

Amna Vs. State (Govt of Nct of Delhi)

Amna Vs. State (Govt of Nct of Delhi)

SooperKanoon Citation : sooperkanoon.com/1138960

Court : Delhi

Decided On : Apr-30-2014

Judge : G.P. Mittal

Appellant : Amna

Respondent : State (Govt of Nct of Delhi)

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

23. d April, 2014 Pronounced on:

30. h April, 2014 + CRL. A. 423/ 1999 AMNA Appellant Through Ms. Inderjeet Sidhu, Amicus Curiae. Versus STATE (GOVT OF NCT OF DELHI) Respondent Through Mr. Rajat Katyal, APP for the State. CORAM: HON'BLE MR. JUSTICE SANJIV KHANNA HON'BLE MR. JUSTICE G.P. MITTAL

JUDGMENT

G.P. MITTAL, J.

1. Appellant Amna impugns the judgment dated 10.11.1998 and the order on sentence dated 12.11.1998 whereby she and her son Guddu @ Guchan were convicted for the offence punishable under Section 120B of the Indian Penal Code, 1860 (IPC), under Section 307 read with Section 120B IPC and under

Section 302 read with Section 120B IPC and were sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- on each count. In default of payment of fine, the appellant and her co-convict were to suffer rigorous imprisonment for further three months on each count. The substantive sentences were to run concurrently.

2. In fact, the appellant, co-convict Guddu @ Guchan along with Rehana, Mehrunissa and Nabijan were sent up to the Court to face trial for the above said offences on the allegations which can be extracted from the opening paragraph of the impugned judgment as under:

1. Mehrunissa is the jithani of the complainant and Rehana is also related to her. Nabijan is the husband of Mehrunissa and Amna is the sister of the complainants husband and accused Guddu @ Guchan is Amnas son. Mehrunissa was the Pradhan of the jhuggi colony earlier but, a year back the husband of the complainant became the Pradhan of that colony and this annoyed accused Mehrunissa who tried to create problems with the complainants family. Mehrunissa had also some altercation with the complainant on 18.5.93. On 19.5.93 at about 2 p.m. accused Rehana and Mehrunissa came to the jhuggi of complainant Razda begum and started quarrelling with her about some Pradhani issue. A police team came at the spot and the complainant, accused Mehrunissa and Rehana were taken to the Police Station and were challaned under Section 93/97 Delhi Police Act. They were bailed out the same day by the police. After coming from the Police Station, the complainant, her daughter Shabnam aged about 14 years and her son Salman Khan aged about 2 years were sitting on a cot outside their jhuggi where accused Amna came and started abusing them and was objected to by the complainant telling her as to what business she had for coming in-between. It was then at about 5 p.m. when the complainant and her two children were still sitting on the cot outside their jhuggi, accused Guddu came holding a white can and poured acid on the complainant and her children resulting in burns to all three. Accused Guddu escaped from the spot after throwing the plastic can there itself. Injured persons were removed to GTB hospital by one Suresh and their MLCs were prepared. Duty Constable Yash Pal sent information to the P.S. Seemapuri about the admission of the injured persons about which DD entry 18 A Ex. PW-1/A

was recorded and the same was entrusted to SI Baldev Singh for investigations. SI Baldev Singh and Const. Raj Pal went to GTB hospital and collected the MLCs of the three injured. Injured Razda begum and Shabnam were found fit to make their statements as per endorsements on their MLC. The SI recorded the statement of Razda Begum Ex. PW-3/A and after endorsing it sent it to the Police Station for the registration of the case.....

3. Rehana, Mehrunissa and Nabijan were acquitted on the ground that the prosecution had not been able to prove the entering into conspiracy by the earlier said three persons whereas Guddu @ Guchan, the main accused who had thrown the acid and the appellant, who is Guddus mother, were convicted and sentenced as stated earlier.

4. Co-convict Guddu @ Guchan also impugned the judgment and order on sentence in question by Criminal Appeal No.512/1999. During the hearing of the appeal, the learned Amicus Curiae Ms. Inderjeet Sidhu urged that as per the evidence available on the Trial Court record, co- convict Guddu @ Guchan was found to be less than 18 years on 13.09.1993. The occurrence in the present case took place on 19.05.1993. Thus, it was established that on the date of commission of the offence, co-convict Guddu @ Guchan was a juvenile as the benefit of enhanced age of juvenile was extended to the pending cases by virtue of the amendment in the Juvenile Justice (Care and Protection of Children) Act, 2000 w.e.f. 22.08.2006. Thus, by an order dated 13.03.2014, the co-convict Guddu @ Guchan was held to be a juvenile and he was ordered to be released as he had already undergone imprisonment for more than three years which is the maximum punishment that can be awarded to a juvenile (Actual sentence undergone being 7 years, 09 months and 07 days on the date of the passing of the bail order i.e. 20.03.2001).

