

**Harish Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Mar-21-1990

**Reported in :** 41(1990)DLT42

**Judge :** Malik Sharief-ud-Din and; M.K. Chawla, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302; [Evidence Act, 1872](#) - Sections 32

**Appeal No. :** Criminal Appeal No. 47 of 1987

**Appellant :** Harish Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** Neelam Grover,; amices Curiae and; Usha Kumari, Adv

**Judgement :**

**M.K. Chawla, J.**

(1) On 1.6.1984, Shyam Lal was the duty constable at General Hospital, Shahdara. He set the ball of investigation rolling, by informing the police station Seema Puri at 4.50 P.M. about the admission of one Kiran aged about i9 years by her husband Harish, resident of Block No. K-4, Sunder Nagri, in a burnt condition. A.S.I. Swaran Singh (Public Witness -8) on receipt of this information made an entry in the D.D. Register and gave its copy to the A.S.I. Budh Ram (Public

Witness -3) for necessary action. He immediately came to the spot from where he came to know that the injured had been taken to J.P.N. Hospital. On reaching the hospital, he found Smt. Kiran in the burn ward of the hospital. The doctor on duty reported that she is in a fit condition to make the statement. The A.S.I, then recorded the statement of Smt. Kiran in Hindi translation of which is Ex. PW-3/B. It reads as under : -

'I reside at the aforesaid address. I was married to Harish Kumar r/o K-4, Sunder Nagri, Delhi about 7 months ago. Today at about 12, 0' Clock, my husband came to the house and enquired as to why I have not cooked the rice for him. I replied that I have kept the rice for boiling and then told him that he had no definite time to return home. On this, my husband gave beatings with a wooden roller (belan). He then poured kerosene oil on me and set my clothes on fire. He pushed me on the stove as a result of which I caught fire and received burn injuries.'

(2) This statement was attested by Dr. Ravi Shanker in whose presence it was recorded. Underneath the said statement, the investigation officer made his endorsement Ex. PW-3/C and sent the Ruqa to the Police Station, through constable Vipin Kumar, for the registration of the case.

(3) From the hospital, the investigating officer came to the spot and took into possession one stove of iron, a funnel (kupi) of plastic, a can containing some kerosene oil, one fry-pan containing some half prepared rice, one chunni, a stove pin, a burnt match stick, one match box, one broken karchhi, some broken pieces of bangles and one belan (Ex. P-1 to P-9) vide memo. Ex. PW-1/A. Thereafter, he prepared a site plan, got the scene of occurrence photographed, and completed all other formalities there and then.

(4) On the night between 2nd/3rd June, 1984, the investigating officer received an information that Smt. Kiran has died. He went to the mortuary and prepared the Inquest report Ex. PW-3/F. The case was then converted into Section 302 of the Indian Penal Code. During the course of investigation, Inspector Ram Chander, S.H.O. of Police Station Seema Puri recorded the statement of the various witnesses and on receipt of the report from C.F.S.L. submitted the challan for trial.

(5) During the trial, the prosecution examined as many as 15 witnesses, including the father and uncle of the deceased, Shri Mohan Lal, a neighbour who claimed to be an eye-witness, medical experts, besides many formal witnesses. The accused in his statement under section 313 Cr.P.O., denied his involvement altogether and pleaded ignorance of the incident. However, he did not examine any witness in his defense. The learned Addl. Sessions Judge mainly relied upon the dying declaration of Smt. Kiran, and with the help of supporting evidence, held the accused guilty of the offence u/s 302 Indian Penal Code . for intentionally committing the murder of his wife by setting her on fire and sentenced him to undergo rigorous imprisonment for life.

(6) The present appeal is directed against the order of his conviction and sentence passed by Additional Sessions Judge, Delhi, on 16th August, 1985. The appeal was filed through jail. Ms. Neelam Grover was appointed as amicus curiae. We have heard Ms. Grover at length and with her help gone through the carefully.

(7) As already observed earlier, the conviction of the accused has primarily been based on the dying declaration of Smt. Kiran which has been found to be a truthful version as to the cause of her death. It is well settled 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 to test 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.

(8) In this background, we have first to examine the authenticity of the dying declaration and to find out if it qualifies the test of truthfulness and reliability.

(9) A.S.I. Budh Ram (Public Witness -3) is the most important witness. He is investigating officer who recorded the statement of Smt. Kiran (Ex. PW-3/B). Before the start of the statement. Dr. Ravi Shanker under whose charge Smt. Kiran was made the endorsement on the M.L.C. that she is fit for statement. The endorsement is Ex.PW-10/C and Timed as 06.25 P.M. The statement Ex. PW3/B was recorded in the presence of Dr. Ravi Shankar. According to the Investigating

officer, at that time, there was no other person present except he and Dr. Ravi Shanker. The thumb impression of Smt. Kiran was obtained on her statement and thereafter Dr. Ravi Shankar not only identified the right thumb impression of Kiran but also made the endorsement that it was recorded in his presence. The time of his endorsement is 7 P.M. The signature of Dr. Ravi Shankar has been proved from the statement of Shri O.P. Shashicharan, Record Clerk, J.P.N. Hospital.

