

Janki Dass Vs. State

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SooperKanoon Citation : sooperkanoon.com/686436

Court : Delhi

Decided On : Mar-15-1994

Reported in : 1995CriLJ2175; ILR1994Delhi392

Judge : R.L. Gupta and; Y.K. Sabharwal, JJ.

Acts : Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313, 313(4), 342 and 366; Evidence Act - Sections 8

Appeal No. : Crl. A. 160/93 and Murder Ref. 3/94

Appellant : Janki Dass

Respondent : State

Advocate for Def. : N.K. Handa Addl. Standing Counsel

Advocate for Pet/Ap. : Rakesh Sherawat, Adv

Judgement :

Y.K. Sabharwal, J.

1. The family of Janki Dass comprised of wife, a son, three unmarried daughters and a married daughter. He was a tenant in a portion of a House No. B-192, Vivek Vihar, Delhi. Pyare Lal was his landlord. Jai Kishan is son-in-law of Pyare Lal.

2. In Feb. 1989 Janki Dass after locking the house left for some unknown destination. On 15th Aug. 1989 when Janki Dass met pyare Lal and Jai Kishan he was told to vacate the house as the same was lying unoccupied and locked. Janki Dass expressed some difficulty and stated that he will vacate the house after some time. Pyare Lal told him that sometime back police from Raxsol had come in his search as they had found two dead bodies in a hotel in Raxsol and the said dead bodies were of his wife and daughter. Janki Dass became nervous and said that the dead bodies of his three children were also buried in his house. Janki Dass was taken to the Police. He is alleged to have made a disclosure statement that he can get the bodies of his three children recovered. The lock of the house of Janki Dass was opened by the keys provided by him to the Police and on pointing out of Janki Dass the three dead bodies in decomposed condition were found covered with mattresses and loose earth. The post mortem of the said dead bodies was conducted by Dr. Bharat Singh on the spot as he had advised that it was not possible to remove the dead bodies for post mortem on account of their decomposed condition. The post mortem was conducted on 16th Aug. 1989.

3. The case of prosecution further is that Janki Dass had also taken the Police to the place near the Power House, Road No. 56, Surya Nagar from where he had brought the loose earth to cover the dead bodies and took the police party to a Chemist shop as well from where he purchased becasue and to the shop from where he purchased cyanide. The case of the prosecution is that Janki Dass had administered cyanide to the said three children whose dead bodies were recovered on 15th Feb., 1989 and after covering the dead bodies with polythene cloth, mattress and loose earth the room was locked by Janki Dass and thereafter on some pretext he took his wife and another daughter to Raxsol and stayed there in a hotel and killed them too in the similar manner by administering cyanide.

4. Besides examining the formal witnesses, the prosecution examined the landlord Pyare Lal and his son-in-law Jai Kishan Narang as PW. 1 and PW. 3 respectively, a neighbour M. M. Chadha (PW 4), Subhash Chand (PW. 7), Dr. Bharat Singh (PW. 13) who had conducted the post mortem and the Investigating Officer Inspector K. K. Kaushik (PW. 22).

5. On the appreciation of evidence the learned Additional Sessions Judge found Janki Dass guilty of murder of his three children and also held him guilty of destruction of evidence of murder by burying the dead bodies under the heap of earth in his house and imposed sentence of death on Janki Dass. Janki Dass has filed this criminal appeal challenging his conviction and sentence. The murder reference has been submitted to this court by learned Additional Sessions Judge as required under S. 366 Cr.P.C.

6. Since the fate of the case, to a large extent, hangs also upon the admissions made by Janki Dass in his statement recorded under S. 313 of the Code, it would be useful to briefly notice as to what is contained in the said statement and examine its legal effect. Janki Dass admits that he locked his house in the month of Feb. 1989 and left for some unknown destination. The other admissions made by Janki Dass in his statement under S. 313 of the Code are :-

