

Darshan etc.

Vs

State of Uttar Pradesh

(M. M.Punchhi, S. P. Kurdukar JJ.)

30.09.1997

JUDGMENT

S.P.KURDUKAR, J.

1.Smt.Kanti Devi (since deceased) was the real sister of the appellants (accused).Smt.Kanti Devi was said to have alopeed with Naresh Pal, the real brother of Ramesh Chander Singh (PW 1).This fact was not relished by her brothers, the appellants. A complaint which was filed by the appellants against Naresh Pal ended in a final report submitted by the police as it was then discovered that Kanti Devi was a major.Later on, Kanti Devi married Naresh Pal and started her matrimonial life at village Lathi.This fact was again not taken kindly by the appellants and since then they nurtured a serious grievance against the family of Naresh Pal.Ramesh Chander Singh (PW 1) supported the marriage of Kanti Devi with his brother. This led to an attack with fire arm on Ramesh Chander Singh(PW 1) causing him injuries and in a trial thereof, Darshan (A-1) and his father Har Prasad were convicted on 11th November, 1971.The animosity did not rest there but sometime in 1973, the appellants and their father Har Prasad attempted to commit the murder of Mahesh, another brother of Ramesh Chander Singh (PW 1).They were tried but ultimately acquitted on 29th April, 1976.During the pendency of the said trial, Mahesh was murdered on 14th September, 1973 and a trial against the appellants and their father Har Prasad ended in acquittal vide order dated 2nd June, 1976.

2.Sometime in the year 1973, the appellants and their father alleged to have concerned Ramesh Chander Singh (PW 1) at Burden but somehow or the other, he managed to escape. There was again a criminal case relating to murder of one Amba wherein Naresh Pal was implicated. Harroo, the acquitted accused in the present crime was a prosecution witness.Naresh Pal was convicted and at the time of present occurrence which took place on 30th June, 1997 he was lodged in Fatehgarh jail.

3.It was alleged by the prosecution that Kanti Devi along with son Babloo @ Raj Kumar had gone to Fatehgarh jail to meet Naresh Pal.Kanti Devi thereafter left for Delhi leaving her son Babloo with Ramesh Chander Singh (PW 1) who brought him to his village Badaun. Babloo then fell ill and was admitted to the District Hospital, Badaun, about 10 to 12 days prior to the date of present occurrence. After hearing the news of illness of her son, Kanti Devi came to Badaun and remained with her son in the hospital.

4.The above narration of facts would indicate that there were not only sharp differences between Kanti Devi and the appellants over her marriage with Naresh Pal but it led to an animosity between the two families which resulted into various crimes including the murder of Mahesh Kumar.

5.On 30th June, 1977, Babloo (PW 2) was getting his treatment in the hospital and Kanti Devi was staying with him.Ramesh Chander Singh (PW 1) was also giving company to Babloo in the

hospital. At about 10.00 p.m., Kanti Devi was lying on the cot whereas Ramesh Chander Singh (PW 1) and Babloo (PW 2) were sitting on the cot. It was alleged by the prosecution that the appellants along with the acquitted accused came to the hospital. Ramesh Chander (PW 1) identified these accused persons in the light when they were climbing up the steps and coming towards the male ward where Babloo (PW 2) was admitted. Ramesh Chander Singh (PW 1) suspect some foul play and therefore, he took Babloo (PW 2) in the verandah hiding behind a pillar. It was further alleged by the prosecution that the appellants and acquitted accused fired at Kanti Devi and as a result thereof, she died. Ramesh Chander Singh (PW 1) and Babloo (PW 2) claimed to have seen the said incident from behind the pillar. Ramesh Chander Singh (PW 1) within half an hour reached the police station and lodged the FIR naming the assailants and disclosed all the necessary details about the occurrence. Because of commotion in the male ward, Dr. Tiwari who was on emergency duty came to the place of incident and despite his efforts to save Kanti Devi, she succumbed to the injuries and was declared dead. A memo to that effect Ex. Ka-19 was forwarded to the Superintendent through a messenger for information. Since Ramesh Chander Singh (PW 1) had already lodged the FIR, the police party reached the scene of offence and commended the investigation. After completing the necessary investigation, the appellants along with Harroo were put up for trial for offence punishable under Section 302/34 IPC.

6. The appellants denied the charge and claimed to be tried. They pleaded that they are innocent and they be acquitted.

7. At the conclusion of the trial, the Sessions Judge at Badaun vide his judgment and order dated 6th February, 1978, found the appellants and Harroo guilty of committing the murder of Kanti Devi and accordingly convicted them under Sections 302/34 IPC and sentenced each one of them to suffer life imprisonment. The three convicts preferred an appeal to the High Court at Allahabad and a Division Bench vide its judgment and order dated January 10, 1989, partly allowed the appeal. The conviction and sentence of the appellants was confirmed but however, Harroo was given a benefit of doubt and came to be acquitted. It is against these two concurrent judgments, the appellants by Special Leave have filed these two separate appeals to this Court.

