
CASE COMMENT: SURINDER KUMAR V. STATE OF HARYANA (2011)

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Citation	2011 INSC 777.
Date	21 October, 2011.
Court Name	Supreme Court of India.
plaintiff/appellant/petitioner	SURINDER KUMAR.
defendant/respondent.	STATE OF HARYANA.
Judges	Justice P. Sathasivam & Justice Dr. B.S. Chauhan.

FACTS OF THE CASE

- **Background and Relationship**

The complainant Surinder Kumar was acquainted with Inder Pal, who worked at Mullana while maintaining his family hearthstone at Naraingarh, District Ambala, Haryana. Inder Pal's woman was Kamlesh Rani. According to execution allegations, Surinder Kumar, who was considered a 'dharma bhai' (spiritual family) of Inder Pal, would constantly visit their house during Inder Pal's absence. The execution contended that Surinder Kumar developed an lawless relationship with Kamlesh Rani, which Inder confidante ultimately suspected and accordingly proscribed his woman from meeting the complainant.

- **The Incident- June 25, 1991**

On June 25, 1991, Kamlesh Rani went to watch a movie with four ladies from her neighborhood. A boy named Subhash was also present in the cinema hall, sitting in the reverse seats. After the movie ended, Kamlesh Rani returned to her house at Naraingarh.

In the evening of the same day, according to the dying protestation latterly recorded, Surinder Kumar Garg came to Kamlesh Rani's house. He brazened her about going to see the

movie and allegedly indicted her of getting a woman of bad character. He also stated that if she had any sense of shame, she should die by burning herself. According to the dying protestation, Surinder Kumar also took kerosene from a small vessel, sprinkled it over Kamlesh Rani's body, and set her ablaze using a matchstick. When she was gulped in dears, he placed a spread over her and fled from the scene.

- **Medical Treatment and Dying Declaration**

Neighbors discovered Kamlesh Rani in dears and rushed her to the HOSPITAL at Naraingarh. From there, she was appertained to the Post Graduate Institute of Medical Education and Research(PGIMER), Chandigarh, given the inflexibility of her burn injuries.

On June 26, 1991, Shri P.K. Sharma, an Executive Magistrate from Chandigarh, recorded Kamlesh Rani's dying protestation at the sanitarium. This statement, marked as exhibition PD, contained her interpretation of events wherein she specifically named Surinder Kumar as her bushwhacker who had poured kerosene on her and set her on fire.

Grounded on this dying protestation, a First Information Report was registered as FIR No. 86/1991 at Police Station Naraingarh at 530 PM on June 26, 1991, originally under Section 307 of the Indian Penal Code(attempt to murder).

- **Death and disquisition**

Despite medical treatment, Kamlesh Rani succumbed to her burn injuries during the intermediating night of June 28- 29, 1991. Following her death, the case was converted from Section 307 IPC (attempt to murder) to Section 302 IPC(murder).

Ram Niwas, Sub-Inspector of Police Station Ambala, arrived at PGIMER Chandigarh and prepared the probe report. postmortem examination examination was conducted at the General Hospital, Sector 16, Chandigarh by Dr. V.K. Chopra and Dr. Ajay Verma on June 29, 1991 at 445 PM. The posthumous verified that death redounded from expansive burn injuries.

On the same day, Surinder Kumar was arrested, and after completion of disquisition, the case was committed to the Sessions Court for trial.

- **Trial Court Proceedings**

The Sessions Judge, Ambala, after examining the substantiation and assaying the dying protestation, gave the benefit of mistrustfulness to the complainant. The trial court set up that the dying protestation did n't inspire confidence and was the sole piece of substantiation against the indicted. Vide judgment dated December 17, 1992, the Sessions Judge acquitted Surinder Kumar of all charges.

- **High Court Appeal**

Aggrieved by the vindication, the State of Haryana filed Felonious Appeal No. 241- DBA of 1993 before the Division Bench of the Punjab and Haryana High Court. The High Court, after re-examining the substantiation, took a different view of the dying protestation. The High Court held that it was extremely delicate to reject the dying protestation altogether, particularly when the departed had appreciatively linked Surinder Kumar as the person who offered her.

