
(1988) 01 AHC CK 0027

Allahabad High Court

Case No: Criminal Appeal No. 533 of 1978

Darshan and Ors.

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Jan. 10, 1988

Acts Referred:

- Evidence Act, 1872 - Section 3
- Penal Code, 1860 (IPC) - Section 302, 34

Hon'ble Judges: V.P.Mathur, J and Kamlakar Chaubey, J

Final Decision: Allowed

Judgement

V.P. Mathur, J.

This appeal is directed against the judgment and order passed on 1621978 by Mr. Parmata Saroop, the then Sessions Judge of Budaun in Sessions Trial No. 236 of 1977. The learned Judge convicted and sentenced appellants Darshan and Rampal under Section 302, I. P. C. to imprisonment for life and appellant Harroo under Section 302 read with 34, I. P. C. also to imprisonment for life.

2. The occurrence which gave rise to this case, took place on 3061977 at about 10 in the night in the District Hospital, Male Ward within the area of police station Kotwali, Budaun. The first information report was lodged 30 minutes thereafter by Ramesh Chandra Singh (PW I) brotherinlaw of the deceased Smt. Kanti Devi wife of Naresh Pal.

3. All the parties to this case are of the same caste, namely, Kurmi Smt. Kanti Devi was the real sister of accused appellants Rampal and Darshan. It is contended that appellant Harroo is an associate and friend of Rampal and Darshan and all of them are residents of village Nagla Sharki, which is a village adjoining the city of Budaun. Sometime in the year, 1963 Smt. Kanti Devi eloped with Naresh Pal real brother of the present first informant Ramesh Chandra Singh. This was not taken kindly by Har Prasad father of Smt. Kanti Devi and the present appellants Rampal and Darshan.

The first information report was lodged by Har Prasad, but, it appears that because Smt. Kanti Devi was a major girl, the police ultimately submitted final report. Thereafter Smt. Kanti Devi and Naresh Pal married and started living in Delhi, but, were from time to time also visiting village Dahemi four miles away from Budaun also Nagla Sharki. In the year, 1969 Naresh Pal left Smt. Kanti Devi with PW 1 Ramesh Chandra Singh and himself went to Hyderabad. It was then that Darshan and his father Har Prasad fired at Ramesh Chander Singh (FW 1) and caused him injuries. This happened on 16/2/1969. The two were tried and convicted on 11/11/1973, vide Ext Ka 25. On 6/7/1973 Har Prasad and his sons Rampal and Darshan and others allegedly attempted to commit the murder of Mahesh another brother of PW 1 Ramesh Chander Singh and they were prosecuted. Ext kha 4 will show that on 29/4/1976 the case ended in their acquittal. Meanwhile on 14/9/1973 Mahesh was murdered. A first information report Ext ka 23 was lodged naming Har Prasad and the present appellants Rampal and Darshan and others as accused in this case. The case proceeded and ended in acquittal on 26/1/1976, vide, Ext ka 24.

4. On 28/12/1973, again Rampal, Darshan and Har Prasad alongwith others are said to have surrounded Ramesh Chander Singh (PW 1) at the sugarcane weighing centre, Budaun, but PW 1 Ramesh Chander Singh somehow managed to escape. There is further evidence to show that one Amba Sahai was murdered and Naresh Pal husband of Smt. Kanti Devi was implicated in that case. As a result of the trial, in which Harroo appellant was one of the prosecution witnesses, Naresh Pal was ultimately convicted and at the time of the present occurrence i. e. on 30/6/1977 and prior to it, he was lodged in the Fatehgarh jail. About a month before 30/6/1977 Smt. Kanti Devi along with her son Bablu alias Rajkumar had gone to visit Naresh Pal in Fatehgarh jail. From there Ramesh Chander Singh (PW 1) brought Bablu (PW 2) to Badaun, while Smt. Kanti Devi went away to Delhi. Bablu fell ill. Then Smt. Kanti Devi was informed and, simultaneously Bablu was admitted to the District Hospital, Budaun about ten to twelve days prior to this murder. On hearing about the news of the illness of Bablu, Smt. Kanti Devi also came to Budaun and started staying with Bablu at the hospital itself. The prosecution case is that Ramesh Chander Singh (PW 1) also used to remain there and was supplying them food from his house.

