

(1990) 01 DEL CK 0045

In the Delhi High Court

Case No : Criminal Appeal No's. 155 and 180 of 1987

Ved Parkash

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-01-1990

Acts Referred:

Citation : (1990) 3 Crimes 212 : (1990) 41 DLT 62 : (1990) 1 ILR Delhi 435 : (1990) 3 RCR(Criminal) 636

Hon'ble Judges : M.K. Chawla, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : D.R. Sethi, Raman Sawhney and S.T. Singh, for the Appellant;

Judgement

M.K. Chawla, J.

(1) (RULE D.B.) Gianender Kumar, complainant, and his brother Surender Babu, deceased, Along with one Ram Sewak were residing on the first floor of house No.A-756, Shastri Nagar since 1977 as tenant of one Shri Chandgi Ham. Ved Parkash, appellant is the nephew of Shri Chandgi Ram and was residing in the same building The landlord and his nephew wanted their tenant to vacate the room and had extended threats from time to time. On 25th October, 1985 i.e. prior to the date of incident, Ved Parkash had again threatened and tried to forcibly evict the tenants against which action, a report was duly lodged.

(2) Narrating the incident, Gianender Kumar in his Statement, Ex. Public Witness -1/A made before the Police and while appearing as one of the prosecution witnesses staled that -on the night between 24-25th December, 1985, at about 11 P.M., he Along with his brother Surender Babu was present in their room. Surender Babu was dressing up to go to his Home-guard duty. Ved Parkash, Harihar and Kishanwala came to their room and told them to vacate or face the consequences Harihar accused gave a slap to his brother who in retaliation also slapped. Gianender, however, succeeded in pushing all of them out of the room and bolted the door from inside. However, after sometime, all the three accused

named above came back, broke open the door and attacked Surender Babu with saria (iron rod). He tried to intervene whereupon Ved Parkash exhorted "jala do sale ko". A plastic can containing kerosene oil was lying in the room. Kishanwala lifted, the plastic can and poured kerosene oil on his brother Surender Babu and Harihar accused lit the match-stick to it. He raised an alarm and shouted "bachao-bachao". He tried to extinguish the fire as a result of which, he received burn injuries on his right hand fingers. On hearing the alarm, many of the neighbours including Jawahar Lal, came and poured water on his brother. In the meantime, Ved Parkash and his other two companions made good their escape from the room. Due to this fire, his brother Surender Babu and he himself sustained burn injuries and few of the household articles were also burnt. After a short while, the Police reached there and he and his brother were removed to J.P.N. Hospital. The Investigating Officer recorded his statement. Ex. Public Witness -1/A which he signed in token of its correctness.

(3) In his presence, the Police inspected the spot and took into possession partly burnt cot, half-bump quilt, one plastic can containing one litre kerosene oil and one door plank which was broken in the process of the forcible entry by the accused. "The investigating officer prepared the rough sketch plan of the place of incident which was also got photographed. Surender Babu succumbed to the burn injuries in the hospital at about 5.30 A.M. on 25th December, 1985. Two of the abused persons namely, Ved Parkash and Harihar Prasad were arrested from the park adjacent to the D.D.A. office building situated in Gulabi Bagh area. Kishanwala could not be arrested and was declared proclaimed offender.

(4) During the trial, the accused Ved Parkash completely denied the prosecution allegation while accused Harihar Prasad took the stand that he has been arrested on 25th December, 1985 at about noon time while he was taking lunch Along with his co-workers in Birla Mill canteen where he was employed. He has falsely been implicated in this case.

(5) .THE learned lower court convicted both the accused of an offence under Sections 302/452/34 Indian Penal Code . and sentenced them to life imprisonment and a fine of Rs. 5000 each u/s 302/34 Indian Penal Code . Both the accused were further sentenced to under go R.J. for five years and a fine of Rs. 3000 each u/s 452/34 Indian Penal Code .

(6) Both the accused persons have filed separate appeals against the order of their conviction and sentence. These appeals are being disposed of by this Judgment as common questions of law and fact arise.

(7) The contention of Shri D. R. Sethi, learned counsel for the appellant is two fold:

(1)The prosecution story as disclosed in the First Information Report of Gianender Kumar and detailed in his statement before the Court has not been substantiated in the oral or documentary evidence proved in the case.

(2)The ocular testimony of the only eye-witness Gianender Kumar cannot be believed as it is quite contrary to the medical evidence of the Autopsy Surgeon as well as the report of the C.F.S.L. on which the order of conviction cannot succeed.

(8) There is much substance in the submissions of the learned counsel for the appellant which are based on the well settled propositions of law. In the case reported as Bhagirath Vs. State of Madhya Pradesh, , while disposing of the Criminal appeal, the Supreme Court observed as under - "

"IT is well settled that the prosecution can succeed by substantially proving the very story it alleges. It must stand on its own legs. It cannot take advantage of the weakness of the defense. Nor can the court, on its own, make out a new case for the prosecution and convict the accused on that basis."

