fit case in which the benefit of doubt should be given to Surjit Singh appellants. The appeal is, therefore, allowed and the appellant acquitted.

**Bal Raj Tuli, J.**

30. I agree.

