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September 17.

BAKHSHISH SINGH

v.

THE STATE OF PUNJAB

(B. P. SINHA, P. GOVINDA MENON and J. L. KAPUR JJ).

Criminal law—Dying declaration—Scope of—Recording statement in Urdu, while deceased spoke in Punjabi—Reliability—Discretion of the prosecutor in calling witnesses—Indian Evidence Act, 1872 (*I of* 1872), *s.* 22 (1).

The appellant was convicted for murder on the basis inter alia of the dying declaration of the deceased. The Sessions Court rejected it on the ground that though the deceased gave the narrative of events in Punjabi the statement was taken down in Urdu.

Held, that in view of the fact that in the Punjab the language used in the subordinate courts and by the Police for recording statements has always been Urdu, the recording of dying declarations in Urdu cannot be a ground for saying that the statement does not correctly reproduce what was stated by the declarant. Accordingly, the dying declaration should not have been rejected.

The dying declaration in the instant case was a long document containing a narrative of a large number of incidents which happened before the actual assault, which was more in the nature of the First Information Report :—

Held, that the object of a dying declaration being to get from the person making the statement the cause of his death or the circumstances of the transaction which resulted in his death, persons who record such declaration should not include in that statement details which are not relevant under s. 32(1) of the Indian Evidence Act, 1872, unless they are necessary to make the statement coherent or complete.

It is desirable that rules should be framed for the guidance of persons recording dying declarations, and included in the Rules and Orders made by the High Court.

Where a person who was stated in the dying declaration to have witnessed the occurrence was not examined by the prosecution at the trial on the ground that he had been won over and it was contended that this was a serious omission and an adverse inference should be drawn :—

Held, that there was no obligation on the part of the prosecution to examine this witness and that the court would not interfere with the discretion of the prosecutor.

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Abdul Mohammad v. *Attorney General of Palestine*, A.I.R. 1945 P. C. 42, *Stephen Servaratne* v. *The King*, A. I. R. 1936 P. C. 298, and *Habeeb Mohammed* v. *The State of Hyderabad*, 1954 S.C.R. 475, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 205 of 1956.

Appeal by special leave from the judgment and order dated the 30th November, 1955, of the Punjab High Court in Criminal Appeal No. 282 of 1955, arising out of the judgment and order dated the 15th February, 1955, of the Court of the Additional Sessions Judge at Amritsar in Sessions Case No. 64 of Trial No. 6 of 1955.

R. L. Anand, and *S. N. Anand*, for the appellant.

Kartar Singh Chawla, Assistant Advocate-General, for the State of Punjab and *T. M. Sen*, for the respondent.

1957. September 17. The following Judgment of the Court was delivered by

KAPUR J.—This is an appeal against the judgment and order of the Punjab High Court reversing an order of acquittal by the Additional Sessions Judge, Amritsar. The appellant Bakshish Singh and his brother Gurbakshi Singh were tried for an offence under ss. 302/34 of the Indian Penal Code but were acquitted. Against this judgment the State took an appeal to the High Court. As Gurbaksh Singh was said to be absconding the appeal against the appellant alone was heard and decided by the High Court.

On August 1, 1954, sometime between 7 and 8 p.m. Bachhinder Singh son of Bhagwan Singh of village Kairon was shot in the lane in front of their house and as a result of bullet injuries he died the next day in the hospital at Amritsar. He was at the time of shooting accompanied by his younger brother Narvel Singh, a boy of 13, and after getting injured Bachhinder Singh and his brother returned to the house. Bhagwan Singh states that he was informed of the identity of the assailants by Bachhinder Singh who was, at his own request, carried from the house to the hospital at Kairon but as the injuries were serious