By judgment dated December 19, 2003, the High Court reversed the trial court's vindication, condemned Surinder Kumar under Section 302 IPC, and doomed him to rigorous imprisonment for life. also, a forfeiture of Rs. 25,000 was assessed, with a reservation that failure to pay the forfeiture would affect in farther rigorous imprisonment for one time.

- **Supreme Court Appeal**

Challenging the High Court's judgment, Surinder Kumar filed Felonious Appeal No. 328 of 2004 before the Supreme Court of India.

ISSUESS OF THE CASE

- Whether the dying protestation (exhibition PD) recorded by the Executive Magistrate was dependable, believable, and sufficient to predicate a conviction for murder?
- Whether the High Court was justified in reversing the order of vindication passed by the Sessions Court and condemning the complainant grounded on the dying protestation?
- What are the legal norms for assessing the trustability and evidentiary value of dying affirmations in Indian felonious justice?

- Whether the original statement made by the departed to the treating Doctor regarding accidental burns while cooking affects the credibility of the latterly recorded dying protestation?
- Whether conviction under Section 302 IPC can be sustained when the dying protestation is the sole piece of substantiation and there are circumstances casting mistrustfulness on its veracity?

JUDGEMENT

The Supreme Court dismissed the appeal and upheld the conviction of Surinder Kumar under Section 302 IPC along with the judgment of rigorous imprisonment for life and forfeiture of Rs. 25,000.

The Court held that the dying protestation recorded by the Executive Magistrate was dependable, veracious, and voluntary, and could form the sole base for conviction. The Court set up no infirmity in the High Court's judgment reversing the vindication.

COURT REASONING

• Principles Governing Dying Affirmations

Justice P. Sathasivam began by reiterating the well-established principles governing dying affirmations in Indian felonious law. A dying protestation is considered a piece of substantial substantiation under Indian substantiation Act vittles, and if set up believable and dependable, it can form the sole base for conviction without taking substantiation from other substantiation.

The foundational principle behind accepting dying affirmations is embodied in the Latin sententia "nemo moritur presumitur mentire" a person on the verge of death is n't anticipated to lie. When someone knows their end is near, they are doubtful to make false allegations. This principle forms the base for treating dying affirmations as largely believable substantiation.

• Assessment of the Dying Declaration in This Case

The Court precisely examined the dying protestation (exhibition PD) recorded by P.K. Sharma, Executive Magistrate, on June 26, 1991. Several factors supported its trustability

1. **Voluntary Nature** The dying protestation was recorded by an independent public officer an Executive Magistrate- who had no interest in the case outgrowth. There was no substantiation suggesting any training, coaching, or external influence on the deceased while making the statement.
2. **Mental Fitness** The deceased was conscious and coherent when making the statement. Though suffering from burn injuries, she was in a internal condition to understand what she was saying and to communicate her interpretation of events easily.
3. **Specific Identification** The dying protestation specifically named Surinder Kumar Garg as the perpetrator. It did n't contain vague or nebulous references but easily linked the indicted and described his conduct in detail- taking kerosene from a vessel, sprinkling it on her, lighting a matchstick, and fleeing after covering her with a spread.
4. **Detailed history** The statement handed a coherent sequence of events, including the background(going to watch a movie), the battle(being indicted of bad character), the trouble(asking her to burn herself if she had shame), and the factual act of sacrifice. This position of detail enhanced credibility.
5. **No Motive to Falsely interlace** The Court set up no reason why a dying woman would falsely interlace Surinder Kumar if he were innocent. She had no apparent grudge or motive to frame him falsely while facing death.

- **Addressing the Defense Arguments**

Original Hospital Statement The defense argued that when Kamlesh Rani was first admitted to the HOSPITAL at Naraingarh, the original medical records indicated she had suffered BURNS while cooking food on a gas cookstove. The defense contended this contradicted the dying protestation naming Surinder Kumar.

