

Dharamvir and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-02-1988

Reported in : 1990CriLJ839

Judge : V.P. Mathur and ;Madan Mohan Lal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 307

Appeal No. : Criminal Appeal No. 1353 of 1978

Appellant : Dharamvir and ors.

Respondent : State of U.P.

Advocate for Def. : Deputy Govt. Adv.

Advocate for Pet/Ap. : Vereesh Misra, ;K.P. Singh and ;P.N. Katju, Adv.

Disposition : Appeal dismissed

Judgement :

Madan Mohan Lal, J.

1. This is an appeal against a judgment and order dated 4-5-1978 passed by Sri N. N. Sharma, the then Sessions Judge, Moradabad by which he has convicted all the four appellants under Section 302/34, I.P.C. and has sentenced each of them to imprisonment for life and has further convicted Vijai Pal and Chhotey Singh

under Sections 307/34, I.P.C. and has sentenced each of them to undergo rigorous imprisonment for seven years. Both the sentences were, however, ordered to run concurrently.

2. Dharamvir and Dharam Pal appellants are real brothers. They are residents of village Javra, to which place Phool Singh deceased also belonged. They were friendly to the remaining two appellants. All the appellants are Jats.

Jaipal was the elder brother of Phool Singh deceased. He was a person of low intelligence. About two years prior to the occurrence Dharamvir and Dharam Pal appellants got their cousin Vijai Singh married to Smt. Ramesh, daughter of Jaipal despite the objection of Phool Singh deceased. Dharamvir and Dharam Pal appellants were aggrieved because Phool Singh had resisted the said marriage. After the said marriage Dharamvir and Dharam Pal appellants used to visit the place of Jaipal frequently. Phool Singh deceased persuaded his brother Jaipal to stop the said visits of Dharamvir and Dharampal appellants. '

One month prior to this incident, Phool Singh deceased got Smt. Laxmi, younger daughter of Jaipal, married to one Inderpal to the disliking of Dharamvir and Dharam Pal appellants, who wanted her to be married to one of their relatives named Nambri.

It is further said that on the occasion of Shiv Teras' fair in village Mohammadpur, Dharamvir and Dharampal appellants fell out with Mahendra Singh son-in-law of Phool Singh deceased.

It is also the case of the prosecution that one day prior to the incident, i.e. on 7-6-1977, when said Mahendra Singh went to the shop of one Bhukhan Saran in village Fatehpur Bishnoi, Dharamvir and Dharam Pal appellants surrounded him. In order to save himself Mahendra Singh went upstairs in a room and bolted the door of the said room from inside. On getting the information of the said incident Phool Singh deceased went with his licensed gun to that place and rescued his son-in-law Mahendra Singh. Dharamvir and Dharam Pal appellants had threatened Phool Singh with dire consequence at that time.

According to the case of the prosecution, on 8-6-1977 at about 8 p.m. Phool Singh deceased was returning to his house from that place where he had installed engine. When he reached at the north west corner of the house of Buddha Singh in his village Javra, P.S. Chhajlaid, district Moradabad, he was waylaid by all the four appellants, who were present at the south-east corner of the nearby house of Ganga Ram, Dharamvir and Dharampal were armed with single barrel guns and Vijaipal and Chhotey Singh were carrying pistols. Dharamvir and Dharampal appellants challenged Phool Singh with the utterance that he was considering himself to be a valiant and that he had rescued Mahendra Singh in village Fatehpur Bishnoi at point of gun and so he was not to remain alive. The said altercation attracted Chhuttar Pal Singh informant, Hem Singh and his wife Smt. Lilawati and Uttam Singh living in the vicinity to the place of occurrence. Chhuttar Pal Singh and Hem Singh were carrying torches which they had flashed. Dharamvir appellant then asked Dharam Pal appellant not to get the entire village collected at the place of occurrence but to shoot Phool Singh, on which both these appellants, i.e. Dharamvir and Dharam Pal, fired shots at Phool Singh which hit him. When Hem Singh and his wife Smt. Lilawati proceeded to save Phool Singh, they were fired at by the remaining two appellants, i.e. Vijai Pal and Chhotey Singh, as a result of which they were injured. When some witnesses rushed to the place of occurrence, the appellants ran away. Phool Singh had succumbed to the injuries at the spot. He was carried to his house. Hem Singh and Smt. Lilawati were taken to the district hospital Moradabad on the same night. Chhuttar Pal Singh went to P. S. Chhajlaid, situated at a distance of eight miles, on the next day, where he lodged the report of the incident at 10 a.m.