5. Homicidal death of Salman Khan, son of complainant (PW-3) and severe burn injuries on the person of Smt. Rajada Begum (PW-3) and her daughter Shabnam (PW-7) is not in dispute. The sole contention raised by Ms. Inderjeet Sidhu, learned Amicus Curiae is that the appellants presence at the time of the actual incident had not been established and nor the appellant was also prosecuted with

the aid of Section 34 IPC. Ms. Sidhu states that the appellant stands convicted on the ground that the acid was thrown by the co-convict in conspiracy with the appellant. The learned Amicus Curiae urge that there was no reliable evidence produced by the prosecution to infer any conspiracy between co-convict Guddu @ Guchan and the appellant. Smt. Rajada Begum (PW-3) tried to build up a new case in her deposition in the Court for the first time absent from her earlier statement to the police Ex. PW-3/A on the basis of which the present case was registered. The learned Amicus Curiae points out that Shabnam (PW-7) who was one of the victims and Tahira Begum (PW-8) who was another eye witness to the incident were completely silent about any role attributed to the appellant by Smt. Rajada Begum (PW-3). The Trial Court erred in relying on the statement made by Smt. Rajada Begum (PW-3) for the first time in the Court and convicting the appellant for the commission of the offence in conspiracy with the co-convict Guddu @ Guchan.

6. In para 43 of the impugned judgment, while relying on the testimony of Smt. Rajada Begum (PW-3), the Trial Court convicting the appellant held as under:

43..... Looking to the fact that accused Amna came to complainant Razda Begum, abused her and was still standing by her side when her son came with a plastic can filled with acid and he poured it on the three victims coupled with the fact that accused Amna had also threatened the complainant that her son was quite grown up and she would get her husband and her children burnt I have my firm view that accused Amna and accused Guddu had a definite plan in between them to burn these victims to death by throwing acid on them. Acid is not a normal or common consumable item in household and the presence of acid in the jhuggi of accused Amna, under the given circumstances, is a certain indication that there two accused had already planned and conspired to use the said acid as a weapon of offence to eliminate the complainant and her two children.....

7. Before referring to the testimony of Smt. Rajada Begum (PW-3), we shall first analyse the testimonies of Shabnam (PW-7) and Tahira Begum (PW-8).

8. Shabnam (PW-7) on the factum of the incident deposed that on 19.5.93 at about 4-5 p.m. I, my brother Salman Khan and my mummy were sitting on the cot

outside jhuggi. Accused Guddu now present in court correctly pointed out by the witness was seen coming with a white plastic dibba (cane) in his hands and I thought that he might be going for washing out, but after coming to near our cot he poured acid from that cane on all three of us who were sitting on the same cot. Acid fell on my head, my face, my hands and my leg.

9. Similarly, Tahira Begum (PW-8) testified that on 19.5.93 I was washing clothes on the kharanja outside my jhuggi at about 5 p.m., Razda Begum, her daughter Shabnam were sitting outside their jhuggi on the cot and son of Razda Begum was in her lap, accused Guddu came there from one side holding a white cane in his hands. He came near to the cot where Razda Begum, her daughter Shabnam and son Salman Khan was sitting and threw acid from that plastic cane on all three of them, who started crying accused Guddu then ran away from there throwing the plastic cane at the spot.....

10. Thus, from the testimonies of Shabnam (PW-7) and Tahira Begum (PW-8), it is apparent that the appellant was neither present at the spot at the time of throwing of acid by the co-convict nor the threatening words as deposed by PW-3 were said by her.