(9) In order to succeed, the prosecution was required to substantiate and prove their case of Ved Parkash having attacked Surender Babu with an iron rod which the com complainant tried to intervene and secondly, that the death of Surender Babu was. the result of severe burns caused by pouring kerosene oil and Fitting it with match-stick. It is not disputed that Public Witness -1 Giander Kumar, the brother of the deceased is the only eye-witness of the occurrence. Public Witness -3 Jawahar Lal who is named-in the Fir and allegedly had come to the rescue of the complainant and his brother has not supported the prosecution version. The story put forth by Gianender Kumar, in our opinion, is quite contrary to the facts placed and proved on record. The following circumstances will justify this conclusion :

(A)Even though Saria Ex. P-5 was got recovered at the instance of accused Ved Parkash from his house but it is not proved to have been used on the person of either of the brothers. We have perused the M.L.C. of Surender Ex. Public Witness -9/A and that of Gianender Ex. Public Witness -9/B. We do not find any injury on their person alleged to have been caused by this weapon. Even Dr. Ramani did not find any evidence of any such injury on any part of the body of the deceased. So this part of the prosecution story that accused Ved Parkash attacked and gave beating with a saria stands falsified.

(B)The evidence of Public Witness -11 Dr. L. T. Ramani who conducted the post-mortem examination on the body of Surender Babu also contradicts the prosecution version as disclosed by Public Witness -1 According to him, only upper part of the body was having 22 per cent burns which were ante mortem and were caused by fire .Death was due to shock resulting from burns. While under cross-examination, he was of the opinion that such burns were not possible. if the person was in standing posture. He was further of the opinion that if 4-5 litres of kerosene oil (as is the case of the prosecution) is poured on the body of the deceased or from the head side, extensive burns should have resulted and not only 22 per cent as in this case. The kerosene oil would have been detected in the scalp hair but in this case, no smell of kerosene oil was

detected in the remaining scalp hair of the deceased. On further probe, the doctor stated, "In view of the distribution of burns on the body and the degree of burns, such burns in, in my opinion, are likely to be caused as a result of accidental fire". The evidence of the medical expert even though establishes the death of Surender Babu due to 22 per cent burns, but it was not on account of fire due to pouring of kerosene oil.

(C)Ex. "X" is the report of the C.F.S.L. All the articles, including a sealed gunny bag, containing partly burnt wet quilt, a plastic can containing liquid, wooden box said to contain viscera, scaled parcel of unburnt underwear, a sealed phial containing hair and a sealed cloth parcel containing partly burnt shirt, sweater and baniyan were sent to the office of the C.F.S.L. for report. On physicochemical analysis of these articles, it was found that the partly burnt wet quilt, the parcel containing unburnt underwear, sealed phial containing hair and the partly burnt shirt, sweater and baniyan did not contain kerosene Oil. This report which is not under challenge conclusively demolishes the prosecution case that the accused persons poured kerosene oil on the person of Surender Babu and lit it to fire as a result of which he died of burns.

(D)Public Witness -18 Asi Harbhajan Singh was the first Police Officer to reach the place of occurrence on receipt of the copy of the report Ex. Public Witness -21A, registered at 11.40 P.M. informing that a quarrel has taken place at A-756, Shastri Nagar, Delhi and some police officer be sent. In his cross-examination, he was frank enough to admit that at the time of investigation, at the spot, he did not feel the smell of kerosene oil coming from the cot. If three to four litres of kerosene oil has been poured or sprinkled on the body of the deceased, then, there was every possibility of it flowing on the floor thereby emanating a strong smell of kerosene oil But it was not to be.

(E)A.C.P. Raghunandan Singh in his statement deposed that the deceased was wearing underwear and the same was smelling of kerosene oil but his statement does not inspire confidence in his behalf as the same is against the C.F.S.L report. On the other hand, according to Public Witness -18. Harbhajan Singh, when he reached the spot, Surender Babu was lying in burnt condition and was wearing jersey and pant and shirt. This very pant has neither been taken into possession nor has been sent to the office of the CfsL for report Even it was not found on the person of the deceased when his post-mortem examination was conducted by Dr. Ramani.

(10) The cumulative effect of these infirmities in the prosecution case leads to the only conclusion that the substratum of the prosecution evidence given by the eye-witness is not only contrary to the case as put forth but is also totally inconsistent with the medical evidence. We are not required to find out as to how and under what circumstances the deceased got burns or to make out a new case for the prosecution and convict the accused on that basis. Suffice it to say that where the direct evidence is not supported by the expert evidence, then, the Court has no option but to hold that the prosecution evidence is wanting in most

material part of their case and it would be difficult to convict the accused on the basis of such ocular cadence. In our opinion, learned court below has not given due consideration to the medical evidence and the report of the C.F.S.L. and has preferred to rely on the testimony of the eye-witness which is against the principle of law laid down in Ram Narain Singh Vs. State of Punjab, , holding :.

"WHERE the evidence of the witnesses for the prosecution is totally inconsistent with the medical evidence or the evidence of the ballistic expert, this is a most fundamental defect in the prosecution case and unless reasonably explained, it is sufficient to discredit the entire case."

(11) As observed earlier, the prosecution has miserably failed to sufficiently explain the discrepancies/contradictions between the ocular testimony of Public Witness -1 and the medical evidence.

(12) In the result, we accept the appeal and set aside the conviction and sentence of the accused persons. They be released immediately.