the doctor at Kairon rendered "first aid" and advised the father to take his son to V.J. Hospital at Amritsar. Bhagwan Singh then took Bachhinder Singh to the Railway Station but before the arrival of the train he went to the Police Post at Kairon which is at a distance of about 100 yds. from the Railway Station in order to make a report. As the Assistant Sub Inspector was away at Sarhali, he returned to the Railway Station and took his son to the Amritsar hospital by the train leaving Kairon at 9-47 p.m. Bhagwan Singh was accompanied at that time by his younger son, Narvel Singh, P.W. 12, and by Shamir Singh, Inder Singh and Naringan Singh. Soon after their arrival at the Amritsar hospital Bachhinder Singh was examined by Dr. Kanwal Kishore, P.W. 2, at 11-45 p.m. and finding the injury to be of a serious nature the doctor sent information to the Police as a result of which Head Constable Maya Ram Sharma, P.W. 4, arrived at the hospital sometime after midnight and, in the presence of Dr. Mahavir Sud, P.W. 17, recorded the dying declaration of Bachhinder Singh, Exhibit P-H, after getting a certificate from the doctor that the injured person was in a fit state to make a statement. This statement is the basis of the First Information Report, Exhibit P-H. 1, which is a copy of Exhibit P-H. This report was recorded on August 2, 1954, at 7-50 a.m. at Police Station Sarhali which, we were told, is about 20 miles or so away from Amritsar. In the early hours of the morning Dr. K.C. Saronwala P.W. 1 performed an operation on Bachhinder Singh and extracted a bullet from the left abdominal wall which was handed over to the Police. But Bachhinder Singh died at 1-35 p.m. on August 2, 1954. An inquest report Exhibit P-K was prepared at 2-30 p.m. by Head Constable Maya Ram, P.W. 4.

The case for the prosecution rests on the dying declaration of Bachhinder Singh, Ex. P-H, and on the statement of Narvel Singh, P.W. 12, who was an eye witness to the occurrence and on the statement made by the deceased to his father as to his assailant as soon as he (Bachhinder Singh) was brought to the house after receiving the injuries. The prosecution

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also relied on an extra-judicial confession made to Teja Singh, P.W. 13, but both the courts below have rejected this piece of evidence and it is unnecessary to consider it any further.

The learned Additional Sessions Judge rejected the dying declaration made by Bachhinder Singh on two grounds; that at the time of recording the dying declaration not only Bhagwan Singh, the father, and Narvel Singh, the brother of Bachhinder Singh, were

"present but the police officer had actually made enquiries from them about the occurrence before he proceeded to record the dying declaration of Bachhinder Singh deceased. Head Constable Maya Ram, P.W. 4, has admitted in cross-examination that Bachhinder Singh gave his statement in Punjabi but the form and the detailed account given in the statement, Exhibit P-H, would show that it was not the product of Bachhinder Singh's creation alone but it was a 'touched up' declaration of the deceased. It is laid down in 1954 Lahore 805 that a dying declaration which records the very words of the dying man unassisted by interested persons is most valuable evidence but the value of a dying declaration altogether disappears when parts of it had obviously been supplied to the dead man by other persons whether interested or Police Officer. As the dying declaration, Exhibit P-H, in this case cannot be regarded as the creation of Bachhinder Singh deceased, no reliance whatsoever can be placed on it and it could not form the basis for the conviction of any of the accused."

The learned Judges of the High Court did not agree with this criticism. Bishan Narain J., who delivered the main judgment, said:

"This criticism appears to me to be without any substance. The statement was recorded by Head Constable Maya Ram who was posted in Amritsar and was not posted in village Kairon and therefore had no knowledge of the parties nor had any interest in them. Thus there was no reason why he should record the statement falsely or irregularly. Throughout the time that the statement was recorded Dr. Mahavir Sud of the Amritsar hospital was present. He has appeared

as P.W. 17 in the present case. He is a respectable and disinterested person and he is positive in his testimony before the court that the statement was made by the deceased voluntarily and that there was nobody present to prompt him. He has further stated that he did not allow any person to be present at that time. There is absolutely no reason for doubting the correctness of this statement.....

.....

Coming to the other objection of the Additional Sessions Judge, it is difficult to understand the significance attached by him to the fact that the deceased spoke in Punjabi while the statement was recorded by Maya Ram in Urdu. The court language is Urdu and the Police generally records statements in Urdu even if they are made in the Punjabi language. I have no doubt in my mind that the dying declaration recorded in the present case is a voluntary one and was made without any prompting from anybody."

The High Court in our opinion correctly appreciated the evidence and was right in accepting the authenticity of the dying declaration. The statement of Maya Ram, P.W. 4, does not support the criticism of the learned trial judge. And he had read more in the statement of Narvel Singh, P.W. 12, made before the Committing Magistrate, than it really contains. It is unfortunate that the criticism has proceeded on the English record of the Magistrate's Court which does not appear to have been correctly recorded as the Urdu record is in many parts materially different. The fact that the statement contained in Exhibit P-H was made without any prompting is also supported by the testimony of a wholly disinterested witness, Dr. Mahavir Sud, whose statement made before the Committing Magistrate was transferred at the trial stage under s. 33 of the Evidence Act. He stated:

"The statement of Bachhinder Singh was voluntary and there was none to prompt it. I did not allow any attendant on Bachhinder Singh then."

