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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-D-146-DBA-2005 (O&M)

Date of decision : 25.07.2025

State of Haryana

... Appellant

Versus

Deepak Kumar

... Respondent

**CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

Present:- Mr. Yuvraj Shandilya, AAG, Haryana.

H.S. Grewal, J.

1. This appeal has been preferred by the State of Haryana against the judgment dated 12.04.2004 passed by the learned Additional Sessions Judge, Panipat in case FIR No.135 dated 25.02.2003, registered under Sections 328/302 IPC at Police Station City Panipat whereby the respondent-accused has been acquitted of the charges levelled against him by giving him the benefit of doubt

2. The case of the prosecution is that on 25.02.2003, a V.T. message was received in the Police Station regarding the admission of injured Satish Kumar in the General Hospital, Panipat. Head Constable Rameshwar Dutt reached there and after obtaining the medical opinion of the attending Doctor, he recorded the statement of the injured- Satish Kumar, who had stated that he is working as a Barber while his brother Krishan is running a barber shop at Tehsil Camp, Panipat and is also residing as a tenant in the house of his

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maternal uncle, namely, Om Parkash. He had got recorded the statement to the effect that his brother Krishan had gone to visit his in-laws and he was present in the house alongwith his maternal uncle's sons, namely, Deepak and Sushil. In the night at about 11.00 P.M., Deepak had offered him something in the glass and asked him to drink it as it is liquor. However, after consuming the same, he started vomiting, his condition deteriorated and it was accused-Deepak, who had brought him to the Hospital. On the basis of this statement, a case under Section 328 of the Indian Penal Code was registered. Thereafter, Head Constable Rameshwar Dutt had received medical ruka regarding the death of Satish Kumar and consequently, Section 304 of the Indian Penal Code was added. Sub Inspector Zile Singh conducted the proceedings u/s 174 Cr.P.C. and recorded the statements of the witnesses u/s 161 Cr.P.C. He had also prepared the site plan of the place of occurrence. A plastic bottle containing some poisonous substance was also taken into possession from the spot. The postmortem of the deceased was conducted and the cause of death as per report of the Chemical Examiner was *due to consumption of Organo Phosphorous Pesticide*. The case was consequently converted into Section 302 of the Indian Penal Code. The accused-Deepak was arrested and after completion of necessary investigation, the challan was presented in the Court and the accused/respondent was charge sheeted under Sections 302 & 328 IPC to which he pleaded not guilty and claimed trial.

3. Learned State counsel submits that the trial court had erred in acquitting the respondent although there was sufficient material on record to prove his guilt. Although the prosecution had presented supporting evidence including dying declaration but the trial court failed to appreciate the

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testimonies of the witnesses and the recoveries made during the investigation and therefore, learned State counsel submits that the judgment of acquittal is liable to be set aside.

4. We have heard learned counsel for the State and have carefully perused the material available on record.

5. In order to prove its case, the prosecution had examined as many as 12 prosecution witnesses. PW1 Krishan, who is brother of deceased Satish Kumar, had identified the dead body of his brother in the Civil Hospital. He was present during inquest proceedings and his signatures were obtained on the report Ex.PA.

6. Sushil, who is the cousin of the deceased-Satish Kumar and real brother of respondent was examined as PW-2 and was declared hostile. He had deposed that respondent was neither present at the house of Om Parkash i.e. place of occurrence on the night of the incident nor he administered any poisonous substance to the deceased by mixing it with liquor.

7. PW3 Dr. K.L.Chopra, Medical Officer, who had conducted the postmortem examination on the dead body of Satish Kumar, had deposed that there were no external injuries on the person of the deceased. The other internal body parts such as - Stomach, part of lungs, heart, liver spleen, kidneys and blood were sent for chemical examination and as per the report of Chemical Examiner, the cause of death was opined as poisoning *due to organo phosphorous compound/pesticide*.

8. PW4 Head Constable Siri Krishan had apprised the link evidence with regard to attestation of the recovery memo Ex.PE vide which seal, sample seal and a parcel containing viscera etc. were taken into possession.

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9. PW5 Dr. Shiv Kumar had deposed that he was the attending doctor and had made endorsement to the police regarding the fitness of the patient to render statement before police. He also gave certificate Ex.PH/2 to the effect that the patient remained fit while making statement.

10. PW6 ASI Rameshwar, PW7 Head Constable Dharam Pal and PW8 Constable Chand Singh, were the formal witnesses and had apprised the link evidence.

