

R. N. Aggarwal

Vs

Dharam Pal and Others

Criminal Appeals Nos. 407 and 408 of 1978

(K. Jagannatha Shetty, G. L. Oza JJ)

11.08.1988

JUDGMENT

JAGANNATHA SHETTY, J. –

1. These two appeals by special leave are directed against the judgment of the Delhi High Court dated May 6, 1977 rendered in Criminal Appeal Nos. 292 and 319 of 1976 and Murder Reference No. 8 of 1976. Criminal Appeal No. 407 of 1978 is by Dharam Pal challenging the validity of his conviction and sentence of life imprisonment awarded under Section 302 IPC. Criminal Appeal No. 408 of 1978 is by the informant in the case seeking sentence of death to Dharam Pal and also challenging the acquittal of three accused, Surinder Kumar, Suresh Kumar and Shankar.

2. The prosecution story runs like this. Geeta PW 1 originally had some love affair with Dharam Pal. Later she developed strong dislike towards Dharam Pal and refused to marry him. Her parents also did not approve of this alliance. Geeta was residing with her parents in one of the quarters at Laxmi Bai Nagar, New Delhi. On June 11, 1975 at about 3.00 p. m., Geeta and her mother Smt. Janki Devi were inside the house. Then somebody knocked at the door from outside. On hearing the knock, Geeta and her mother came for opening the door. But they became suspicious since the hole in the door had been blocked by placing fingers on it. They peeped outside from the window and found Dharam Pal standing with three other persons. The three other persons were Surinder Kumar, Suresh Kumar and Shankar. They asked Geeta to open the door, but she refused to do it. After a short while, the said persons forced entry into the house by breaking open the door. Dharam Pal was the first to enter the house. He was holding an open chura in his hand. His three companions followed him. On seeing an open chura in the hand of Dharam Pal, Geeta out of fear rushed to the kitchen and bolted herself from inside. Dharam Pal wanted to chase her, but Janki Devi stood in front of Dharam Pal and stopped him from proceeding further. At this stage, Dharam Pal inflicted injuries on Janki Devi with the knife. Geeta raised an alarm. Then the said persons fled away from the scene of occurrence. Janki Devi in spite of being fatally injured opened the door and went to the stairs and cried. Upon hearing the cry, the neighbours Bal Kishan Vaid, PW 20 and Ramakant PW 22 came to the house. Janki Devi told them that it was Dharam Pal who stabbed her. Bal Kishan hurriedly went out to call a doctor. Before the doctor came, she succumbed to her injuries.

3. It may be mentioned that Dharam Pal and his companions came by a taxi no. DLT 1348. Vijay Bahadur Singh, PW 6 is the taxi driver. They stopped the taxi nearby the house of Janki. But while returning, all of them did not go together. Dharam Pal after the incident ran towards eastern side, while the others ran towards western side. They went and took that taxi and disappeared.

4. As regards the murder of Janki Devi, there was an immediate intimation to the Police Control

Room. The police came to the spot without any loss of time. Geeta gave her detailed statement about the occurrence to the police which became the first information report. The investigation proceeded on that basis. Bal Kishan Vaid and Rama Kant, who were the neighbours of Janki Devi supplemented the statement of Geeta. The police after completion of the investigation charge-sheeted the aforesaid four persons along with one Raghbir Singh. At the trial, the prosecution adduced as many as 33 witnesses. Dharam Pal produced one defence witness, Ramesh Chand. The other accused did not produce any witness in their defence. Dharam Pal pleaded that since he refused the hand of Geeta, she felt offended and had falsely implicated him. According to him, Geeta was living a life of indulgence and she had shielded the real culprits. The other accused had taken the stand that they had no connection or relation with Dharam Pal and they even did not know him.

5. The trial court upon consideration of the evidence found Dharam Pal guilty of murder and awarded him the sentence of death. The other three accused Surinder Kumar, Suresh Kumar and Shankar were convicted under Section 302 read with Section 34 IPC. They were sentenced to imprisonment for life. Raghbir Singh was acquitted by giving him the benefit of doubt. The entire matter came before the High Court by way of murder reference and also on appeals by the accused. The High Court maintained the conviction of Dharam Pal, but reduced his sentence to imprisonment for life. The conviction of other three accused persons were set aside and they were acquitted on the ground that there was no common intention between them and Dharam Pal to commit the murder of Janki Devi.

6. The first question before us is whether Dharam Pal should be awarded the death sentence for the crime he has committed. The crime was committed on June 11, 1975. The High Court found his case not appropriate to give him the extreme penalty. Having gone through the material on record and also after hearing the counsel for the parties, we share the opinion of the High Court. Dharam Pal did not go to the house of Janki to murder her. He went there to secure the hand of his beloved. But it so happened that Janki Devi came in between and at the spur of the moment, Dharam Pal inflicted injuries on her thinking that she was an obstructor between him and Geeta. There is, therefore, in our opinion, no reason to award the death sentence in this case.

7. The next question for consideration is whether the High Court was justified in acquitting Surinder Kumar, Suresh Kumar and Shankar. We have closely perused the evidence on record, in particular, the evidence of Geeta PW 1 and Vijay Bahadur Singh, PW 6. Geeta no doubt has deposed that after opening the door, Dharam Pal came inside while holding a knife in his hand and the other accused also came inside along with Dharam Pal. She then ran inside the kitchen in order to hide herself and bolted the door of the kitchen from inside. It will be clear that other accused were not armed. They came together by taxi belonging to PW 6, but nothing has been elicited from PW 6 that those persons had any intention to commit murder of Janki. In fact, PW 6 was not aware of the motive of the accused for which they came in his taxi. Another significant factor to be noticed is that after the incident, Dharam Pal did not accompany the other three accused persons. They ran in opposite directions. Dharam Pal did not even take that taxi. The other accused alone went by the taxi. After perusing the entire material on record we have no reason to disagree with the conclusion of the High Court. All the three accused are of young age between 19 to 22 years. They might have assisted Dharam Pal in the latter's attempt to secure Geeta. That of course is bad enough. We would have convicted them for house trespass. But unfortunately there is no charge on that count. We cannot, therefore, convict them even for that offence.

8. In the result, we dismiss both the appeals. Dharam Pal is on bail. The bail bond is cancelled. He

should surrender forthwith and undergo the remaining part of his sentence.

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