8. At the outset, it need to be emphasized that the Session Court as well as the High Court after careful scrutiny of the evidence of Ramesh Chander Singh (PW 1) and Babloo (PW 2) found their evidence trustworthy and unblemished. The courts below also found that Kanti Devi died a homicidal death because of the fire arm injuries and the appellants were responsible for causing the death of Kanti Devi except that the High Court gave benefit of doubt to Harroo and acquitted him.

9. With the assistance of learned counsel for the parties, we have very carefully gone through the evidence of Ramesh Chander Singh (PW 1) and Babloo (PW 2) and other materials on record and we find that the findings recorded by the Courts below do not suffer from any infirmity so as to call for an interference by this Court in these appeals. Learned counsel for the appellants, however, strenuously urged that the First Information Report which was alleged to have been lodged within half an hour of occurrence was in fact not lodged and the same was ante dated. This contention proceeds on the footing that it was impossible for Ramesh Chander Singh (PW 1) to go alone to the police station and lodge the FIR when he admitted that he was afraid of the appellants. It was next contended that the conduct of Ramesh Chander Singh (PW 1) was totally contrary to a human conduct inasmuch as he instead of attending on the injured Kanti Devi and calling a doctor straight away went to the police station to lodge the FIR. It was also submitted that Ramesh Chander Singh (PW 1) did not raise any hue and cry after seeing the firing on Kanti Devi. We do not see any substance in any of these contentions. Ramesh Chander Singh (PW 1) in his evidence has testified

that he went to the police station straight away and lodged the FIR within half an hour at about 10.30 p.m. His evidence stands corroborated from the FIR itself where date and time has been correctly recorded and was so testified by the Investigating Officer. His going straight away to the police station in our considered view was not at all unnatural. The theory of ante dating the FIR has, therefore, no substance. It was then contended that Dr.Tiwari (CW 1) who was on emergency duty claimed to have forwarded a report to the police station but the same was not produced. This again has got no relevant because the police reached the place of incident immediately within short time and the crime was already registered on the complaint of Ramesh Chander Singh (PW 1).

10.It was then contended on behalf of the appellants that Ramesh Chander Singh (PW 1) at the time of occurrence had a vision in one eye only and other eye was stone-blind and if this be so, it was almost difficult for him to identify the assailants when they were climbing up the steps and coming towards the male ward. This submission is devoid of any merit because there was sufficient light in the hospital premises and we see no difficulty whatsoever in identifying the assailants by Ramesh Chander Singh (PW 1) with one eye.

11.It was then contended for appellants that both the eye witnesses might not have seen the assailants because according to Ramesh Chander Singh (PW 1), he was hiding behind the pillar and due to said obstruction, he could not have seen the occurrence.This submission again has no substance because Ramesh Chander Singh (PW 1) in his evidence had asserted that he identified the assailants and thereafter he took Babloo (PW 2) with him and tried to hid behind the pillar to save their lives.Within minutes thereafter, the appellants entered the male ward and opened the fire at Kanti Devi. In the facts and circumstance of this case, this submission deserves no further elaborate discussion.

12.It was then contended by learned counsel for the appellants that the prosecution had come before the court alleging enmity with the appellants and if this be so, the appellants' false involvement in the present crime due to enmity cannot be ruled out.From the materials on record, it is quite clear that appellants did not approve the marriage of Kanti Devi with Naresh Pal and as a result thereof, there were several attempt on the life of Ramesh Chander Singh (PW 1) and in fact Mahesh Kumar, the brother of Ramesh Chander Singh was murdered, although the appellants were acquitted in the said crime. In our considered view, the appellants were more agitated and were waiting for an opportunity to do away with their sister and supporters of her marriage and accordingly the appellants accomplish their design on 30th June, 1977.The motive and issue of enmity were rightly held proved in favour of the prosecution. It was also urged that the conduct of Ramesh Chander Singh (PW 1) was unnatural because when assailants were running away, Ramesh Chander Singh did not raise any hue and cry and tried to catch hold of them. This argument needs to just stated and rejected.

13.It was contended that the prosecution had failed to examine any independent witness who had witnessed the incident in the hospital. It is in these circumstances, an adverse inference must be drawn against the prosecution. This submission again, in our opinion, has no substance. What is required to be consider in the present case is whether the evidence of both these witnesses is trustworthy and could be accepted safely notwithstanding the fact that they were close relatives. On careful scrutiny of their evidence, we find that their evidence is totally unblemished and suffers from no infirmity. It was also contended that Ramesh Chander Singh (PW 1) had not reason to be in the hospital when Kanti Devi, the mother of Babloo was looking after the patient. This submission is again devoid of any merit.

14.It was then contended that the evidence of Dr.Tiwari (CW 1) is inconsistent with the evidence of Ramesh Chander Singh (PW 1).This has reference to the fact that whether Kanti Devi was lying on the cot at the time of incident or on the floor. This fact is totally insignificant and we see no serious inconsistency which would weaken the substratum of the prosecution case.

15.After going through the judgments of the courts below and the evidence on record, as we are satisfied that the appellants have been rightly convicted under Section 302/34 IPC.

16.In the result, both the appeals fail and the same are dismissed. The appellants, who are on bail, shall surrender to their bailbonds forthwith to serve out the remainder of their sentences.