11. PW9 Sub Inspector Zile Singh, IO of the case had conducted investigation of the case and had recorded formal FIR Ex.PJ/2 on receipt of complaint Ex.PJ. He had collected ruka Ex.PH/3 regarding the death of Satish Kumar from Head Constable Rameshwar Dutt. He conducted the proceedings under Section 174 Cr.P.C. and proved the inquest report Ex.PA. He prepared rough site plan of the place of occurrence Ex.PM, took into possession a plastic bottle and one glass which was sealed into the parcel with the seal of 'Zs'. He also recorded the statement of the witnesses under Section 161 Cr.P.C. and took into possession postmortem report Ex.PC. After completing the investigation, he prepared the report under Section 173 Cr.P.C.

12. PW10 Constable Jagbir Singh, Draftsman had prepared scaled site plan Ex.PW10/A. PW11 Head Constable Krishan Chand and PW12 Anil Kumar, were formal witnesses and had tendered their affidavits Ex.PW11/A and Ex.PW12/A respectively.

13. After closing the prosecution evidence, the statement of the accused/respondent under Section 313 Cr.P.C. was recorded wherein he had denied all the prosecution allegations and also pleaded ignorance regarding the investigation of the case. He had specifically stated that at the time of

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occurrence, he was not present at Panipat. In fact, he had gone to village Uchana Khurd on 22.02.2003 and had come back on 25.02.2003 where he stayed with Krishan son of Gopi Ram who is real brother of Satish Kumar(deceased).

14. In defence, DW1 Parkashi, who is the mother of deceased Satish Kumar, had stepped into the witness box and had deposed that when the incident took place, the accused-Deepak was not present at Panipat. He was present with her at Village Uchana Khurd. After receiving the information at about 10/11 AM on 25.2.2003, she had reached the Hospital where Satish Kumar was admitted. Her son was still alive but he was unable to speak. She had stated that the police had obtained the thumb impressions of her son as he was unconscious and nothing was explained to him. She had stated that Deepak is innocent and had not murdered her son.

15. After considering the statements of all the witnesses and taking into account the evidence led by both the sides, the trial Court had observed that the prosecution had failed to prove its case and the uncorroborated dying declaration would not be a sole ground to hold the accused/respondent guilty and the respondent was acquitted of the charges under Sections 302 & 328 IPC by giving him the benefit of doubt.

16. It is manifest that the prosecution has merely relied upon the alleged **dying declaration** (Ex. PJ) made by the deceased Satish Kumar and recorded by Head Constable Rameshwar Dutt. However, the credibility of this dying declaration is undermined because it was not recorded by a Magistrate, despite there being ample time and opportunity to do so. No explanation has been provided as to why a Magistrate was not called. The failure to involve a

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Magistrate in recording such a crucial piece of evidence casts serious doubt on its reliability. Moreover, the dying declaration was not recorded in a question and answer format, which is a crucial safeguard to ensure clarity. Although the deceased was educated up to 8th standard and could read and write, his thumb impression was taken rather than his signature. The testimony of DW1 Parkashi (mother of the deceased) raises further concerns as she had stated that her son was unconscious when his thumb impression was taken and the contents were not explained to him.

17. PW1 Krishan, the real brother of the deceased, stated that the accused Deepak was not present in Panipat during the relevant period but was present with him at Village Uchana Khurd from 22.02.2003 to 25.02.2003.

18. PW2 Sushil, who is a cousin of the deceased, turned hostile and categorically denied the presence of the accused-Deepak at the place of incident. He further stated that Deepak did not administer any poisonous substance.

19. PW5 Dr. Shiv Kumar, who had attested the dying declaration, had admitted during cross-examination that the deceased told him that he had consumed machine oil and not poison. He also confirmed that such oil can be consumed accidentally.

20. DW1 Parkashi, who is the mother of deceased, had supported the defence version and confirmed that the respondent-Deepak was not responsible for her son's death.

21. The prosecution had also failed to establish any motive for the crime especially since the deceased and the accused were relatives and there was no dispute between them over ancestral property.

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22. Furthermore, the Forensic Science Laboratory report (Ex.PF) mentions that a smell of poison was detected in the viscera and the cause of death was stated to be consumption of a poisonous substance. The prosecution claims that this substance was given to the deceased secretly or by deception. However, organophosphorus poison has a strong and pungent smell, making it unlikely that it could be given to someone without their knowledge or by mistake.

23. Keeping in view the above inconsistencies and the absence of reliable corroborative evidence, we find that the trial court was justified in granting the benefit of doubt to the accused. The law is well settled that in a case based on a sole dying declaration, such a declaration must be wholly reliable and free from suspicion. In the present case, the declaration is surrounded by doubtful circumstances and is not corroborated by other evidence on record.

24. In view of the above, we do not find any infirmity or illegality in the judgment of the trial Court acquitting the respondent by giving him the benefit of doubt and the appeal is, hereby, dismissed.

25. Pending application, if any, shall stand disposed of accordingly.

(MANJARI NEHRU KAUL)
JUDGE

(H.S.GREWAL)
JUDGE

25.07.2025
A.Kaundal

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No