In cross-examination he made it clearer that there was no relation or friend of the deceased person when

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the statement was recorded. Some criticism was levelled against the dying declaration based on a sentence in the statement of Dr. Mahavir Sud P.W. 17 that the Head Constable put certain questions to clarify the ambiguities and these questions and answers do not find place in Exhibit P-H, the record of the dying declaration. No such question was put to the Head Constable who recorded the statement. The Head Constable stated that the dying declaration was written at the declarant's own dictation without any addition or omission. In cross-examination nothing was asked as to any questions having been put to the deceased by this witness. Therein the witness also stated:

"It is not correct that I first made the inquiry from the father of the deceased and other persons before I proceeded to record his statement".

He also made it clear that before he allowed the statement to be made he satisfied himself that Bachhinder Singh was in a fit state to make the statement. We are of the opinion that the High Court rightly held the dying declaration to be a statement made by the deceased unaided by any outside agency and without prompting by anybody. The declarant was free from any outside influence in making his statement.

Another reason given by the Additional Sessions Judge for rejecting the dying declaration was that the deceased gave the narrative of events in Punjabi and the statement was taken down in Urdu. In the Punjab that is how the dying declarations are taken down and that has been so ever since the courts were established and judicial authority has never held that to be an infirmity in dying declarations making them inefficacious. As a matter of fact in the Punjab the language used in the subordinate courts and that employed by the Police for recording of statements has always been Urdu and the recording of the dying declaration in Urdu cannot be a ground for saying that the statement does not correctly reproduce what was stated by the declarant. This, in our opinion, was a wholly inadequate reason for rejecting the dying declaration.

Exhibit P-H, the dying declaration, is a long document and is a narrative of a large number of incidents which happened before the actual assault. Such long statements which are more in the nature of First Information Reports than recital of the cause of death or circumstances resulting in it are likely to give the impression of their being not genuine or not having been made unaided and without prompting. The dying declaration is the statement 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 and such details which fall outside the ambit of this are not strictly within the permissible limits laid down by s. 32(1) of the Evidence Act and unless absolutely necessary to make a statement coherent or complete should not be included in the statement. We are informed that, in the Punjab, no rules have been made in regard to the recording of dying declarations which, we are told, has been done in several other States. We think it would be desirable if some such rules were framed and included in the Rules and Orders made by the High Court for the guidance of persons recording dying declarations. Of course the authenticity of the dying declaration has to be judged in accordance with the circumstances of each case depending upon many factors which would vary with each case but those recording such statements would be well advised to keep in view the fact that the object of a dying declaration is to get from the person making the statement the cause of death or the circumstances of the transaction which resulted in death.

The admissibility of the statement of Dr. Mahavir Sud was assailed by counsel for the appellant on the ground that the conditions laid down for the admissibility of statements under s. 33 has not been complied with and several decided cases were relied upon. This question does not seem to have been raised at any previous stage of the proceedings, neither before the Additional Sessions Judge not before the High Court, and this criticism seems to be without much substance. At the trial the prosecution produced Foot Constable Kartar Singh, P.W. 14, who deposed that he took the

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summons for this witness to the hospital where he was previously employed and the Superintendent of the hospital made a report that he was no longer in service and it was not known where he was. This witness also stated that "from the inquiries made by me, I learnt that his whereabouts are not known." In cross-examination he again stated that he made inquiries but he could not discover the whereabouts of this witness. After the statement of Kartar Singh, P.W. 14, the Public Prosecutor made a statement that Dr. Mahavir Sud's whereabouts were not known and prayed that his statement be transferred under s. 33 of the Evidence Act on the ground that there was no likelihood of the witness being available without unreasonable delay and expense and no objection is shown to have been taken by the defence at that stage. Thereupon the learned trial judge ordered the statement to be transferred under s. 33 of the Evidence Act. He might have been well advised to give fuller reasons for making the order transferring the statement. It appears to us that the learned judge transferred it on the ground of unreasonable delay and exspense and we do not find any infirmity in this order of transfer.

