

Hari Kishan Vs. the State

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Court : Punjab and Haryana

Decided On : May-17-1954

Reported in : AIR1955P& H25; 1955CriLJ327

Judge : Harnam Singh and; Kapur, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 342; [Evidence Act, 1872](#) - Sections 32; [Indian Penal Code \(IPC\), 1860](#) - Sections 302

Appeal No. : Criminal Appeal No. 71 of 1954

Appellant : Hari Kishan

Respondent : The State

Advocate for Def. : Har Parshad, Asst. Adv. General

Advocate for Pet/Ap. : Party in person

Disposition : Appeal dismissed

Judgement :

Harnam Singh, J.

1. In Sessions Trial No. 44 of 1953 the Additional Sessions Judge has convicted Hari Kishan under Section 302, Penal Code and sentenced him to suffer transportation for life. Hari Kishan appeals from his conviction and the sentence

imposed upon him.

2. Briefly summarised, the facts of the prosecution case are these; Hari Kishan who was employed by Shib Narain resided in the 'chaubara' of the shop of Shib Narain in Kath Mandi, Rohtak town. Suspecting that 'Shrimati' Kamla had contacted illicit intimacy with Shib Narain, Hari Kishan took up residence in 'Mohalla' Sarai, Rohtak town, in the middle of April, 1953. Differences having arisen between 'Shrimati' Kamla and Hari Kishan, 'Shrimati' Kamla went to live with her father Piara Lal P. W. 12 in the middle of June, 1953. On 20-6-1953 Piara Lal P. W. 12 seni 'Shrimati' Kamla with Hari Kishan to Mohalla Sarai. 'Shrimati' Kamla, however, returned to the house of Piara Lal on that very day saying that she was afraid lest Hari Kishan might kill her. On the 27-6-1953 at about 2 p.m. Hari Kishan going to the house of Piara Lal gave two blows to Shrimati Kamla with 'Chaursi', Exhibit P. 1, one on the back and the other on the belly. Chhotu P. W. 8, Hari Ram P. W. 9, 'Shrimati' Parbati P. W. 10 and Shrimati Ankaur P. W. 11 saw the assault on 'Shrimati' Kamla.

3. Going to the police station Chhotu P. W. 8 made the report, Exhibit P.A, at 2.30 p.m. on the 27-6-1953, distance between the police station and the place of occurrence being one mile.

4. Assistant Sub-Inspector Kundan Lal arrested Hari Kishan on 27-8-1953. In making the arrest Assistant Sub-Inspector Kundan Lal removed bloodstained 'dhoti', Ex. P-5, and shirt. Ex. P-6, from the person of Hari Kishan. On interrogation Hari Kishan gave information contained in the memo, Ex. P-N, that he had placed 'chaursi' in heap of manure on the railway road, Prom that place, bloodstained chaursi, Ex. P-1, was recovered. 'Shrimati' Kamla died on 28-6-1953.

5. From the report of the Imperial Serologist, Ex. P-X, it is plain that 'chaursi', Ex. P-1, 'dhoti' Ex. p-5, and shirt, Ex. P-6, bore stains of human blood.

6. Doctor T. Section Gill P. W. 2 performed 'post mortem' examination on the body of 'Shrimati' Kamla-on 28-6-1953 at 6-30 p.m. In that examination Doctor T. Section Gill found two incised wounds, one on the back of chest and the other on the belly. In the opinion of Doctor T. Section Gill death, of 'Shrimati' Kainla was the

result of shock and rupture of the bowel caused by the incised wound on the belly.

7. Sub-Inspector Mit Singh P. W. 18 recorded the dying declaration of 'Shrimati' Kamla on 27-6-1953 at 4.30 p.m.

8. On 28-6-1953 'Shri' Jagat Singh Magistrate recorded the dying declaration of 'Shrimati' Kamla, Ex. P-K.

9. Chaudhry Dharam Singh Magistrate recorded the confessional statement of Hari Kishan, Ex. P-H/1 on 29-6-1953 at about 9 a.m.

10. In convicting the appellant the Sessions. Judge has based his judgment on the confessional statement, Ex. P-H/1, the dying declarations, Exs. P-B and P-K and the evidence given by Chhotu, Hari Ram, 'Shrimati' Parbati, 'Shrimati' Ankaur and Piara Lal.

11. In dealing with the matter I have no doubt that the dying declarations, Ex. P-B and P-K ought not to have been used in determining the guilt of the appellant. Neither in the Court of Commitment nor in the Court of Session were the dying declarations put to Hari Kishan in examination under Section 342, Criminal P. C.