11. When we advert to the testimony of Smt. Rajada Begum (PW-3), she tried to make out a case that the appellant just before the incident of throwing acid had informed PW-3 that her son was grown up and that she would get PW-3s husband and children burnt (by him). We would also like to extract the relevant portion of PW-3s testimony including the improvements hereunder:

..... After returning from the PS at about 4 p.m., I was sitting on a cot. My daughter Shabnam and Salman aged 2 years were also with me. In the meantime accused Amana came there and started abusing me. Accused Amana is present in the court. She continued to abuse me in spite of my asking her to refrain from doing so. My husband was also present there, intervened and sent me inside the jhuggis accused Amana remarks that her son was also grown up enough and that she would get my husband and children burnt. Thereafter Amana went away. My husband had also gone away. And I again came out and sat on the cot outside the jhuggi alongwith my said children. When I was sitting with my daughter outside my

jhuggi, accused Amna again came there and at that time, I was holding my son Salman Khan aged about 2 yrs. in my lap. Accused Amna started abusing me. Just then, son of Amna named Guddu accused came there any my daughter told me that he was coming that side. The accused was carrying a small tin with him and I presumed that he was going to ease himself. He, however, came near us with the tin and the accused threw acid on us from the said tin as a result of which, I, my daughter and my child Salman Khan received injuries on account of burn caused by the acid.....

12. Admittedly, in her statement Ex. PW-3/A on the basis of which the instant case was registered, Smt. Rajada Begum (PW-3) was completely silent about any threat being given by the appellant that she would get PW-3, her husband and her children burnt by her grown up son. The learned Additional Sessions Judge was swayed by the fact that on account of the pain being suffered by her due to burn injuries, Smt. Rajada Begum may not have stated the factum of extending threat by the appellant to her in her police statement. We are not inclined to accept the view taken by the Trial Court. Smt. Rajada Begum (PW-3) was not the solitary witness of the incident produced by the prosecution. In the face of the testimonies of PW-7 and PW-8 who also saw the entire incident and were completely silent about the alleged threat, the statement of PW-3 with regard to the threat that Smt. Rajada Begum, her husband and children would be got burnt by the grown up son of the appellant ought to have been rejected by the Trial Court. If that portion of her statement is taken out, there is no material whatsoever to hold that the acid was thrown by the coconvict Guddu @ Guchan on the three victims in conspiracy with the appellant.

13. Further, PW-7 stated that in the evening of 18.05.1993, she saw all the five accused collected together at the jhuggi of the Appellant. However, she (PW-7) was unable to hear their conversation. This by itself cannot lead to an inference that the accused were hatching a conspiracy to plan an acid attack upon the complainants family which took place the next day evening on 19.05.1993 around 05:00 p.m. All the accused persons are close relatives of each other and thus, it is natural and not out of place for them to have a family meeting, specifically when one family member i.e. Mehrunissa was upset as she had an altercation that

morning with PW-3. Hence, the evidences taken in totality, do not even point a finger at the Appellants hand in the attack that took place. Thus, the appellant cannot be held to have hatched a criminal conspiracy or to be a part thereof in the acid attack. From the evidence adduced, it cannot be inferred that the appellant was present at the spot at the time of throwing of acid by the coconvict or in any way shared the common intention.

14. It is true that direct evidence of hatching a conspiracy is seldom available, yet at the same time, it is the bounden duty of the prosecution to prove conspiracy by indirect or circumstantial evidence which must be clear, cogent and believable. (Esher Singh v. State of Andhra Pradesh (2004) 11 SCC585 Nazir Khan & Ors. v. State of Delhi (2003) 8 SCC461 Mohd. Khalid v. State of West Bengal (2002) 7 SCC334. In the absence of any direct evidence with regard to the appellants role in throwing acid on the victims by the co-convict, it cannot be said that the acid was thrown by the co-convict in conspiracy with the appellant.

15. The impugned judgment and order on sentence therefore cannot be sustained, the same are accordingly set aside and the appellant is entitled to be acquitted. We order accordingly.

16. Since the appellant was not appearing in the court in spite of the issuance of theailable and non-ailable warrants, this court by order dated 13.03.2014 had directed the Trial Court to initiate proceedings under Section 82/83 of the Code of Criminal Procedure, 1973 (Cr.P.C.) against the appellant. Since the appellant has been acquitted as stated above, the Trial Court shall stop the proceedings under Section 82/83 Cr.P.C., if any, initiated in pursuance of the order of this Court dated 13.03.2014.

17. The Personal Bond and the Surety Bond are discharged. (G.P. MITTAL)
JUDGE (SANJIV KHANNA) JUDGE APRIL30 2014 vk

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com