

Smt. Dharamwati

Vs

Jaibir and Another

Criminal Appeal No. 135 of 1979

(P. B. Sawant, Smt. M. S. Fathima Beevi, Kuldip Singh JJ)

06.08.1990

JUDGMENT

KULDIP SINGH, J. –

1. Jaibir respondent was convicted under Section 302 IPC for the murder of his brother Harbir and was sentenced to death by the trial court. He was also convicted and sentenced under Section 324 IPC for inflicting injuries on Dharamwati wife of deceased Harbir. The High Court on appeal set aside the conviction and sentence of Jaibir and acquitted him of the charges. This appeal against acquittal is by complainant Dharamwati.
2. Jaibir, Tej Pal and Rambir are real brothers of deceased Harbir. All the four brothers were living in the same ahata. Jaibir was in service at Aligarh at the time of occurrence. He had developed illicit relation with the wife of Tej Pal and on this account Harbir and his wife Dharamwati separated from the other three brothers and started living in a separate room in the same ahata. There were constant quarrel between Dharamwati and the wife of Tej Pal. This is said to be the reason for the assault in question.
3. The prosecution case is that on March 7, 1976 at about 12 o'clock Jaibir called Harbir to his room. Dharamwati also followed her husband. Jaibir got infuriated on the uncalled for presence of Dharamwati and attacked her with kirpan. On Harbir's intervention he was given a kirpan blow by Jaibir which pierced through his stomach. Harbir was taken to the hospital where he died as a result of injuries the same day at 10.05 p. m. Dharamwati sustained four injuries with a sharp-edged weapon.
4. The prosecution examined Dharamwati (PW 1) and her daughter Murli aged about 8 years (PW 3) as eye-witnesses. Accused Jaibir put up a plea of alibi and alleged that on the date of occurrence he was at Aligarh where he was in service. He examined Sabha Chand (DW 1), I. A. Khan (DW 2) and N. S. Chauhan (DW 3) in his defence.
5. The learned Sessions Judge believed Dharamwati and Murli and rejected the evidence of the defence witness. He convicted jaibir under Section 302 IPC and Section 324 IPC and sentenced him to death and further two years' rigorous imprisonment on the two counts.
6. On appeal the High Court came to the conclusion that Dharamwati and Murli were not reliable witness. Believing the defence version the High Court acquitted Jaibir. This appeal is by the complainant Dharamwati against the judgment of the High Court.

7. The High Court rejected the testimony of Dharamwati on the following reasoning :

(1) In the first information report Dharamwati mentioned that after her husband Harbir had fallen down Tej Pal came and assaulted her with a hammer. In her cross examination she stated that Tej Pal gave 2 or 3 hammer blows on her head. Dr. R. K. Jain on the other hand did not find any hammer injury on her person. According to the High Court she made an attempt to falsely rope in Tej Pal.

(2) According to the prosecution case Jaibir gave injuries to Dharamwati and Harbir in his room. Dharamwati admitted in her cross examination that blood from her injuries fell on the ground. The investigating officer inspected the site on March 9, 1976 and he did not find any blood in the room. According to the High Court since no blood was found from Jaibir's room the prosecution story as narrated by Dharamwati regarding the place of occurrence could not be believed.

(3) Sabha Chand (DW 1) uncle of the deceased and the appellant deposed that Harbir and Smt. Dharamwati were injured at about 8 or 9 a. m. in their chak and that Smt. Dharamwati told him that they were assaulted by some sardars who were plucking sugarcane from their fields. Sabha Chand further stated that Smt. Dharamwati did not allow him to lodge report and she asserted that the report would be lodged after the arrival of her nephew and relations.

(4) Jaibir in his bail application dated march 23, 1976 pleaded alibi. According to the High Court prosecution knew that Jaibir would set up the same plea at the trial and for that reason Dharamwati in her statement stated that Jaibir had come to the village on March 5, 1976 and this was done to defeat Jaibir's plea of alibi. The High Court further stated that according to Dharamwati Jaibir sent a letter threatening that he would behead harbir. She further stated that the said letter was snatched from her by Tej Pal. According to the High Court since the letter did not come on the record and Dharamwati made no mention of such a letter in the first information report or in her statement before the investigating office the story regarding the letter was false and it was set up to defeat the plea of alibi put up by Jaibir.

8. On the basis of the abovementioned four reasons the High Court discarded the testimony of Dharamwati. So far as PW 2 Murli is concerned the High Court gave no reason except that Murli was a child witness and she could easily be tutored by her mother.