3. In support of its case the prosecution examined ten witnesses. P.W. 2 Chhuttar Pal Singh is the son of Phool Singh deceased. He is the informant P.W. 5 Hem Singh and P.W. 7 Smt. Lilawati are injured persons. P.W. 6 Uttam Singh is an eye-witness. P.W. 9 Bhukam Saran is a witness of the incident which took place one day prior to the incident P.W. 8 Head Constable Ishtiyag Mohammad had received the written report of the incident and had registered the case P.W. 1 constable Pyare Lal brought the dead body of Phool Singh for post-mortem examination.

4. P.W. 4 Dr. Y.K. Jain was the Medical Officer, District Hospital, Moradabad. On 9-6-1977 at 0.20 a.m. he had examined the two injured persons and had found the following injuries on their persons:--

Hem Singh

1. Three gun shot wounds of entrance in an area of 3 1/2 cm. x 1 cm. on the right side head 12 cm. above the right ear. margin inverted. No blackening charring present. Kept under observation. Advised X-ray. Fresh bleeding present size 1/8 cm. x 1/8 cm x scalp deep.

2. Two gun shot wounds of entrance in an area of 6 cm. x 3 cm. on the right side forehead 1 1/2 cm. above the right eye-brow, 6 cm. each apart, margin inverted. No blackening and charring present, size 1/8 cm. x 1/8 cm. muscle/bone deep.

3. Multiple gun shot wounds of entrance in an area of 11 cm. x 8 cm. on the left side face size 1/8 cm x 1/8 cm x muscle deep. No blackening and charring present margin inverted. Kept U.O. Advised X-ray. Fresh bleeding present.

4. Multiple gun shot wounds of entrance in an area of 9 cm. x 5 cm. on the right side face size 1/8 cm. x 1/8 cm. x muscle bone deep. Margin inverted, no blackening and charring present, kept u.o. Advised X-ray. Fresh bleeding present.

5. Multiple gun shot wounds of entrance on the front and upper part of chest and neck both sides in an area of 28 cm. x 12 cm. size 1/8 cm. x 1/8 cm. x depth not probed. Margins inverted. No blackening and charring present. Fresh bleeding present Kept U.O. Advised X-ray.

Smt. Lilawati

1. Multiple gun shot wound of entrance in an area of 11 cm. x 2 1/2 cm. on the right side head 3 cm, above the right ear. Size 1/8 cm. x 1/8 cm. x bone deep. No blackening and charring present margins inverted and lacerated. Kept U.O. Advised X-ray. Fresh bleeding present.

2. Multiple gun shot wound of entrance in an area of 18 cm. x 9 cm on the right side face and neck size 1/8 cm x 1/8 cm. x muscle bone deep. No blackening and

charring present. Kept u.o. Advised X-ray. Margins inverted and lacerated.

3. Three abrasions on the right side lower jaw in an area of 3 cm. x 2 cm. size maximum 1 1/2 cm. x 1/2 cm. and maximum 1/6 cm. x 1/5 cm. Fresh blood oozing out.

5. The post-mortem examination of the dead body of Phool Singh was conducted by P.W. 3 Dr. Diwakar Misra, then Medical Officer, District Hospital, Moradabad and he found the following ante-mortem injuries on the said dead body:--

'Multiple fire-arm wounds of entry margins inverted. No tattooing, no signing, no blackening 1/10' x 1/10' x bone deep over left side of face and left side of skull, muscle deep over left side of neck and thoracic cavity deep over the upper part of left side of front of chest in an area 4' x 3 1/2' below the clavicle. The carbbid vessels of left side lacerated and blood clots present in muscle of left side of neck. The intercostal muscles perforated at multiple places under the injury over the left side of chest. The pleura under the injury lacerated at multiple places 1/10' x 1/10' x whole thickness deep and the upper lobe of left lung perforated 1/10' x 1/10' lung tissue deep. The left thoracic cavity contains about 1 1/2 pint of blood. Five pellets recovered from left side of neck, face and skull and six pellets from the left lung.'