5. This occurrence took place on 30/6/1977 at about 10 p. m. Smt. Kanti Devi was lying on the bed of the hospital in the verandah of the General Ward, while Ramesh Chander Singh and Bablu were sitting on the edge of this bed towards the east and were talking. Food had already been taken by Bablu and Smt. Kanti Devi at about 8.00 p. m. and a fluorescent tube light and a bulb were burning in the verandah. There is a Chabutra in front of this Verandah towards the east. Suddenly both the prosecution witnesses saw accused appellants Rampal and Darshan armed with guns and Harroo armed with a tamancha, entered the verandah from the eastern side. Ramesh Chander Singh at once drew the child Bablu towards him and both of them took shelter behind a two feet wide pillar of the verandah. Meanwhile Rampal and Darshan stood one towards the north and the other towards the south of this

pillar and from there they fired with their weapons upon Smt. Kanti Devi. Rampal fired twice and Darshan once. Smt. Kanti Devi received injuries and fell down from the bed on the ground floor. Then appellant Harroo is said to have fired in the air with the tamancha and all the three appellants ran away towards the south after scaling the southern wall. The first informant Ramesh Chander Singh (PW 1) lifted Smt. Kanti Devi and put her on a neighbouring bed, which was vacant and himself ran away to the Kotwali. He managed to reach there within 30 minutes and lodged the first information report Ext ka 1 at the Thana at 10.30 p. m.

6. Meanwhile the firing raised a commotion in the Hospital and the Doctor, who was on emergency duty. Sri A. K. Tewari came on the spot. He tried to treat Smt. Kanti Devi, but failed and when he was sure that she was dead, he sent a memo to that effect to the Superintendent of the hospital, vide, Ext ka 19 and it was duly forwarded by the Superintendent and sent to the thana through a ward boy and on the basis of this information, the case which was originally registered as one under Section 307, I. P. C. was altered to one under Section 302, I. P. C. vide, entry Ext ka 20. This happened at 11.00 p. m.

7. Mr. Suraj Pal Singh (PW 3), who was investigating the case, came to the hospital ward with necessary papers, carried out inquest on the dead body and prepared other documents and sent the dead body for postmortem examination.

8. Dr. V.P. Kulshrestha (PW 5) on 171977 at 3.00 p. m. conducted the postmortem examination on the dead body of Smt. Kanti Devi and the report is Ext ka 21. He found the following ante mortem injuries on her person:

1. Gun shot wound of entry 6 cm. X 6 cm. X bone deep on the lateral aspect of right side knee joint with blackening and tatooing with fractures of tibia upper end and lower end of femur.

2. Gun shot wound of exit 7 cm. X 6.5 cm. communicating with wound of entry of injury No. 1 and the medial of right knee joint.

3. Gun shot wound of entry 1 cm. X 1 cm. X middle deep on right thigh medial aspect middle point. No blackening or tatcoing was, seen. One pellet was recovered,

4. Gunshot wound of entry 1 cm. X 1 cm. X muscle deep on right side of thigh middle asp;ct 5 cms. below, injury No. 3. One lead pellet was recovered.

5. Gun shoot abrasion 1 cm. X 1 cm. on left thigh medial aspect lower 1/3rd.

6. Gun shoot wound of entry 5 cm. X cavity deep on right side back 3 cms. below scapula lower and with blackening and tatooing.

7. Gun shot abrasion 1 cm. X 1 cm. on the abdomen 5 cms. below umblicue.

9. The internal examination revealed congestion of the brain and its membrane, fracture of the posterior right side 6th and 7th ribs, rupture of the pleura, lungs,

pericardium and heart. From the pleura, five big pellets were recovered. About 10 ozs. semi solid material was found in the abdomen. Small intestine contained fluid and gases and the large intestine contained fluid and faecal matter. The gall bladder was also ruptured. It was due to shock and haemorrhage that the death had occurred. From the thorax, five big pellets and from the right thigh two pellets were recovered. According to the doctor these injuries could have been caused on 30/6/1977 at about 10 p. m. and were sufficient in the ordinary course of nature to cause death. He is also of the view that these injuries were in three different sets and had been caused as a result of three distinct firings. According to the doctor, the food that one takes, becomes semi solid in 2 or 3 hours.