On his personal search conducted vide Memo Ex. PW. 3/B, two key rings containing 4 keys were recovered along with other articles. A disclosure statement Ex. PW. 3/C was made disclosing that he can get recovered the dead bodies of three children from his house No. B-192, Vivek Vihar, New Delhi, from a room situated in the rear portion of the house. He led the Police to the said house which was locked. The lock was opened with a key which was recovered from the personal search of Janki Dass and thereafter he led the Police to a room in his house and pointed out a heap in the room in which the three dead bodies of his children, namely, Asha, Rakesh and Anita were found lying buried and the heap was covered with a mattress and the police prepared a pointing out Memo Ex. PW. 3/D. Janki Dass gave an application in the court of Sh. Z. S. Lohat, Metropolitan Magistrate, to return the articles recovered from his personal search on which the Magistrate passed an order for production of the articles and that he received all the articles including the keys recovered from his personal search from the said court and executed a receipt to this effect (Ex. PW. 22/Q). Janki Dass also admitted that Subhash Chand (PW. 7) had given to him, prior to 1989, a loan amounting to Rs. 15,000/-, Rs. 21,500/- and Rs. 68,000/- and he had returned the part of the loan. Janki Dass further admitted that nobody had implicated him in the case and stated that he was helpless and a victim of

circumstances. He owed about Rs. 2 lakhs to Jagdish and Gyan Chand and was unable to pay the said amount and was even unable to pay the interest. He was threatened by them that if the amount is not returned he would be treated badly. On finding no other way he administered cyanide to Rakesh, Anita and Asha while his wife and daughter had gone to Calcutta to attend the marriage of the son of his brother-in-law. After a few days his wife and daughter Sunita came to Delhi. He did not take them to the house and took them to Adrash Nagar and from there took them to Raxsol via Patna and administered cyanide to them in a hotel in Raxsol and that his wife, daughters Sunita, Asha and Anita and son Rakesh died due to poisoning by cyanide.

7. Having noticed the aforesaid admissions made by Janki Dass, the question to be examined is as to what extent the aforesaid admissions can be taken into consideration and be made the basis of conviction. Mr. Sherawat, learned counsel for the convict, vehemently contends that admissions made by Janki Dass in statement under S. 313 of the Code, cannot be taken as evidence in the case and as such the conviction cannot be based on the said admissions. It has to be borne in mind that the underlying object behind S. 313 is to give an opportunity to the accused to be heard not only on what is prima facie proved against him but on every circumstance appearing in evidence against him so that he is not condemned unheard. It enables the accused to explain the circumstances appearing against him in evidence. For the present case, the provisions of sub-sec. (4) of S. 313 Cr.P.C., are very significant. The said section, inter-alia, provides that the answer given by the accused may be taken into consideration in such enquiry or trial in which the answers are given. The statement given by the accused may not be evidence in the strict sense of the term but at the same time the full meaning and effect has to be given to sub-sec. (4) of S. 313. A bare reading of this provision shows that the answers given by an accused may be taken into consideration in judging not only his innocence but also judging his guilt. There is nothing in the language of S. 313 to suggest that answers given by an accused admitting the evidence or circumstances proved against him, have to be ignored and have not to be taken into consideration for judging his guilt.

8. The Supreme Court in the case of *Hate Singh v. State*, : AIR 1953 SC468 has held that the answers given by an accused in his statement under S. 313 Cr.P.C. can be used for proving his guilt as much as the evidence given by the prosecution witness.

9. While construing S. 342(3) of the old Code which corresponds to S. 313(4) of the new Code the Supreme Court in the case of *Narayan Singh v. State of Punjab*, : [1963]3SCR678 , has held that if the accused person in his examination under S. 342 confesses to the commission of the offence charged against him the court may, relying upon that confession, proceed to convict him.

10. Again in a recent decision in the case of murder of Gen. A. S. Vaidya, former Chief of the Army (*State of Maharashtra v. Sukhdev Singh*, : 1992 CriLJ3454 the Supreme Court has held that 'even on first principle we see no reason why the court should not act on the admission of the confession made by the accused in the course of trial or in a statement recorded under S. 313 of the Code.'

11. The weight to be attached to the statement of an accused made under S. 313 of the Code though cannot be place in a straight jacket since it has to vary according to the circumstances of each case, yet the legal position seems to be clear that such statements can be taken into consideration in judging not only the innocence but guilt of the accused and admission made in a statement under S. 313 of the Code can be made the basis of conviction. The arguments of Mr. Sherawat and the discrepancies in evidence pointed out by the learned counsel, will have to be examined bearing in mind the aforesaid principles and the admissions contained in the statement of Janki Dass.