12. But, it is said that under Section 342, Criminal P. C. it was not necessary to question the accused to explain the evidence furnished by the dying declaration, Exs. P-B and P-K.

13. Section 342, Criminal P. C. provides 'inter alia' that for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him the Court 'shall' question the accused generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

14. Section 32(1), Evidence Act makes relevant statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death. Indisputably, when evidence of dying declaration is given at the trial the credit of the declarant may be impeached or confirmed in the same way as that of a witness examined in Court. In the present case it was open to Hari Kishan to plead 'inter alia' that 'Shrimati' Kamla was after the receipt of injuries wholly

unconscious till death or that the thumb-impression purporting to be the thumb-impression of 'Shrimati' Kamla on the dying declarations was 'in fact not' the thumb-impression of 'Shrimati' Kamla.

15. For the foregoing reasons, I have in determining the guilt of the appellant excluded from consideration dying declarations, Exs. P-B and P-K.

16. In the confessional statement, Exhibit P-H/1, Hari Kishan stated that 'Shrimati' Kamla had illicit connection with Shib Narain. Piara Lal P. W. 12, father of 'Shrimati' Kamla gave evidence :

'Hari Kishan accused was employed by Shibu and the accused lived in a room on the upper storey of the shop. I do not know if Kamla contacted illicit intimacy with Shibu. I do not know if Hari Kishan suspected his wife for illicit intimacy with Shibu. I heard that 'Shrimati' Kamla had illicit connection with somebody'.

17. In the Court of Session Chhotu P. W. 8 gave evidence that 'Shrimati' Kamla was reputed to be of loose character.

18. On the evidence given at the trial I find that the motive for the crime was that Hari Kishan thought that 'Shrimati' Kamla had illicit connection with Shib Narain. That, however, does not provide any justification for murder. In the cross-examination of the prosecution witnesses nothing was brought on the record to show that on 27-6-1953, 'Shrimati' Kamla was seen by the appellant with Shib Narain.

19. Chhotu P. W. 8, Hari Ram P. W. 9, 'Shrimati' Parbati P. W. 10 and 'Shrimati' Ankaur P. W. 11 gave evidence that they saw Hari Kishan giving blows to 'Shrimati' Kamla with 'Chaursi', Ex. P-1. As stated hereinbefore, there is no evidence to show that on 27-6-1953 'Shrimati' Kamla was seen by the accused with Shib Narain.

20. In Court 'Chaudhry' Dharam Singh gave evidence that when he recorded the confessional statement, Ex. P-H/1, no policeman was allowed to remain in Court and nobody could communicate with Hari Kishan from outside. From the evidence given by 'Chaudhry' Dharam Singh it is plain that in recording the confessional

statement, Exhibit P-H/1, he observed very faithfully the directions contained in Section 164, Criminal P. C. In the Court of Session Hari Kishan said :

'I did make a statement that I had gone to fetch my wife and I was insulted by her, and that I aimed a blow at Shibu which by chance hit Kamla.'

21. In examination under Section 342, Criminal P. C., Hari Kishan stated at the trial :

'I went to the house of my father-in-law Piara Lal to fetch my wife 'Shrimati' Kamla but she refused to come and abused me and threw a shoe at me. Just at that time Shibu came from inside the room of the house and gave me a fist blow. I picked up a 'chaursi' from that place and aimed a blow at Shibu in self-defence, which did not hit Shibu but struck Shrimati Kamla who was grappling with me.'

22. No evidence in defence was examined. On the present record I have no reason to doubt that Hari Kishan made the confessional statement. Ex. PH/1, or that that statement was voluntary.

23. In Sessions Trial No. 44 of 1953 evidence was given that the dhoti, Ex. P. 5, shirt, Ex. P. 6, and chaursi, Ex. P-I, bore stains of human blood. In the present case it is not disputed that the appellant had caused the death of Shrimati Kamla. Indeed, the question that arises for decision concerns the circumstances in which the appellant had caused the death of Shrimati Kamla. That being so, the existence of stains of human blood on the dhoti, shirt and chaursi cannot be regarded to be incompatible with the plea raised in defence.

24. Finding as I do that there does not appear to be any justification for the rejection of the evidence given by Chhotu, Hari Ram, Shrimati Parbati, Shrimati Ankaur, Piara Lal and Chaudhry Dharam Singh, I maintain the conviction of Hari Kishan under Section 302, Penal Code and the sentence imposed upon him.

25. In the result, Criminal Appeal No. 71 of 1954, fails and is dismissed in toto.

Kapur, J.

26. I agree.

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