10. The prosecution examined in this case in all five witnesses. PWs 1 and 2, namely, Ramesh Chander Singh first informant and Bablu alias Rajkumar son of Smt. Kanti Devi (deceased) are the only eyewitnesses. All others are formal including the Investigating Officer and the Doctor V.P. Kulshrestha (PW 5), who conducted the postmortem examination. One witness was examined as a court witness and he is Dr. E. A. K. Tewari. It may be mentioned here that the Investigating Officer, when he tried to contact the accused appellants, did not find them at their houses and had to take recourse to the provisions of Sections 82 and 83, Cr.P.C. and get their properties attached. It was only thereafter that the accused appellant Rampal, who was already on bail in some other case, surrendered in court on 8/7/1977 after getting his bail cancelled and Darshan surrendered on 9/7/1977. Similarly Harroo who was on bail in a case under Section 60 of the Excise Act, got his bail cancelled and surrendered in Court on 17/7/1977.

11. The defence was a complete denial of the prosecution story. Rampal has alleged that Naresh Pal never resided in Dahemi, but was residing in Regla Sharki. He has however no knowledge about his living in Delhi. He also took the stand that Harro was neither his associate nor his friend. His further contention was that although Smt. Kanti Devi had eloped with Nareshpal, they had no grievance and no ill will. He even denies commission of the murder of Mahesh and says that he was at that time in Pilibhit Jail. He admits that Raj Kumar alias Bablu is the son of Smt. Kanti Devi but is not sure about his father. Similar is the statement of Darshan. Harro, however says that he is not an associate of other appellants and he denies having known Rajkumar alias Bablu and his contention is that he has been falsely implicated, because he was a prosecution witness against Naresh Pal in the murder case of Amba Sahai and as a result of his testimony, Naresh Pal was convicted and sentenced.

12. There is no doubt as regards the fact that since after the elopement of Smt. Kanti Devi with Naresh Pal, the relations between the two families deteriorated to the limit of being inimical. I have already mentioned above the progress of the events that took place between these two families, between 1963 and 1973 up to date, till this occurrence took place. It was in 1963 that the elopement took place. It did not go

unnoticed and there is no dispute as regards the fact that Har Prasad father of Smt. Kanti Devi and the two appellants Darshan and Rampal lodged a formal first information report with respect to this occurrence. It is a different matter that the police did not take any action and submitted a final report. It appears that this caused great annoyance to Har Prasad and his family members, who were not only blaming Nareshpal and his family members for this outrage, but were also angry with Smt. Kanti Devi who had in this manner insulted them and their family and struck at their ego. In 1969 allegedly Darshan and Har Prasad fired at Ramesh Chander Singh and caused him injuries. This happened on 16/2/1969. A criminal trial started and resulted in their conviction on 11/11/1971, vide, Ext ka 25. Then there is evidence to show that Har Prasad and his sons Rampal and Darshan were accused of having tried to commit murder of Mahesh brother of Nareshpal. Prosecution was launched, which continued for a long time and only shortly before the present occurrence, it ended in acquittal on 29/4/1971. Meanwhile Mahesh was murdered on 14/9/1973. First Information report Ext ka 23 was again lodged against Har Prasad, Darshan and Rampal and one Siyaram. The Sessions Judge of Budaun on 26/1/1976, vide, Ext ka 24 acquitted all the accused. There is further evidence to show that on 29/12/1975 an attempt was allegedly made by Rampal, Darshan, Har Prasad and others to surround Ramesh Chander Singh when he was at the sugarcane Weighing Centre at Budaun. In this manner, there is no doubt of the fact that since after the elopement of Smt. Kanti Devi with Nareshpal, which took place in 1963, the relations between Har Prasad and his family members on the one hand and Nareshpal and his brothers and other family members on the other, became extremely strained. The last case was one when Amba Sahai was murdered and at the instance of the appellants, Nareshpal was involved in this case and was ultimately convicted and sentenced. This will simply provide for a very potent motive for Darshan and Rampal to do away with all the family members of Nareshpal including Smt. Kanti Devi, who though was their own sister, was the bone of contention and responsible for this deterioration in the relations and for causing insult to Darshan, Rampal and others. Under these circumstances, therefore, we have to view the present occurrence.