1. The Court rejected this argument on several grounds. First, the original entry was likely made by HOSPITAL staff grounded on information handed by Surinder Kumar himself, who had brought the victim to the HOSPITAL and remained present during original examination. Second, burn victims in extreme pain and shock incontinently after the incident may not be in a position to give coherent statements. Third, the dying

protestation was recorded latterly by a justice after the victim had entered treatment and was in a more stable condition to narrate events directly.

2. **Sole substantiation** The defense argued that conviction should n't be grounded solely on the dying protestation without confirmational substantiation. The Court held that under Indian law, if a dying protestation is set up believable, voluntary, and dependable, it constitutes substantial substantiation sufficient for conviction without taking substantiation. The legal position is clear that dying affirmations, if duly recorded and set up secure, can be the sole base for conviction.
3. **Mistrustfulness Regarding Relationship** The defense tried to produce mistrustfulness about the contended lawless relationship between the indicted and deceased, arguing this was enterprise. The Court noted that while the alleged relationship handed environment and possible motive, the conviction did n't depend on proving similar relationship but on the dying protestation's credibility regarding the factual act of murder.

- **Legal Principles Applied**

The Court applied several established legal principles

1. **Standard of Proof in Dying Affirmations** It isn't obligatory that either an Executive Magistrate or Judicial Magistrate must be present for recording a dying protestation. What matters is that there's substantiation showing the protestation was voluntary and veracious. Indeed if family members or indicted persons are hard, courts must precisely examine circumstances to determine if there was pressure or influence.
2. **Doctor's instrument** Not obligatory While instrument by a Doctor regarding the declarant's fitness of mind is desirable, it is n't obligatory for accepting a dying protestation. Courts can assess fitness grounded on other circumstances, including the consonance of the statement, the declarant's capability to communicate, and the nature of injuries.
3. **Multiple Affirmations** When multiple dying affirmations live, courts must examine all of them together. Minor inconsistencies do n't automatically render them unreliable if the core narrative remains harmonious and veracious.

4. Reversal of Acquittal When hearing prayers against vindication, appellate courts must exercise caution and should intrude only when the vindication is easily perverse or grounded on misunderstanding of substantiation. still, when the vindication is grounded on indecorous rejection of believable substantiation, particularly dying affirmations, appellate intervention becomes necessary to help confinement of justice.

- **Application of facts**

Applying these principles, the Supreme Court set up that the trial court had erred in rejecting the dying protestation. The Executive Magistrate who recorded the statement was an independent officer with no stake in the case. The statement was clear, specific, and detailed. The departed had lived for roughly three days after making the protestation, indicating she wasn't in immediate extremis when the statement was recorded.

The High Court had rightly appreciated the substantiation and reversed the vindication. The dying protestation established beyond reasonable mistrustfulness that Surinder Kumar had poured kerosene on Kamlesh Rani and set her ablaze, causing her death. This constituted murder under Section 302 IPC.

- **Sentencing Consideration**

The Court set up the judgment of life imprisonment applicable given the brutal nature of the crime- burning a woman alive. The fresh forfeiture of Rs. 25,000 with dereliction imprisonment was also upheld as reasonable.

- **Significance for Indian Justice jurisprudence**

This judgment corroborated several important principles in Indian felonious law.

1. Evidentiary Value of Dying Affirmations The case reaffirmed that dying affirmations enjoy special evidentiary status in Indian law and can be the sole base for conviction when set up dependable.
2. Judicial Assessment Courts must precisely assess dying affirmations considering all circumstances who recorded it, the declarant's internal and physical condition, voluntariness, particularity, and thickness.

3. **Protection for Victims** The judgment assured that victims of heinous crimes who survive long enough to identify their assaulters admit justice, indeed if they latterly succumb to injuries.
4. **Gender Violence environment** While not explicitly stating it as a gender violence case, the judgment implicitly honored the serious nature of violence against women, particularly in domestic orquasi-domestic surrounds.
5. **Appellate Intervention** The case demonstrated that appellate courts can and should intrude with clearings when trial courts inaptly reject believable dying affirmations, icing that specialized dubieties don't stamp substantial substantiation.