12. Mr. Sherawat contends that in the case like the present one which is based on circumstantial evidence it is necessary for the prosecution to establish the motive which learned counsel submits the prosecution has miserably failed to establish. According to the prosecution the financial hardship of the accused was the motive as he was unable to pay the heavy debts and was not even in a position to look after the family and, therefore, he planned to liquidate the entire family. In order to prove that the accused was in heavy debts the prosecution examined PW. 7 Subhash Chand who deposed that till 15th Aug., 1989 the accused owed to him

sums of (1) Rs. 15,000/-; (2) Rs. 21,500/- and (3) Rs. 60,000/- which he had to repay. Mr. Sherawat submitted that no reliance can be placed on the testimony of Subhash Chand as the witness admitted in the cross examination that he did not maintain any bank account and was not an income-tax payee and had not made any entries of loan in any document and was not a money lender. A suggestion was also given to Subhash Chand that he was deposing against Janki Dass as he owed a sum of Rs. 9,000/- to the accused. The suggestion was denied by Subhash Chand. Counsel contends that in view of aforesaid admissions made in cross examination by PW. 7, his testimony cannot be relied upon for holding that the accused was in debts. The accused was given an opportunity to explain the fact of his having taken loan from Subhash Chand. He admitted that he had taken the loan but stated that he had returned part of the loan. The accused also stated that he owed about Rs. 2 lakhs to Jagdish and Gyan Chand and was unable to pay the same and was even unable to pay the interest. In this view of the matter, we are unable to accept the contention that the prosecution has failed to prove that the accused was in heavy debts particularly when he has not only failed to offer any Explanation. But has rather admitted that he was under debts while making statement under S. 313 Cr.P.C.

13. Next it is contended that the earth sample lifted from the scene of a occurrence was not compared with the earth sample lifted from the Surya Nagar Power House and the learned Additional Sessions Judge committed grave illegality in holding that sample of earth lifted from Surya Nagar tallied with the earth lifted from near that dead bodies. The contention of the counsel is well founded. A perusal of evidence on record shows that the two samples of earth were not sent for Chemical examination and were not tallied. There is no evidence to support the finding recorded by learned Additional Sessions Judge that the two samples were tallied. This discrepancy, however, in our view is inconsequential. Assuming that the accused had not disclosed about the earth having been lifted from the Surya Nagar and that the prosecution had failed to explain as to from where the earth was lifted and placed on the dead bodies, that by itself would not be fatal to the case of the prosecution in case the other circumstances are proved by the prosecution.

14. Mr. Sherawat next contends that the keys which were alleged to have been recovered from the accused from which the lock of the room in which the dead bodies were lying was opened, were not proved by the prosecution. Counsel contends that while returning Jamatalashi to Janki Dass neither the keys were returned to him nor was there any occasion to return those keys and in fact only the amount of Rs. 28/- recovered from the accused was returned to him. Mr. Sherawat submits that the learned Additional Sessions Judge was wrong in holding that the keys could not be proved as the same had been returned to the accused. We are unable to accept the submission. Though it is correct that the keys being case property should not have been returned to the accused by the Metropolitan Magistrate but the record of the case clearly shows that, in fact, the said keys were returned to the accused along with return of Jamatalashi. The accused in his statement under S. 313 also admits that the said keys were returned to him. There is thus no merit in the contention.

15. The counsel for the accused next contended that the photographs of the three children whose dead bodies were recovered do not tally with the photographs which were recovered during investigation and mentioned in the Memo Ex. PW. 3/J. This again has no effect on the case as the accused admitted in his statement under S. 313 of the Code that the three dead bodies recovered were those of his two daughters and one son.

16. There is substance in the next contention of Mr. Sherawat that the purchase of cyanide by the accused has not been proved by the prosecution which has only proved the factum of purchase of six becasue capsules from the testimony of PW. 10, which is of no consequence as there is no evidence to show that the said capsules were filled with cyanide. The prosecution had examined PW. 17 Kansi Ram with a view to prove that from him the accused had purchased cyanide. The witness stated that he was the owner of Central Photo Store and sells ferry cyanide which is a Chemical used in photography but he could not identify the accused. PW. 17 stated that many persons used to come to him to buy ferry cyanide, hence he could not say whether the accused had come to him to buy the same or not. Thus the fact that the accused purchased cyanide has not been established. The same, however, is of no consequence on the facts and

circumstances of the present case. What is essentially required to be proved by the prosecution is not as to from where the cyanide was purchased or obtained but that it was administered to the deceased. Once again, Janki Dass in his statement under S. 313 of the Code has confessed that he administered cyanide to Rakesh, Anita and Asha. In this view, the non proof of purchase of cyanide becomes only academic and is of no consequence.