13. The argument that Ramesh Chander Singh was also present on the spot and the appellants could have aided at him and caused his death, rather than should have tried to kill their own sister Smt. Kanti Devi does not impress at all. From the prosecution evidence, which has been brought on the record, it appears that Ramesh Chander was quick enough to conceal himself and Bablu behind the pillar of the verandah. It appears that the accused appellants could not pin point him and found it easy to make their attack at Smt. Kanti Devi, who was laying on the bed just in full view of the culprits. The argument that Smt. Kanti Devi had not incurred any displeasure of the appellants with her and hence they could not have planned her murder, also is not appealing. It was due to Smt. Kanti Devi that the entire family of Har Prasad suffered insult, inasmuch as this girl ran away with Naresh Pal and in spite of an attempt by her father to lodge a report, she not only did not return to the

family but continued to live with Naresh Pal as his wife and even gave birth to Bablu.

14. Dr. V. P. Kulshrestha (PW 5) who conducted the postmortem on the dead body of Smt. Kanti Devi, was clearly of the view that injuries Nos. 1, 2 and could have been caused as a result of single firing, injury Nos. 3, 4 and 5 by another firing and injury No. 6 by a third firing. He, therefore, lends support to the prosecution story in this respect, which shows that a total number of three shots were fired at Smt. Kanti Devi from two different positions from the NorthEast and SouthEast of the pillar behind which Ramesh Chander Singh and Babli were concealed.

15. Our attention is drawn to the statement of Bablu in which he says that he and his mother had taken food only slightly before this occurrence and it is argued that this will fix the time of taking the food to about 10 p. m. and from the medical examination report, it appears that the lady had taken food atleast about two to (sic) hours prior to this occurrence and in this manner the statement of Bablu is falsified. We may however refer to the statement of Ramesh Chander Singh (PW 1) who says that he had brought the food at about 8.00 p. m. and Smt. Kanti Devi and Bablu had taken it and then Smt. Kanti Devi lay down on the bed of Bablu for a little rest, while Ramesh Chander Singh (PW 1) and Bablu sat on the foot side of the bed and were busy in talking, when this occurrence suddenly took place. Bablu was a boy of aged about ten years when he was examined in this case. His impression that he had taken food only slightly before this occurrence, does not necessarily indicate the real state of affairs. His estimate appears to be wrong. The fact appears that what Ramesh Chander Singh is saying, is true, because that finds corroboration from the medical report also.

16. It was argued that Smt. Kanti Devi was the brother's wife of Ramesh Chander Singh and it was highly improbable that Ramesh Chander Singh would sit on the same bed, on which Smt. Kanti Devi was lying. We do not however find anything in coherent or inconsistent or unreasonable in this. It so many times happens, specially in hospital wards, where a single bed is provided that people sit down on the bed of the patient also and ladies of the family also lie down for rest. To our mind this circumstances in the present case presents nothing abnormal on the basis of which the prosecution story should be discarded.

17. It is undoubted that the occurrence did take place in male ward of the District Hospital Budaun on 30.6.1977 at 10 p. m. This fact stands established from the entire evidence on the record including the testimony of C. W. 1 Dr. E. A. K. Tewari and the testimony of the Investigating Officer as well as other relevant circumstances including the time of the first information report and, the time of the receipt of the death memo in the thana. Naturally at this hour of the night, most important point to be considered would be of light. Ramesh Chander Singh (PW 1), Bablu (PW 2), Dr. Tewari C.W. 1 and the Investigating Officer are all one to say that there was more than sufficient electric light available in the verandah of the hospital ward, where a number of beds had been laid for various patients including Bablu. The presence of

Bablu also at the spot cannot be disputed. The occurrence took place in the male ward. There is nothing on the record to show that Smt. Kanti Devi herself was ill. Even if that had been the truth, she would not have been killed in the male ward of the hospital. It simply means that some male member of the family was ill and was present in the ward. There is only the prosecution version in this respect and it is now undoubted that Bablu alias Raj Kumar was suffering from some minor ailment, as a result of which he had been admitted in the Male Ward of the Hospital and her mother Smt. Kanti Devi was present there in order to tend to him. So far as the presence of Ramesh Chander Singh is concerned, he has lodged the first information report without delay and we are unable to accept the defence suggestion that the first information report was taken down the next day and has been antedated. There is nothing on the record to suggest that. On the contrary, the entire evidence on the record shows that by 11.00 p. m. information had already been received in the Thana about the demise of Smt. Kanti Devi and the Investigating Officer conducted the inquest proceedings in the hospital itself soon thereafter and mentioned the crime number in the inquest memo. Therefore, the case had already been registered much before 11.00 p. m. and it was only registered at the instance of Ramesh Chander Singh who had rushed to the thana almost immediately after the occurrence. It is true that he did not first try to approach any doctor for the immediate treatment of Smt. Kanti Devi who had received fatal injuries. On the contrary he ran away with a view to lodge a first information report in the thana. That may appear to be somewhat abnormal conduct, but for that reason, his testimony cannot be thrown away as unreasonable. It may be that since the occurrence had already taken place in a hospital where the doctors are expected to be available he might have thought that some body will inform the doctor and medical attendance will be available and that he should himself lodge promptly a report with the police. Whatever may be the reason, the fact remains that he rushed to the thana to lodge a report leaving his Bhabhi in precarious condition.