Three ounces semi digested food material was in the abdomen. Large intestines contained faecal matter. According to the doctor death was due to shock and haemorrhage as a result of aforesaid injury. As per the doctor the said injury was sufficient to cause instantaneous death. The doctor had taken out five pellets from left side of neck. Face and skull and six pellets from left lung.

6. The investigation of this case was conducted by P.W. 10 Devendra Singh Sirohi, S. O. P. D. Chhajlait. The case had been registered in his presence. He had started investigation of this case at once. He recorded the statements of Chhuttar Pal Singh Ram Sahai and others at the police station. He reached the place of occurrence on the same date at 8.30 a.m. He found the dead body of Phool Singh at the 'Baithaka' of his house. He took the dead body in possession and prepared the 'Panchayatnama' thereof andj then handed over the sealed dead body to the constable Pyare Lal and Chukidar etc. to take the same for post-

mortem examination. The I.O. inspected the place of occurrence, where he found the blood at the pavement. He took blood stained and unstained pieces of bricks in his possession. He prepared the site plan. He also inspected the torches of the witnesses, which were found to be in working position. He recorded the statements of Mahendra Singh and others. On 13-6-1977, the I.O. went to the District Hospital, Moradabad, where he recorded the statements of Hem Singh and Smt. Lilawati.

7. The appellants in their , statements denied the case of the prosecution. Dharamvir and Dharam Pal appellants further stated that on the day of the incident they were not in the village but had gone to Moradabad, where ' they stayed for the night. The appellants examined five witnesses in defence. D.W. 1 constable Krishna Kumar Saxena, Record Keeper in the S. P. Office, Moradabad was summoned to bring the general diary dated 9-6-1977 of Kotwali, Moradabad containing an entry that on 9-6-1977 at 1.25 p.m. a memo had been recieved from District Hospital. D.P.W. 2 constable Vijai Pal Sirigh was summoned with the gun licence of Phool Singh deceased. S.M. Iqbal Ahmad D.W. 3 was an arms dealer at Moradabad. He was examined to depose that on 8-6-1977 Phool Singh had come to his shop to purchase five cartridges. D.W. 4 Darshan Kumar is a partner in a shop at Moradabad: He deposed that on 8-6-1977 Dharam Pal appellant had come to his shop and had purchased pipe. D.W. 5 Harish Chandra. S. I. Kotwali Moradabad stated that on receipt of a memo from District Hospital. Moradabad on 9-6-1977, he had gone to the said hospital to make enquiry from Hem singh and Smt. Lilawati, the two injured persons and then handed over the said memo with a report at Kotwali.

Learned Sessions Judge believed the case set up and the evidence produced by the prosecution and had accordingly convicted and sentenced the appellants as aforesaid. Aggrieved by the same the appellants have filed this appeal.

8. We have heard the learned counsel for the appellants and the counsel for the State and have perused the record carefully.

In order to prove its case, the prosecution, as already observed, has examined the two injured persons, i.e. P.W. 5 Hem singh and P.W. 7 Smt. Lilawati, besides two

eye-witnesses P.W. 2 Chhuttar Pal Singh informant and P.W. 6 Uttam Singh. The injuries sustained by the said two injured persons were not superficial. The injuries sustained by them have already been reproduced. As may be seen from the same both these injured persons had sustained very many gun shot wounds. The said wounds were on vital part of their body. When these two injured persons were medically examined at District Hospital. Moradabad on the mid night of 8/9 June, 1977 the doctor found fresh blood oozing from their injuries, The said injuries were fresh. It cannot be said by any stretch of imagination that the said injuries were self inflicted or were caused by a friend. We are thus satisfied that both P.W. 5 Hem Singh and P.W. 7 Smt. Lilawati were present at the place of occurrence and had seen the incident.

