
(1991) 12 DEL CK 0008

In the Delhi High Court

Case No : Criminal Appeal No. 181 of 1981

Municipal Corporation of Delhi

APPELLANT

Vs

Savitri Devi

RESPONDENT

Date of Decision : 02-12-1991

Acts Referred:

Delhi Municipal Corporation Act, 1957 — Section 332

Citation : (1991) 46 DLT 634 : (1992) 22 DRJ 218 : (1992) RLR 124

Hon'ble Judges : M. Sharief-ud-din, J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : R.P. Lao, for the Appellant;

Judgement

Malik Sharief-Ud-Din, J.

(1) We may note that even though this case was at no. 1 on our board, none appeared for the respondent. Mr. Lao, however, has fairly taken us through the record and has put forth his point of view. The respondent herein was prosecuted under Sections 332/461 of the Delhi Municipal Corporation Act, for rising some unauthorised construction which was noticed by Shri S.B. Singh, Junior Engineer of the Corporation on 23.4.80. According to the complaint, the construction was in the nature of two rooms and one passage on the third floor of premises no.2096/IV, Kinari Bazar, Delhi. According to Shri S.B. Singh, who has been cited as prosecution witness, when he inspected the site and found the illegal construction being raised he made a report to the Police and brought the police party and the photographer to the scene and that this unauthorised construction was also noticed by the Police party as the photographer who took the photographs. The trial court dismissed the complaint and acquitted the respondent on the ground there is a reasonable doubt in the prosecution case .because the prosecution deliberately failed to examine the best evidence available with it. We may note that the photographer and the Asi was cited s a witness in the complaint itself and adequate opportunity was granted by the learned trial court to the prosecution to lead evidence. The prosecution failed to

examine the photographer and the ASI.

(2) Mr. Lao urges that even though this evidence was not examined, the trial court has not given any substantial reason for disbelieving the testimony of junior engineer Shri S.B. Singh, who has fully established the prosecution case and there is no rule of law or propriety as to why the testimony of a singly witness if otherwise found trustworthy should not be acted upon. We are afraid as on the facts of this case, we do not feel that this principle is applicable. There is no dispute on the point of law that if the testimony of singly witness is found to be reliable and trustworthy, it has to be acted upon. In the present case, however, the prosecution itself sought to provide corroboration to the testimony of S.B. Singh, but failed to examine those witnesses which, in our view, was in fact the best evidence to lend support to the prosecution case and corroboration to the testimony of Shri S.B. Singh, In a case where the prosecution itself depends upon corroboration, but subsequently withholds it, one has to be very cautious and we think that the learned Magistrate was just in saying that this conduct on the part of the prosecution makes its case doubtful. It was in these circumstances that the benefit of doubt was given to the respondent. We do not think this is an appropriate case in which we should interfere. Dismissed.