

Din Dayal

Vs

Raj Kumar @ Raju

(G. T. Nanavati, V. N. Khare JJ)

03.03.1998

JUDGMENT

NANAVATI J.

1. Both these appeals arise out of the common judgment of the High Court of Delhi in CrI. A. Nos. 53/86 and 56/86. CrI. Appeal No. 53/86 was filed by accused Raj Kumar and Pawan Kumar. The other appeal was filed by accused Uday Singh. All the three appellants were acquitted by the High Court; and therefore Din Dayal, the witness in the case and close relative of deceased Jai Bhagwan, has filed these appeals after obtaining special leave from this Court.

2. The trial court believed the evidence of Basant Ram, Din Dayal, M.K. Bhatnagar and Kalu Ram (P.Ws. 1 to 4) and convicted the respondents under Section 302 read with 34 IPC. The High Court on reappreciation of their evidence found that the version given by them was so improbable and their conduct was so unnatural that it created a serious doubt regarding the truthfulness of their evidence. The High Court also found that there was enmity between Jai Bhagwan and the respondents and the witnesses shared that hostility along with Jai Bhagan. The High Court also doubted that the fatal injuries were caused to Jai Bhagan with dagger Ex. P-1, alleged to have been discovered by respondent Raj Kumar, as the medical evidence - showed that the injuries found on the person of Jai Bhagwan could not have been caused by that dagger. Taking this view the High Court acquitted the respondents.

3. What is contended by the learned counsel for the appellant is that the High Court should not have discarded the evidence of these 4 witnesses particularly when the trial court after carefully scrutinising it held that it was reliable and trustworthy. We find that the High Court has given good reasons for taking a different view. It has pointed the improbability of the version given by them. The witnesses had not accompanied the deceased to the hospital nor had taken any trouble of going and informing the police about what had happened. After seeing the incident they quietly went back to their homes. It cannot be said that the view taken by the High Court that the conduct of the witnesses was not natural is unreasonable. They were not merely eye witnesses. They were closely connected with the deceased. The High Court was, therefore, justified in not placing any reliance upon their evidence.

4. Witness Din Dayal had accompanied the deceased to the hospital but after reaching there he did not disclose the name of the accused to the Police Constable who was on duty even though he disclosed other facts regarding the incident. This circumstance has been relied upon by the High Court together with some other reasons for doubting truthfulness of the evidence of this witness. The High Court has also referred to the improvements made by Din Dayal and those improvements

clearly indicate that they were deliberately made with a view to make the presence of other eye witnesses acceptable. Having gone through the evidence we find that the view taken by the High Court is not unreasonable and no interference is called for by this Court. These appeals are, therefore, dismissed. The bail bonds of the accused are ordered to be cancelled.