Counsel then contended that for the efficacy of the dying declaration, corroboration was essential. In the present case there is the statement of Narvel Singh, P.W. 12, who is an eye witness to the occurrence which is relied upon by the prosecution as corroboration of the dying declaration. The learned Additional Sessions Judge rejected the testimony of this witness on the ground that there were discrepancies between his statement made in the commitment proceedings and at the trial. We have already pointed out that the cross-examination of this witness was based on somewhat inaccurate English record of his statement in the Committing Court, the statement in Urdu record puts a different complexion on it. But even if this were not so the High Court, in our opinion, has taken a correct view of the testimony of this witness and has accepted it for cogent reasons. Besides Narvel Singh there is the statement of Bhagwan Singh, the father, who stated that as soon as Bachhinder Singh

came into the house he mentioned the names of his assailants to him. The incident took place just outside the house of Bhagwan Singh and it was never disputed that he was present in the house when the incident took place. It is only natural that as soon as the injured son came into the house he would be asked as to who had injured him or would himself state who had caused him the injury. He was in his senses at that time and no reason has been suggested why the son would not disclose to his father the names of his assailants. There is no adequate reason for rejecting this portion of the testimony of Bhagwan Singh and merely because the dying declaration does not mention it, is hardly a reason for not accepting it.

The non-production of Sucha Singh who is stated in the dying declaration and in the statement of Narvel Singh, P.W. 12, to have witnessed the occurrence was commented upon by counsel as a very serious omission. The public Prosecutor stated at the trial that he was giving up Sucha Singh as he had been won over. Therefore, if produced, Sucha Singh would have been no better than a suborned witness. He was not a witness "essential to the unfolding of the narrative on which the prosecution was based" and if examined the result would have been confusion, because the prosecution would have automatically proceeded to discredit him by cross-examination. No oblique reason for his non-production was alleged, least of all proved. There was, therefore, no obligation on the part of the prosecution to examine this witness: See *Abdul Mohammad* v. *Attorney General of Palestine* (1) *Stephen Servaratne* v. *The King* (2); *Habeeb Mohammad* v. *The State of Hyderabad* (3). In the circumstances the court would not interfere with the discretion of the prosecutor as to what witnesses should be called for the prosecution and no adverse inference under s. 114 of the Evidence Act can be drawn against the State.

The High Court, in our opinion, have kept in view correct principles governing appeals against acquittals and have rightly applied them to the circumstances

(1) A.I.R. 1945 P.C 42.
(2) A.I.R. 1936 P.C. 289.
(3) [1954] S.C.R. 475.

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of this case. The erroneous view that the learned Sessions Judge took of the dying declaration and of the oral evidence were compelling enough reasons for the reversal of that judgment.

We therefore dismiss this appeal.

Appeal dismissed.

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MANGOO SINGH

v.

THE ELECTION TRIBUNAL, BAREILLY AND OTHERS

(BHAGWATI, S.K. DAS and GAJENDRAGADKAR, JJ.)

Election dispute—Municipal election—Disqualification for membership—Arrears of tax—Payment after nomination but before poll—"For being chosen as", "Demand", meaning of—U. P. Municipalities Act, 1916 (*U. P. II of* 1916), *ss.* 13-*D, cl.* (g), 166, 168—*U. P. Municipalities* (*Condcuct of Election of Members*) *Order,* 1953, *para.* 22(2).

The appellant was elected to the Municipal Board under the U. P. Municipalities Act, 1916. He was in arrears in the payment of Municipal tax in excess of one year's demand, to which s. 166 of the Act applied, at the time of the filing of nominations, but made the payment before the date of the poll. Under section 13D, cl. (g) of the Act "a person shall be disqualified for being chosen as, and for being a member of a board if he is in arrears in the payment of Municipal tax or other dues in excess of one year's demand to which s. 166 applies, provided that the disqualification shall cease as soon as the arrears are paid." On an election petition filed by a defeated candidate, the election was set aside by the Election Tribunal on the ground that the appellant was not entitled to the benefit of the proviso to s. 13-D, cl. (g) of the Act. It was contended for the appellant that the relevant date for the operation of the disqualification was the date of the poll and that in any case, he did not come within the mischief of the disqualification clause in that section, as a bill for payment of the tax was not presented to him, nor a notice of demand served on him under s. 168.

Held : (1) that if a person is disqualified on the date of nomination, he cannot be chosen as a candidate within the meaning of s. 13-D of the U.P. Municipalities Act, 1916, because the disqualification attaches to him on that date and the process of choosing consist of a series of steps starting with nomination and ending with the announcement of the election. The wiping off of the