9. We have carefully examined the statement of Dharamwati and her daughter Murli. Dharamwati is an injured witness and her presence at the place of occurrence cannot be disputed. It is highly improbable that Dharamwati would shield the real culprit who murdered her husband and would falsely rope in Jaibir who is her husband's brother.

10. The reasons given by the High Court in rejection the testimony of Dharamwati are not tenable. It is no doubt correct that in first information report as well as in her statement in the court Dharamwati has stated that she was given hammer blows by Tej Pal. She has been consistent in her stand from the very beginning. It is on record that Tej Pal was also arrayed as an accused in this case but later on he was discharge on the ground that no hammer injury was found in the injury report prepared by the doctor. Tej Pal was living in the same house and possibility of his presence at the time of occurrence cannot be ruled out but even if we agree with the High Court this infirmity alone

is not sufficient to reject her evidence. Sifting the grain from the chaff, especially when her presence on the spot cannot be doubted, we are of the view that Dharamwati is correctly naming Jaibir as assailant.

11. The argument that no blood was found in the room of Jaibir is of no consequence. The occurrence took place on March 7, 1979 and the investigating officer inspected the place of occurrence on March 9, 1976. During all this period the room remained under the possession of Jaibir. In all probability Jaibir must have cleaned the room and effaced the blood stains. The inspection of the place of occurrence two days after the occurrence leaves no scope for the argument and the High court fell into error in accepting the same.

12. The statement of Sabha Chand that Dharamwati told him that she was assaulted by some sardars in the field cannot be accepted. He is uncle of both Jaibir and the deceased. He is obviously making the statement under the influence of Jaibir. As stated earlier Dharamwati would not shield the real culprit specially when the person murdered was her own husband. We do not place any reliance on the statement of Sabha Chand.

13. The last point relied upon by the High Court is equally devoid of force. Dharamwati has categorically stated that Jaibir came to the village on March 5, 1976. There is no reason to doubt her statement on this point. Similarly the non-production of the letter and its non-mention in the FIR is of no consequence. Dharamwati has stated that letter was snatched from her by Tej Pal.

14. We have carefully gone through the statement of Dharamwati and we are of the view that even if we agree with the High Court that there are some infirmities in her statement we feel that on proper appreciation of her evidence it is not possible to reject the same. We are of the view that her statement as a whole inspires confidence.

15. The High Court has rejected the testimony of Murli PW 2 without any justification. It is no doubt correct that Murli was about 8 years old at the time of occurrence. The learned Sessions Judge who recorded the statement of Murli stated as under :

"The child witness Kum. Murli was subjected to searching cross-examination and I had the occasion of watching the demeanour of the witness. I got full impression that she could not be a tutored witness. This impression was based upon the manner in which the witness was replying the questions. All attempt was made to the witness to suggest that she was taken to the State counsel, to the private counsel engaged by the complainant and also to the police but all these suggestion were negated by the witness. Certain innocent utterances were made by this witness which go to show that she could not be tutored. For instance she has stated that after receiving injuries her father was unable to speak and he could only utter and enquire from his wife whether she had locked the house or not. The prosecution was not to gain anything by putting the suggestion in the mouth of the witness. On the other hand this statement shows that the witness had seen the occurrence and she cannot be described as tutored in imaginary witness. she has corroborated the prosecution story on all material particulars."

16. The High Court has given no reason whatsoever to reject the evidence of PW 3 Murli. We are of the view that the High Court fell into error in rejecting the testimony of PW 3 in the ground that she was a child witness and she could be easily tutored. We agree with the abovequoted findings

reached by the learned Sessions Judge regarding PW 3 Murli. The statement of Murli fully corroborates the prosecution story as unfolded by Dharamwati.

17. The plea of alibi as defence by Jaibir does not inspire confidence. The evidence of DW 1 I. A. Khan is highly interested. Jaibir was working under him as a teacher. The certificate regarding the presence of Jaibir at Aligarh on the day of occurrence was issued by I. A. Khan on March 10, 1976. The witness admitted that he came to know on that date the nature of the dispute. He further stated that he was unaware that a case under Section 302 IPC had been registered against Jaibir. It is thus obvious that he issued the certificate in casual manner. We have no hesitation in rejection the plea set up by Jaibir.

18. For the reasons stated above we accept the appeal and set aside the judgment of the High Court and convict the appellant under Section 302 IPC. We sentence him to undergo rigorous imprisonment for life. He is on bail. We direct that he should surrender his bail bond forthwith and undergo the sentence of life imprisonment.

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