(10) The statement of A.S.I. Budh Ram has not been challenged in the cross-examination. The only suggestion to him is that the deceased did not make any statement and that he wrote the same of his own. The 1.0. has not only denied the suggestion but, to us, there appears to be no reason as to why he should record the statement of Kiran of his own without any purpose. There also appears to be no occasion for Dr. Ravi Shankar to make the endorsement underneath the statement of Kiran if she had not in fact made such a statement. They were not known to Smt. Kiran or the appellant from before and would not like to falsely implicate the appellant.

(11) Even this part of the case of the prosecution finds corroboration from and evidence of Mohan Lal (Public Witness -4). who is a resident of the same locality. He was known to both the parties. According to this witness, at about the same time, he had gone to the house of Kiran, where he noticed number of persons collected outside the house. When he entered the house, he saw Kiran burning and the accused standing nearby. In his presence, the accused came out of the house and put a bucket of water on the body of Kiran. He immediately then arranged a three-wheeler scooter and removed Kiran to the Shahdara General Hospital and then to J.P.N. Hospital, Along with Harish. On the way, Kiran told him the story as to how her husband had put her on fire. He further stated that at the time of the admission of Kiran in the hospital, Harish told the doctor on duty that Kiran had burnt herself accidentally.

(12) From the perusal of the case history ( PW-10/A), we find that on her admission, Kiran was conscious and coherent. She herself narrated the cause other burns to Dr. Ravi Shankar in these words :-

'Patient says that her husband poured kerosene over her and set her on fire by pushing her on a lighted kerosene stove due to some domestic quarrel.'

The endorsement of Dr. Ravi is PW-10/B and has been proved from the statement of Shashicharan Record Clerk.

(13) Dr. L.T. Ramani, who performed the post-mortem examination on the person of the deceased, opined that the burns on the person of Kiran were ante-mortem and were caused by fire. The death was due to shock resulting from burns. His statement is another piece of evidence corroborating the cause of death of Kiran.

(14) The contention of the learned counsel for the appellant is that it was a case of accidental fire, inasmuch as when Kiran was first brought to the General Hospital, Shahdara, she told the doctor that her clothes caught fire when she was cooking. In support of her contention. Miss Grover placed reliance on the evidence of Dr. D.K. Popli, who while undercross-examination. stated:-

'The patient had given me the history i.e. she had told me that she was burnt by stove while working and cooking.'

On the basis of this evidence, the contention of the learned counsel is that no reliance should be placed on the so-called dying declaration recorded later on.

(15) We are not in agreement with the learned counsel for the appellant. According to the evidence of Dr. Popli, Kiran was brought by her husband Harish Kumar to the hospital at about 3.45 P.M. with extensive burns. On examination, he found Kiran fully conscious having extensive burns on her face, both arms, both hands, chest, abdomen and both sides of thigh and some part of the back. It was a case of 80 per cent burns. It is true that in the cross-examination, the Doctor admitted that Kiran had told him that she was burnt by stove while working and cooking but we are unable to understand as to how this doctor came to make such a statement without it having been recorded in any document, including the M.L.C. Normally, it is difficult for a busy doctor to remember these words after a lapse of about a year or so. We also do not propose to place any reliance on the statement of Dr. Popli for the simple reason that it cannot be given preference to the statement made by

Smt. Kiran in the Burn Ward of J.P.N. Hospital where except the 1.0. and the doctor, nobody else was present. We have already reproduced her statement Ex. PW-3/B. This statement is not only voluntary but was made without any fear or pressure from any quarter and must be considered to be a truthful and reliable dying declaration.

(16) Similarly, we do not attach any importance to the wording appearing in the M.L.C. (Public Witness -11/A) reading 'history of burns by stove while working and cooking', as it was told to the doctor by Harish Kumar who was accompanying Kiran to the General Hospital and was present when Dr. Popli examined her. Mohan Lal, PW-4 has explained the circumstances how this sentence came to be recorded in the M.L.C. He has not been cross-examined on this aspect and there is no reason to discard his statement being an independent witness.

(17) Unfortunately, the accused in his statement u/s 313 Cr. P.C. has explained the incriminating evidence against him except pleading innocence. He has also not led any evidence. His only plea that Kiran got burnt by accidental fire, has not been held to be a correct version inasmuch as he never made any attempt to come to her rescue till she sustained extensive burns. From the medical evidence, it has been proved that Kiran died because the accused poured kerosene oil on her clothes and then pushed her on a burning stove.

(18) From the totality of the circumstances, we find that the dying declaration of Smt. Kiran is not only a truthful version of the cause of her death but has rightly been relied upon. It finds corroboration from the ocular as well as medical evidence proved on record and is free from any infirmities. In this view of the matter, we do not propose to refer to any other evidence.

(19) In the result, we do not find any force in the appeal. The same is hereby dismissed. The order of conviction and sentence imposed on the appellant is hereby confirmed.