P.W. 5 Hem Singh has stated in his evidence that on the date of the incident at about 8 p.m. when he was at his house, he heard noise on which he, followed by his wife Smt. Lilawati P.W. 7 went to the place of occurrence to see an altercation going on between Dharamvir and Dharam Pal, both armed with single barrel gun, on one side and Phool Singh deceased on the other. He further found Vijaipal and Chhotey Singh appellants, carrying pistols, standing nearby. According to him the appellants were telling Phool Singh deceased that yesterday he had, at the point of gun, rescued his son-in-law, and that thereafter Dharamvir and Dharam Pal appellants had fired shots at Phool Singh, which hit him and he fell down at the 'Kharanja'. This witness further deposed that when he and his wife Smt. Lilawati proceeded to save Phool Singh, Vijay Pal and Chhotey Singh appellants fired shots at them, which hit them. A similar statement has been made by P.W. 7 Smt. Lilawati. P.W. 6 Uttam Singh has also deposed that on 8-6-1977 at 8 p.m. he had come out of his house on hearing noise to find all the four appellants carrying firearms standing at the south east corner of the house of Ganga Ram and Phool Singh deceased standing towards the north west corner of the house of Buddha Singh. He further deposed that Dharamvir and Dharam Pal appellants were abusing Phool Singh and were telling him that he was considering himself very brave and that he had saved his son-in-law from their clutches yesterday and that today they would not leave him. This witness further deposed that both Dharamvir and Dharampal fired shots from their guns at Phool Singh, which hit him and that when Hera Singh and Smt. Lilawati went forward to save him. Vijaipal and

Chhotey Singh fired shots at them, as a result of which both of them were injured. Similarly, Chhuttar Pal Singh informant has also deposed that on hearing the noise of an altercation he had come to the place of occurrence from his house to see Dharamvir and Dharampal appellants firing shots from their guns at his father Phool Singh and then Vijaipal and Chhotey Singh appellants also firing at Hem Singh and his wife Smt. Lilawati, when they went to the rescue of Phool Singh. All these four witnesses have given details of the incident. There is no contradiction with regard to any material detail of the Occurrence in their evidence. They have given consistent evidence and have withstood cross-examinations well. Their evidence inspires confidence. Chhuttar Pal Singh and Hem Singh had torches which they had flashed. There was thus sufficient light in which they could recognise all the four appellants. We have been impressed by their evidence. In our view the learned Sessions Judge has rightly placed reliance upon them.

9. Learned counsel for the appellants has, however, argued before us that the F.I.R. in this case was lodged with much delay and that, therefore, F.I.R. cannot lend corroboration to the case of the prosecution. He has further urged that when Hem Singh and Smt. Lilawati could reach District Hospital, Moradabad on the same night. It is true that Hem Singh and Smt. Lilawati had reached the District Hospital, Moradabad on the same night at about mid-night. It is also true that whereas this incident took place on 8-6-1977 at 8 p.m. the F.I.R. on the other hand was lodged at P. S. Chhajlait, situate at a distance of eight miles, at 6.06 a.m., i.e. after an interval of ten hours. However, we are of the opinion that the delay in lodging the F.I.R. in this case has been satisfactorily explained. P.W. 2 Chhuttar Pal Singh has deposed that due to the fear of the appellants he had not left his house in the night for the police station. There was also the fear that the dead body may not be taken away. In our view when the appellants were dare devils so much so that they had committed this crime in the village 'Abadi' and had killed Phool Singh and seriously injured two others, the fear of Chhuttar Pal Singh was not groundless. We are of the opinion that when a case of murder taken place in the night and the informant both in his F.I.R. and evidence states that he could not proceed to police station due to fear, there is no reason to disbelieve the said explanation. In AIR 1988 SC 1028 : (1988 All LJ 555), State of U.P. v. Ram Swaroop, where incident had taken place on 2nd March at about sun set and

F.I.R. was lodged on 3rd March at 7 a.m. and informant stated that due to fear he could not come to the police station in the previous night, it was observed that the delay in lodging the F.I.R. was satisfactorily explained. In result, therefore, we are of the opinion that the delay in lodging the F.I.R. has been very well explained. With regard to the going of Hem Singh and Smt. Lilawati to the District Hospital, Moradabad on the same night we are of the view that when there was no enmity between the appellants and the said two injured persons and also when the injuries sustained by them were serious, it was natural if, in these circumstances, their kith and kin rushed them to District Hospital, Moradabad for treatment.