17. The conduct of the accused in pointing out the room and the recovery of the keys of the lock of the room in which the dead bodies were lying would be relevant facts under S. 8 of the Evidence Act. The accused admitted in his statement under S. 313 of the Code that the lock was opened with the keys recovered from him and the dead bodies were lying in the room of which the lock was opened. In this state of affairs, it is not necessary to examine the contention that the disclosure statement could not be taken into consideration as the fact of bodies lying in the room was already in the knowledge of the Police as it was mentioned in the FIR which was registered on the statement of Jai Kishan Dass and the recovery did not take place on account of disclosure statement made by Janki Dass before police.

18. It has come in evidence that the bodies were covered with mattresses, polythene sheets and earth and the house of the accused was lying locked and as such one can see why the smell was not noticed by any one for a long period. Similarly, the absence of proof of cause of death has also been explained on the facts and circumstances of the present case. PW. 13 Dr. Bharat Singh who conducted the post mortem has deposed that it was not possible to give the cause of death. That seems to be on account of the fact that the bodies were decomposed. In any case, in view of confession as contained in statement under S. 313 Cr.P.C. by Janki Dass, that he administered cyanide to the deceased and they died due to poisoning of cyanide, we think that these assumed discrepancies have no relevances.

19. From the evidence produced by the prosecution it stands established that the accused locked his house and left for unknown destination in Feb. 1989; accused wrote letters Ex. PW. B/A and Ex. PW. D/1-A which show that he was in perturbed

condition and was running here and there to save his skin; he produced the key of the lock of the room from where the dead bodies of his three children were recovered; the dead bodies were found inside the house which was under the tenancy of the accused and the said bodies were covered with mattress, plastic cloth and buried under the heap of earth; the accused was in heavy debts, the dead bodies were not cremated by the accused and it was not a case of natural death. These circumstances coupled with the admissions contained in the statement of the accused that he administered cyanide to his children and they died because of poisoning by cyanide clinchingly proves the guilt of Janki Dass. It stands fully established that the accused is guilty of offence under S. 302 IPC. All the circumstances taken together exclude the possibility of the innocence of Janki Dass. All the circumstances prove the hilt that Rakesh, Anita and Asha were murdered by Janki Dass. The finding of guilt returned by the learned Additional Sessions Judge is based on proper appreciation of material on record and we do not find any merit in the contentions of the learned counsel for the accused. The conviction is, accordingly, upheld.

20. Before we examine the sentence part, we would like to place on record our deep appreciation of the effort and labour put by Mr. Rakesh Sherawat, Advocate, who appeared in the case as amicus curiae and had very ably argued the case on behalf of Janki Dass.

21. The barbaric, gruesome and heinous crime committed by the accused would shock the conscience of any human being. The young children, Asha aged about 21 years, Rakesh aged about 20 years and Anita about 17 years lost their lives at the prime of their youth. The perpetrator of crime was not a stranger but their father. The act of the accused in murdering his three children would send shock waves to any one. The act is such which is bound to prick the judicial conscience. We do not find any mitigating circumstances in favor of the accused. We have very deeply and anxiously considered the aspect of sentence. While considering the aspect of sentence the conduct of the accused and position of the victim are some of the important aspects to be borne in mind. In the present case after murdering the three young children the accused buried their bodies in the room and left for some undisclosed destination. We do not think that the alleged financial hardship,

on the facts and circumstances of the present case, is such a mitigating factor which calls for a lesser punishment. Taking an overall view of the matter, there cannot be any escape for the conclusion that Janki Dass does not deserve any leniency. It is a fit case which calls for the death penalty which has been rightly imposed by the learned Additional Sessions Judge. Accordingly, we uphold the conviction of the accused Janki Dass and also the sentence of death imposed upon him by the trial Court.

22. In the result, the Criminal Appeal No. 160/93 is dismissed. The death sentence awarded by the trial Court is hereby confirmed.

24. Appeal dismissed.

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