

Kamal @ Ram Singh and anr Vs. State

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Court : Delhi

Decided On : Sep-08-2014

Judge : Pradeep Nandrajog

Appellant : Kamal @ Ram Singh and anr

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % Date of decision: September 08, 2014 + CRL.A. 1551/2011 KAMAL @ RAM SINGH & ANR Represented by: Appellant Mr.Vivek Sood, Adv. for A-1. Ms.Anu Narula, Adv. for A-2. versus STATE Represented by: Respondent Ms.Aashaa Tiwari, APP with Insp. Radhey Sham, PS Jahangir Puri. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE MUKTA GUPTA MUKTA GUPTA, J.

(ORAL) 1. Appellants Kamal @ Ram Singh and Guddi are aggrieved by the judgment dated September 12, 2011 convicting them for offences punishable under Section 302/436/34 IPC and the order on sentence dated September 15, 2011 directing them to undergo imprisonment for life and a fine of `5000/- for offence punishable under Section 302/34 IPC and rigorous imprisonment for 3 years and a fine of `3000/- for offence punishable under Section 436/34 IPC.

2. Kamal @ Ram Singh and Guddi, husband and wife assail the judgment on the ground that they have been falsely implicated. They did not abscond after the incident which conduct is compatible to their innocence. The version of prosecution witnesses is highly unnatural as if the prosecution witnesses had been seeing the appellants burning the jhuggi there was no reason that they would continue to commit the offence rather they would run away from the place. Though it is the case of the prosecution that the jhuggi was burnt by sprinkling kerosene oil, however as per the FSL report kerosene oil was not found present on the burnt material. There is no reason why the appellants would commit such an act when they have their own five children to look after. Hence, they be acquitted.

3. The explanation of the appellants in the statement under Section 313 Cr.P.C. is of denial and false implication.

4. The case of the prosecution is that Tarun Khurana PW-2 saw fire in the jhuggi of Firangi PW-1 and informed the Police and Fire Brigade on February 09, 2009 at about 5.45 AM. SI Ram Kishan and Constable Prabhu reached the spot. They found a bottle which contained around 20-25 grams of kerosene and found the burnt jhuggi with partly burnt household articles which were seized. 4 year old girl Tamanna had already been taken to the hospital. SI Ram Kishan reached the hospital where he collected the MLC of Tamanna declaring her brought dead. As per the post-mortem report Ex.PW-8/A cause of death was shock following ante-mortem 80% thermal burns. He recorded the statement of Mukesh PW-3 the uncle of deceased and Tarun Khurana PW-2. Thus the prosecution case rest on the testimony of these eye witnesses whose presence cannot be disputed as Tarun Khurana is the one who gave information to the Police and the Fire Brigade as per Ex.PW-21/A fire report details.

5. Firangi PW-1 the father of the deceased Tamanna deposed that he had 4 children. Guddi and Kamal were there neighbours. On February 08, 2009 at about 8 PM there was a quarrel between his son Aman aged about 5 years and Ravi and Kundan, sons of Kamal and Guddi while they were playing. Guddi informed the Police at 100 number. Police came at the spot and the matter was settled. After Police went away Guddi threatened them by saying tum Police se to bach gaye,

mere se nahin bachoge, mein tumhari jhuggi mein aag laga kar tumhe khatam kar dunggi. He slept in his jhuggi with his wife and 4 children. His brother Mukesh was also residing in the adjoining jhuggi. His brother got up in the morning at about 4-5 AM for urinating. While coming back he saw Kamal throwing oil on his jhuggi in a plastic bottle and Guddi holding a match stick. By the time Mukesh made the noise, Guddi threw a burning matchstick on the jhuggi due to which his jhuggi got fire. His brother Mukesh apprehended Guddi and raised alarm. With the help of his brother and neighbours they tried to take out his children. Though they took out 3 children, however they could not save Tamanna who was aged 4 years. He stated that he, his brother Mukesh and their father Sadhu also sustained burn injuries. It is thus apparent that Firangi is not an eye witness to the burning of the jhuggi by Kamal and Guddi and has deposed on this count on the basis of testimony of Mukesh.

6. Mukesh PW-3 deposed that on February 08, 2009 at about 5 PM a quarrel took place between the children of his elder brother Firangi and the children of Guddi. Guddi called the Police. The Police was told that it was a small quarrel between the children and no elders were involved and thus Police went back. However, Guddi threatened to set their jhuggi on fire. In the morning of February 09, 2009 at about 5 AM he got out of his jhuggi to urinate. He saw Guddi and Kamal standing near the jhuggi of his brother Firangi. Kamal was having a bottle of oil. He saw him sprinkling oil on the jhuggi of his brother. When he questioned Kamal, Guddi immediately lit one matchstick and set their jhuggi on fire. After setting their jhuggi on fire both ran away. He raised alarm and with the help of family members and neighbours tried to extinguish the fire and brought out the children out of the jhuggi. However, Tamanna 4 year old got badly burnt and when they rushed to the hospital she was declared brought dead. Though deposed by Firangi that Mukesh apprehended Guddi on the spot, however Mukesh does not depose that he apprehended Guddi on the spot.

7. The third eye-witness Tarun Khurana PW-2 has deposed that on February 09, 2009 he was working in the MCD parking near A-1 Market, Jahangirpuri. He reached the parking at 4 AM in the morning. He saw Kamal taking tea on the road around 4.10 AM. After taking tea Kamal left from there and 15-20 minutes later he

saw flames coming from A-1 jhuggis. He rushed towards the place from where the flames were coming and saw Kamal running out of the gali. He did not notice anything in the hands of Kamal. He reached jhuggi of Firangi which was on fire and helped Firangi in bringing out his children from the jhuggi. The younger daughter of Firangi aged 4 years sustained serious burning and she was rushed to the hospital. He informed the Police and the Fire Brigade from his mobile and they reached the spot. He later stated that Guddi was also present at the spot.

8. From the narration of the three witnesses it is apparent that Firangi and Tarun Khurana had not witnessed Kamal and Guddi putting fire to the jhuggi and the same was witnessed only by Mukesh. Though the case of Mukesh is that he saw Kamal putting oil and in the presence Guddi lit the fire, however as per Tarun Khurana whose presence at the spot cannot be disputed as he informed the Police and the Fire Brigade immediately after the incident he saw Kamal running away from the spot and Guddi came to the spot only later when all the neighbours collected.

9. In view of the fact that the testimony of Mukesh does not stand corroborated by Tarun Khurana, as regards Guddi she is entitled to the benefit of doubt. As regards Kamal the case of the Appellants is that as per the FSL report no kerosene oil was found. In this regard though a bottle containing kerosene was recovered from the spot, however there is no witness who stated that the bottle of kerosene was the one from which Kamal had sprinkled on the jhuggi. Further Mukesh has not stated that Kamal sprinkled kerosene oil, he only deposed that he saw Kamal standing near the jhuggi of his brother Firangi having a bottle of oil. He saw him sprinkling oil on the jhuggi of his brother. Thus, in view of the evidence of both Mukesh and Tarun Khurana the independent witness we uphold the judgment of conviction and order on sentence qua Kamal under Section 302/436 IPC, however the same are set aside qua Guddi granting her benefit of doubt. The appeal is accordingly disposed of.

10. T.C.R. be returned.

11. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

Superintendent Tihar Jail will release Guddi forthwith if not required in any other case. (MUKTA GUPTA) JUDGE (PRADEEP NANDRAJOG) JUDGE
SEPTEMBER08 2014 /ga

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