

Deena

Vs

State of U. P.

Criminal Appeal No. 239 of 1975

(R. S. Sarkaria, P. S. Kailasam JJ)

11.08.1978

JUDGMENT

KAILASAM, J. -

1. This appeal is preferred by Deena alias Din Dayal by special leave against the judgment of the High Court convicting and sentencing him.
2. The case for the prosecution is that on the night of the 20th and 21st June, 1971 the deceased Nainsukh, his brother Hari Singh, his distant uncle Tika Ram, Chandra Pal daughter's son of Tika Ram and Chokhey slept on the platform of the Chaupal in Village Jar. According to the prosecution a lantern was hanging on the platform from the branch of a Neem tree. In the morning at about 4 a.m. the appellant Deena and four others came to the Chaupal of Nainsukh. The dogs began to bark as a result of which Hari Singh (PW 1) and others were awakened. Deena and his associates carried pistol and electric torches. Deena challenged Nainsukh saying that he would be taught a lesson for appearing as a witness and fired his pistol striking Nainsukh on his head. Hari Singh and Chandra Pal shouted for help. They were also injured. After hearing the alaram Nihal Singh, Panna Lal and others reached the place of the incident but before their arrival the accused had made good their escape.
3. The first Information Report was written by Bharat Singh on the dictation of Hari Singh. The injured witness Hari Singh and Chandra Pal then went to Etah Police Station where the report Ex. Ka-4 was handed over at Police Station Kotwali at 9.05 a.m. on June 21, 1971. The police officer took up the investigation and reached the scene at about 1.30 p.m. He found the dead body of Nainsukh and held the inquest, prepared the site plan and recovered the material objects. Nihal Singh (PW 2) produced the lantern before the Investigating Officer which was burning at the time the occurrence took place. A shell of used cartridge was also recovered from the scene.
4. Dr. N. K. Mittal (PW 13), the Medical Officer of Etah, found two injuries caused by fire-arm on Chandra Pal and one injury on Hari Singh. The autopsy on the body of Nainsukh was conducted by Dr. Prasad on June 21, 1971. He found two gunshot injuries, one on the right side of head above the right side of head above the right ear and the other was non-traumatic swelling on the back surface of the right hand. On internal examination it was found that the surface of the scalp of the right side was congested under injury 1. The doctor found a fissured fracture of the right parietal bone, vertically placed from the suture line to eyebrow. The doctor was of the opinion that the injuries were sufficient in the ordinary course of nature to cause death.
5. Apart from the eye-witness (PW 1) the prosecution examined (PW 2) Nihal Singh, (PW 3) Panna

Lal who saw the accused running away after the incident. Reliance was not placed by the courts below on the evidence of PWs 2 and 3. The conviction therefore solely rests on the testimony of eye-witness Hari Singh (PW 1).

6. Hari Singh (PW 1) has spoken of the motive. About 4 or 5 years prior to the occurrence one Ram Chandra was murdered. Deena was one of the accused in that case. Deena was found guilty of murder and sentenced to imprisonment for life. In that case the deceased Nainsukh gave evidence against Deena as an eye-witness. About two months before the murder of Nainsukh, Deena was released on bail and it was rumoured that Deena was saying that now when he had come out of jail he would teach a lesson to Nainsukh. Nainsukh, Hari Singh and their relations took the threat seriously and were living cautiously. On the date of the occurrence, according to PW 1, a lantern was burning and at about 4 o' clock in the morning, he was awakened by the barking of the dogs. Four or five other persons came along with Deena. Deena and one of his companions had torches in their hands and they came flashing their torches. Deena and the other accused came at the Chaupal from the staircase on the eastern side. After coming over the Chabutra of the Chaupal the accused stated Nainsukh, beware, now I will teach you the lesson for giving the evidence". While flashing the torches on the deceased Deena fired at Nainsukh aiming towards his head. The shot hit Nainsukh on the head. The other shot fired by Deena injured Chandra Pal and the third shot hit the prosecution witness Hari Singh. Hari Singh received an injury on his right shoulder.

7. The plea that was made by the defence on the evidence of PW 1 was that it cannot be safely relied on. It was submitted that the other injured witness Chandra Pal who was examined as a court witness did not fully support the evidence of the prosecution. We have gone through the testimony of PW 1 and witness Chandra Pal and we do not see any material contradiction. The enmity between Deena on the one side and the deceased and his family on other side is not seriously contested. The deceased Nainsukh gave evidence against Deena in the murder case in which Ram chandra was killed. When Deena was released on bail he wanted to teach a lesson to the witness Nainsukh who had read appeared against him. This resulted in Deena shooting the deceased to death. The motive as alleged by the prosecution stands amply proved.

8. So far as the scene of the offence is concerned it was not seriously disputed before the High Court. It was submitted before us that no blood stains were scrapped from the scene which circumstance would show that the occurrence took place at some other place. It is seen that there was a bundle of straw and a cot at the centre. The strings of the cot as well as the straws were stained with blood. The Serologist had found human blood on the straws. We do not find any difficulty in accepting the finding of the High Court that the occurrence took place at the site alleged by the prosecution.

9. The only question that requires consideration is whether there was sufficient light at the scene of occurrence to enable the witness to recognise the accused. Because of the motive it is highly probable that Nainsukh, Hari Singh and the family slept with the light burning on the platform which was the scene of offence. Three shots were fired and there could have been difficulty in PW 1 identifying the appellant Deena. It is common ground that the witness knew Deena very well. The lantern that was burning was produced by PW 2, Nihal Singh, as soon as the Investigating Officer came to the scene of occurrence. The witness was sleeping to the south of the deceased person at a distance of few feet and we do not think there could have been any difficulty in identifying the assailant. The High Court has fully considered the question as to whether PW 1 would have identified the assailant and has come to the conclusion that the prosecution has established that the lantern was burning and the assailants used torches which enabled the recognition of the accused at

the time of the incident. PW 1, Hari Sing is a natural witness and his presence cannot be disputed as he had sustained a gunshot injury. He had no particular motive for falsely implicating Deena the accused.

10. The court witness Chandra Pal did not fully support the prosecution except that the incident took place at the Chaupal as alleged by the prosecution. But we do not feel any justification for rejecting the testimony of PW 1 because of the contradiction in the testimony of (CW 1) Chandra Pal. We are inclined to agree with the High Court that Chandra Pal was won over by the defence. We also agree with the High Court and find that the appellant Deena was guilty of an offence under Section 302, I.P.C. in causing the death of Nainsukh.

11. The High Court confirmed the extreme penalty of law imposed by the Sessions Court. The Sessions Court in imposing the death sentence found that the appellant is a desperate character and that while he was on bail in Ram chandra murder case he committed the murder of Nainsukh, one of the prosecution witnesses in Ram Chandra murder case. As the offence was committed by a person under a sentence of imprisonment for life for an offence under Section 302, I.P.C. the Sessions Court inflicted the extreme penalty. As a charge under Section 303, I.P.C. was not framed and as the parties are not able to tell us the result of the appeal filed by Deena in Ram Chandra's case, we refrain from invoking the provisions of Section 303, I.P.C. Regarding the sentence after giving our serious and anxious consideration, we find ourselves unable to come to any different conclusion from that arrived at by the trial Judge and High Court. The offence was committed after deliberate planning in the night when the victim was sleeping. It was for the purpose of teaching a lesson to a witness who gave evidence against the accused. We do not see any extenuating circumstance. We confirm the sentence of death and dismiss this appeal.

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