10. Learned counsel for the appellants has vehemently urged before us that there was no light at the place of occurrence which would have permitted the eye-witnesses to see, and recognise the assailants. In our view this argument is without force. We are of the view that when this incident took place in a village where there was no electricity, it was something natural if the witnesses, carried torches with them. Therefore, we believe the witnesses who have deposed that P.W. 5 Hem Singh and P.W. 2 Chhuttar Pal Singh had torches which they had flashed.

11. Learned counsel for the appellants has also urged before us that this incident had not taken place at the spot alleged by the prosecution. It may be observed that the defence had suggested to the witnesses that this case was a case of robbery which was committed when Phool Singh, deceased, Hem Singh P.W. 5 and P.W. 7 Smt. Lilawati were going on a way. In our opinion there is no force in the said submission of the defence specially when it does not find any support from the material on record. Besides, it may be observed that the I.O. who made the local inspection on 9-6-1977 had found blood at the place of occurrence. He had taken the blood stained pieces of bricks from the said place and had sent the same for chemical examination. The Chemical Examiner on chemical analysis found the said pieces of bricks soaked in blood. We are also of the view that had the incident taken place somewhere else, there would have been no gain to the prosecution to change the place of occurrence specially when the two injured persons were there to narrate the incident. Moreover, we are of the view that P.W. 5 Hem Singh, P.W. 7 Smt. Lilawati and P.W. 6 Uttam Singh are independent

witnesses. They had no enmity with the appellants or special affinity for the prosecution. They were residing in the neighbourhood of Dharamvir and Dharam Pal. They would not have left the real assailants and instead thereof would not have falsely implicated their neighbours etc. in this case.

12. Learned counsel for the appellants has also submitted before us that there was no reason for the appellants to have injured Hem Singh and Smt. Lilawati. We find no merit in the said argument as well. It has come on the record that when both Hem Singh and Smt. Lilawati proceeded further to save Phool Singh, Vijaipal and Chhotey Singh appellants fired at them. It is clear that Hem Singh and Smt. Lilawati were not injured due to some enmity but were hit when they went ahead to save Phool Singh.

13. Learned counsel for the appellants has tried to point out certain discrepancies in the evidence given by the eye-witnesses. In this context he has pointed out that as against his evidence in the trial Court Chhuttar Pal Singh informant had not told the I.P. that he had come to the place of occurrence from his house and that appellants were telling Phool Singh deceased that yesterday by the force of his gun he had saved and brought out his son-in-law from village Fatehpur Bishnoi. In our view the said discrepancies are too minor to be attached any weight. In fact the same were omissions which even did not amount to contradiction.

14. Learned counsel for the appellants has further urged before us that the injuries sustained by the deceased and two injured persons were the result of a single shot and not four shots, as deposed by the eye-witnesses. In pur opinion the said argument is without merit. We have already seen that the gun shot wounds sustained by the deceased and the two injured persons were very many in number. The same could not have been possibly caused by a single shot fired at three persons standing at some distance. There is nothing either in the evidence of any doctor or elsewhere which may show that all the aforesaid injuries sustained by three persons can be sustained by one shot. It may be observed that the testimony of the eye-witness is always preferable to medical evidence unless the medical evidence completely rules put the eye-witness version see AIR 1983 SC 484, Solanki Chimanbhai Ukabhai v. State of Gujarat. In our opinion when the

medical evidence does not at all rule out the eye-witness version, there is no reason to disbelieve the version given by the eye-witnesses.

