Supreme Court of India
Kamlesh Rani vs State Of Haryana on 17 December, 1997
Author: Nanavati.
Bench: G.T. Nanavati, K. Venkataswami

PETITIONER:
KAMLESH RANI

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT: 17/12/1997

BENCH:
G.T. NANAVATI, K. VENKATASWAMI

ACT:

HEADNOTE:

JUDGMENT:

THE 17TH DAY OF DECEMBER, 1997 Present :

Hon'ble Mr. Justice G. T. Nanavati Hon'ble Mr. Justice K. Venkataswami Ashok Grover, Sr, Adv., C.N.Sree Kumar, V.K Sidharthan, Advs. with him for the appellant Ajay Siwatch and Prem Malhotra, Advs, for the Respondent J U D G M E N T The following Judgment of the Court was delivered: Nanavati. J.

The appellant is challenging her conviction under Section 302 IPC. She was convicted by the Sessions Judge. Kurukshetra and it has been confirmed by the High Court of Punjab and Haryana in Criminal Appeal No. 18-D8/88.

The conviction of appellant is based upon the dying declaration made by deceased - Kavita. It was recorded by Dr. Sehgal sometime between 9.15 a.m. and 9.40 a.m. of 26.5.87. The incident of poring kerosene over her and her getting burnt took place at about 8.30 a.m. She was taken to the hospital at about 9.15 a.m. The evidence discloses that her husband had tried to save her and in that process he had also received burn to the extent of 50%. He had also gone to hospital along with Kavita and both of them were admitted and treated in the hospital. The evidence of the Doctor who treated them was that immediately after Kavita was brought to the hospital, he prepared a bed head ticket

and sent rukkas to the police and the Naib Tehsildar. Within a short time, he was informed that the Naib Tehsildar was not available and therefore he recorded the statement of Kavita himself. Therein, Kavita has stated that her mother-in-law had burnt her. She has further stated that while sh was preparing chappaties, her mother-in-law had poured kerosene over her and that is how she got burnt. She also stated that no one less was at fault except the mother-in-law. The said dying declaration was attested by Doctor Jitender Sayal. Who had assisted Dr. Sehgal, both the courts below have believed the dying declaration and convicted the appellant on the basis thereof.

It was contended by the learned counsel for the appellant that Kavita with 80% burns could not have been in a position to give statement and more particularly after she was given an injection of Pathedine. he also submitted that she had breathed carbon-di-oxide and carbon-mono-oxide and therefore was having breathing difficulties. He further submitted that she was also suffering at times from hallucinations and therefore the evidence of the Doctor that she was in a fir condition to give the dying declaration should not have been accepted. We find that both the Doctors have positively stated that she was conscious when she gave her statement. merely because she had 80% burns, it cannot be inferred that she was not in a position to speak. no good reason has been urged for not believing the evidence of two doctors who have positively stated that she was conscious. Doctor Sehgal has stated that he had put questions to her to find out how she got burns and whatever she had stated was taken down in the words spoken by her.

We do not find any evidence on the basis of which it can be said that she could not have made that statement. An attempt was made in the across-examination of the doctor who had performed post-mortem to prove that she could not have made such a statement in view of the extent and degree of burns she had received. but the Doctor clearly stated that is was not possible to say that she must have became unconscious on receiving the burns and that she could not have given such a statement. We do not find any infirmity in the evidence of Doctor Sehgal. We do not agree with the learned counsel that his conduct suggests that he was not impartial.

It was also contended that the dying declaration does not bear the time at which it was recorded and therefore no reliance should be placed on such a dying declaration. In support of this contention, the learned counsel cited the decision of this could in State Delhi (1985 (2) Sup]. SCR

898). in that case, the dying declaration was rejected mainly because it was recorded by the police, was not signed by the person making it and it did not bear the time. Therefore, that decision can be of help to him.

As we do not find any substance in this appeal, it is dismissed.

The appellant is on ball. He is directed to surrender to custody immediately to serve out the remaining part of the sentence.