13. Then again, the fact whether the lady was left lying on the ground where she had fallen down after receiving the gunshot injuries or was lifted and placed on a neighbouring bed, is of no consequence. The contradiction in this respect available in the testimonies of P.W. 1 and C.W. 1 does not point to any material contradiction in the evidence. It can, therefore, be ignored. We are of the opinion that the statement of Ramesh Chander Singh (P.W. 1) as regards the manner of the occurrence is perfectly reliable and acceptable and so also of the child witness P.W. 2, Bablu alias Raj Kumar.

19. Of course from the testimony of these two witnesses, it appears that there were three persons who came on the spot. Two of them undoubtedly were Darshan and Rampal, who were armed with guns and who fired three fatal shots. There was a third person also. The statement of Bablu alias Raj Kumar in this respect is not convincing to fix the identity of the culprits. He could have no occasion to know

Harroo alias Gantha from before. This man did not belong to the family of Darshan and Rampal. There was no occasion for Bablu, who did not live in this village, to know him from before. The testimony of Bablu shows that even the members of the family of his Nana, (mother's father) were not known to him, as he was always kept at a distance from them and was never allowed to come into contact with them. The three appellants were never put up for identification by Bablu. Therefore, his testimony regarding their identity has to be ignored but his statement has to be accepted completely as regards the fact of the occurrence, how it took place, how many persons were involved and how his mother was fired at and injured. But this cannot be said about Ramesh Chander Singh (P.W. 1). He had reason to know Darshan and Rampal from before and he specifically named them without losing any time within 30 minutes of the occurrence by lodging the first information report three furlongs away in thana kotwali at 10.30 p.m. Of course he has also named Harroo in this case. There is some doubt about the presence of this appellant amongst the culprits. It appears to us that there was a third person also along with Darshan and Rampal and he was perhaps unknown and since in view of Amba Sahai's murder case, in which Harroo had appeared as a witness against Naresh Chander Singh and in which Naresh Chander Singh was convicted and sentenced, Harroo has been implicated in this case in place of the third unknown person just to wreck vengeance. The case against Harroo is thus not free from doubt and the benefit of this doubt should go to him.

20. We have very carefully gone through the entire evidence on the record and after placing reliance upon the testimonies of Ramesh Chander Singh (P.W. 1) and Raj Kumar alias Bablu (P.W. 2) in the light of what we have said above we agree with the learned Sessions Judge, that it was satisfactorily proved beyond doubt that Darshan and Rampal shot at Smt. Kanti Devi and committed her murder. Therefore, they were rightly held guilty of this offence. It is not known as to whose shot resulted in the death of Smt. Kanti Devi. It appears that her death was the result of the cumulative effect of the three shots. Therefore, both these persons Rampal and Darshan would be guilty under Section 302, read with Section 34 of the Indian Penal Code and their conviction has to be altered accordingly, though the sentence of imprisonment for life awarded to them has to be upheld.

21. We are also of the view that the case against Harroo, son of Jhammar, is somewhat doubtful and he should be granted the benefit of this doubt and hence acquitted of the charge under Sections 302/34, I.P.C.

22. In the result, the appeal is allowed in part. Rampal and Darshan are found guilty and convicted under Sections 302/34, I.P.C. and the sentence of imprisonment for life awarded to them is upheld and confirmed. They are on bail. They should surrender forthwith. They will be taken into custody to serve out their sentences and their bail bonds shall be cancelled.

23. So far as Harroo is concerned, he is given benefit of the doubt and hence acquitted of the charge under Sections 302/34 of the Indian Penal Code. He is also on bail and he need not surrender. His bail bonds shall stand discharged.