15. Learned counsel for the appellants has further urged before us that there was no connection between Dharamvir and Dharam Pal with the remaining two appellants and that therefore they could not combine to commit this crime. This argument is without force because Chhuttar Pal Singh has stated in his evidence that these two sets of appellants were friendly to each other and that Vijai Pal and Dharam Pal appellants had also studied together. Chhuttar Pal Singh P.W. 2 was not cross-examined on the said point.

16. Learned counsel for the appellants has pointed out that when Hem Singh and Smt. Lilawati were examined at District Hospital on the midnight of 8/9 June, 1977, the doctor had sent a memo to the Kotwali, Moradabad on which D.W. 5 Harish Chandra, S.I. had come to the Hospital to make enquiry and that because the said memo and the enquiry report have been suppressed, hence the case of the prosecution should not be believed. We find no force in the said argument. Although D.W. 5 Harish Chandra has stated in his evidence that on receipt of the aforesaid memo he had gone to District Hospital, Moradabad to make enquiries and that he has then returned the said memo with his report of back thereof to Kotwali, Moradabad, yet we are of the opinion that no advantage from the same can be given to the defence. It may be noted that all that D.W. 5 Harish Chandra stated in his evidence was said from his memory after a lapse of about nine months. In our view if the defence had thought that the said memo would go to destroy the case of the prosecution, it could have summoned the memo at the relevant time. Anyway, the evidence of D. W. 5 Harish Chandra does not contradict or belie any of the witnesses, including P.W. 5 Hem Singh and P.W. 7 Smt. Lilawati.

17. The appellants Dharamvir and Dharam Pal had raised a plea of alibi before the trial Court. In this respect they have stated that on the night of the occurrence they were staying at Moradabad. In support of their contention they had examined D.W. 4 Dar-shan Kumar, who was a partner of M/s. Rameshwar Saran, Ram Bharosey, Kalpnath, Moradabad. He deposed that on 8-6-1977 Dharampal appellant had

come to his shop and had purchased pipe. In our view even if it may be believed that some time in the day Dharam Pal had gone to Moradabad, situate at a short distance from his village, to purchase some pipe, the same cannot go so far as to raise an inference that he had stayed for the night as well at MPradabad. No evidence was produced in support of plea of alibi taken by Dharam Pal. Thus the fact remains that both Dharamvir and Dharam Pal appellants had raised a plea of alibi but the same was not substantiated.

18. In the end of the learned counsel for the appellants has urged before us that the motive set up by the prosecution in this case was not established. It is true that P.W. 2 Chhuttar Pal Singh had no personal knowledge about the previous incidents and his evidence with regard to the motive was based on hearsay. However, the evidence given by P.W. 9 Bhukan Saran proves the immediate motive attributed to the appellants. The said Bhukan Saran P.W. 9 is a sweetmeat seller at village Fatehpur Bishnoi. He has deposed that about six months prior to this incident, Mahendra Singh, son-in-law of Phool Singh had come to his shop at about 3-4 p.m., when Dharamvir and Dharam Pal appellants surrounded him and abused him on which the said Mahendra Singh retreated and went upstairs and bolted himself in a room from inside. He further deposed that whereas the two appellants waited for Mahendra Singh to come out from the aforesaid room in the meanwhile Phool Singh deceased and one Raja Ram came there and rescued Mahendra Singh. P.W. 8 Bhukam Saran is an independent witness. In our view his evidence inspires confidence. Anyway, we are also of the opinion that in case of direct evidence motive does not play a very important rule. As already observed, the direct evidence produced in this case has proved the case against the appellants beyond reasonable doubt.

In result, therefore, we find no force in this appeal.

19. Accordingly this appeal is dismissed. The conviction and sentence of Dharamvir and Dharam Pal appellants under Sections 302/34, I.P.C. and Vijai Pal and Chhotey Singh under Sections 302/34, I.P.C. and 307/34, I.P.C. are upheld. They are no bail. They shall be taken into custody forthwith so that they may serve out the sentence of imprisonment imposed on them.

