

Tara Devi

Vs

State of U. P.

Criminal Appeal No. 212 of 1979

(Smt. M. S. Fathima Beevi, Kuldeep Singh JJ)

06.08.1990

JUDGMENT

KULDIP SINGH, J. -

1. Tara Devi and her lover Hari were tried for the murder of Shivanand husband of Tara Devi. The trial court gave benefit of doubt to Hari and acquitted him. Tara Devi was, however, convicted under Section 302 IPC and was sentenced to life imprisonment. The High Court dismissed the appeal filed by Tara Devi and maintained the conviction and sentence. This is Tara Devi's appeal against the judgment of the High Court.

2. The prosecution story, briefly, is that Shivanand deceased was the cousin of Hari. They were living in adjoining houses. Shivanand possessed about 30-40 bighas of land whereas Hari had only 6 bighas with him. Hari had a grouse that Shivanand had illegally occupied part of the family land which according to him was his share. Hari was thus claiming his share in the land from Shivanand. The first wife of Shivanand had died issueless and he had taken Tara Devi as his second wife about 12-13 years before the occurrence. Tara Devi gave birth to four daughters aged 12, 5, 3, and 1 1/2 respectively. On the date of occurrence the eldest daughter had gone to her maternal grandfather's house. Hari's wife died 6 to 7 years before the occurrence and he did not remarry. Hari developed illicit relation with Tara Devi which was resented by Shivanand and he restrained her from meeting Hari. Tara Devi did not listen to her husband and as such they used to quarrel quite often. Getting disgusted with his wife's conduct Shivanand thought of disposing of his property and leaving the village. That further aggravated the differences between the two as Tara Devi apprehended that if the property was sold she along with her children would starve.

3. The prosecution case further is that on the night between December 22/23, 1971 Tara Devi and Hari in furtherance of their common intention hacked Shivanand to death with gandasa while he was asleep. The dead body was kept in the house for two days. Tara Devi closed the house from inside and stayed there with her three small daughters. On December 24, 1971 Ram Saran, who was living in front of Shivanand's house became suspicious as he had not seen Shivanand for two days. He went to Garib Das chowkidar and told him that the doors of Shivanand were suspiciously closed for the last day. Garib Das accompanied by Kotwal Singh, Dashrath Singh, Ujagar Singh, Balwant Sri Ram and others went to the house of Shivanand. Initially Tara Devi did not open the door but ultimately they got the door opened and found Tara Devi trembling with fear. The villagers found the dead body of Shivanand lying in the house in a pool of blood with incised wounds on his head, temple and neck. On inquiry as to the cause of Shivanand's death she at first kept quiet but when Garib Das told her that in case she gave the correct facts she would not be harmed, she came out with the confession that her husband used to beat her and wanted to leave the village. She along

with Hari committed the murder of Shivanand between December 22/23, 1971. She also stated that the murder was committed by inflicting injuries with a gandasa and as Hari alone was unable to lift the dead body he went away to call persons for this purpose.

4. The post-mortem examination on the dead body of Shivanand revealed four incised injuries on the neck and temple. Large blood vessels were found cut. The frontal parietal and temporal bones were also cut. The head was found badly lacerated and the fourth cerebral vertebra was also cut.

5. Both the accused denied the charges and stated that they were falsely implicated. Tara Devi stated that there was dispute between Shivanand and Hari over property. Hari got annoyed and threatened to Kill Shivanand. During the night of the occurrence she was sleeping inside her kotha when she heard hue and cry. She went out and saw Hari along with his maternal uncle's wife coming out of the room where her husband was sleeping. They pointed towards her the gandasa by which they had committed the murder of Shivanand. They threatened her with dire consequence and Hari gave one or two slaps on her face. She was pushed inside the kotha which they bolted from outside. In this manner she gave out that the murder was committed by Hari and not by her.

6. After going through the evidence on the record the trial court gave the benefit of doubt to Hari and acquitted him. The appellant was found guilty by the trial court as well as by the High Court and was sentenced to life imprisonment.

7. There is no direct evidence to connect the appellant with the crime. The prosecution relied on the circumstantial evidence to prove the charge against her.

8. The prosecution heavily relied on the extra-judicial confession alleged to have been made by Tara Devi before the village chowkidar and also the confession made by her before the Magistrate. Both the confessions were ruled out of consideration by the trial court and the High Court. For the reasons recorded by the High Court we agree that the confessions were rightly not taken into consideration.

9. The prosecution examined Garib Das, chowkidar (PW 1), Ujagar Singh (PW 2) and Ram Saran (PW 3) to establish that Tara Devi was having illicit relation with Hari. These witnesses also deposed that Shivanand, deceased resented the same. The courts below have believed these witnesses and we have no reasons to differ.

10. The High Court primarily relied on the circumstance that the dead body of Shivanand was recovered from inside the House where Tara Devi alongwith three minor daughters were present and kept the dead body for two days till the village chowkidar and other persons came and discovered the body. The High Court further pointed out that the appellant took an oscillating stand about the murder of Shivanand. According to the High Court at one stage she stated she committed the murder along with Hari and at later stage she put the whole blame on Hari and totally exculpated herself.

11. We do not agree with the reasoning of the High Court. Regarding the dead body in the house, she has stated that after the murder Hari left the house saying that he would bring some more persons to take away the body. Bring a woman she must have been terrified and be doing what she was asked to do by Hari. Regarding the stand taken by Tara Devi we find no inconsistency in the same. The confessional statements having been ruled out the remaining circumstantial evidence makes it clear that Hari was having an eye on the property of the deceased and was also having

illicit relations with his wife. Hari was not on good terms with Shivanand because of the property dispute. He was claiming part of the land in possession of the deceased. Hari had strong motive to commit the murder because by eliminating Shivanand he could have got the property and the woman. There is no doubt that Tara Devi was in complicity with Hari but the fact remains that the main accused who committed the crime was Hari. The nature of injuries on the person of deceased were such which could not have ordinarily been inflicted by the frail hands of a woman. Keeping in view the totality of the circumstances in this case, we are of the view that the main accused having been acquitted, there is no justification to maintain the conviction and sentence of the appellant. We, therefore, give benefit of doubt to Tara Devi and accept her appeal and set aside her conviction and sentence. She was granted bail by this Court on April 16, 1979. We cancel the bail bond.

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