

Prem Devi vs.state

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Court : Delhi

Decided On : Apr-25-2017

Appellant : Prem Devi

Respondent : State

Advocate for Def. : Mr. Sundershan Joon

Judgement :

* + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. No.675/2001 Date of Decision : April 25th, 2017 PREM DEVI Through: Mr.Yogesh Saini, Advocate. Appellant versus STATE Respondent Through: Mr. Sundershan Joon, Additional Public Prosecutor the State with Sub-Inspector Ramesh, Police Station Sultanpuri, Delhi. for CORAM: HON'BLE MR. JUSTICE P.S.TEJI P.S.TEJI, J JUDGMENT1 Aggrieved by the judgment of conviction dated 27.02.2001 convicting the appellant-Prem Devi finding her guilty under Sections 304 Part-I IPC and order on sentence dated 28.02.2001 vide which the appellant was sentenced to undergo eight years rigorous imprisonment for the offence under Section 304 Part-I IPC with fine of Rs.1000/-, in default of payment of fine to further undergo simple imprisonment for one month, the present appeal has been preferred.

2. The factual matrix emerging from the record is that the Crl.A. No.675/2001 Page 1 of 8 appellants husband was a habitual drinker and the same was the main reason behind many fights, on a daily basis behind him and the appellant. The appellant Prem Devi, allegedly, had an altercation on the night of 24.03.1995 at

about 11pm when the neighbours had also intervened and tried to pacify the appellant and her husband. Further that night, on 25.03.1995 at around 2.30am the appellant allegedly poured kerosene oil on her husband who was asleep in his jhuggi and set fire by lighting. The police was subsequently informed about the incident, and acting on the same ASI Kishan Pal along with a constable reached the jhuggi of Bharat Bhushan and learnt that the victim had been moved to Hindu Rao Hospital from where he was referred to L.N.J.P Hospital by the doctors. The doctors at L.N.J.P Hospital found the victim unfit for statement. The ASI subsequently reached at the place of incident again and inquired about the alleged incident from the eye witnesses.

3. On the basis of statement made by the complainant, Bharat Bhushan, on a subsequent date, FIR of the instant case was registered. After completion of investigation, charge sheet was filed in the Court.

4. Charge under Sections 302 IPC was framed against the appellant to which she pleaded not guilty. The prosecution had CrI.A. No.675/2001 Page 2 of 8 examined as many as 16 witnesses namely PW1 Ct.Usha Rani, PW2 Mangal Singh, PW3 Anand Kumar, PW4 Ct.Surjit Kumar, PW5 HC Somna, PW6 HC Surinder Kumar, PW7 Ram Bharose, PW8 Narinder Kumar, PW9 Naresh Kumar, PW10 Dr.R.P. Mittal, PW11 Mohar Singh, PW12 Atiq Khan, PW13 Dr.B.N. Acharya, PW14 Ratan Singh, PW15 ASI Kishan Pal and PW16 SI Suman Bala.

5. The statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. Accused examined one witness in her defence i.e. DW1 Kamal.

6. The appellant was held guilty by the learned Additional Sessions Judge vide judgment of conviction dated 27.02.2001 and passed the order on sentence on 28.02.2001.

7. The appellant has assailed the impugned judgment of conviction on the ground that the deceased died after 40 days of incident due to cardio respiratory failure and not as a result of burning. There is no eye witness to the incident. There is no evidence to link the appellant with the offence. One of the children of the deceased was produced as a defence witness who stated that at the time of incident, the

appellant was sleeping outside the jhuggi along with her children. The door of the jhuggi was closed from outside, therefore there was no occasion for the appellant to CrI.A. No.675/2001 Page 3 of 8 commit the offence alleged against her.

8. Per contra, arguments advanced by learned Additional Public Prosecutor for the State are that the appellant has been rightly held guilty under Section 304 Part-I IPC by the trial court. The neighbours of the appellant and deceased have supported the case of prosecution and as per their testimony; deceased informed them that he was burnt by his wife. There is sufficient evidence against the appellant to hold her guilty for the offence of causing culpable homicide not amounting to murder of the deceased.

9. Arguments advanced by the counsel for the appellant as well as learned APP for the State were heard.

10. It is apparent from the testimony of the prosecution witnesses, particularly PW2 Mangal Singh that on the intervening night of 24/25th March, 1995, Randhir Singh and Mohar Singh came to his jhuggi and woke him up, subsequent to which all of them went to the jhuggi where the deceased resided, and found him in a burnt condition. The deceased while crying allegedly told PW2 that his wife, accused Prem Devi had burnt him. Thereafter, this witness along with Anand Kumar took the deceased to HR hospital and got him admitted there.

11. PW7 has stated that he reached the jhuggi of the deceased and found him in a burnt condition, crying and stating that his wife had CrI.A. No.675/2001 Page 4 of 8 burnt him. Thereafter, he along with Mohar Singh informed the police of the alleged incident and took the deceased to the hospital. This witness has specifically stated in his testimony that he did not witness the incident of burning.

12. PW3 Anand Kumar and PW11 Mohar Singh have also made similar statements as made by PW2 and PW7. They have stated that when they went to the spot, they found the deceased in a burnt condition and the deceased was removed to the hospital.

13. From the testimonies of above prosecution witnesses, it is clear that they both were residing in the vicinity of the area of the deceaseds jhuggi and reached the spot upon being woken up by neighbours. Neither of them is an eye-witness thereby they did not see the incident taking place but only reached the spot after being called out for.

14. The consistent defence taken by the appellant was that at the time of burning of her deceased husband, she was sleeping outside her jhuggi along with her children. The plea taken by the appellant is that she had no role to play in the burning of her husband, rather it was either the accidental burning or self immolation of the deceased. It is also her plea that there is no eye witness to the burning of her deceased husband. It was also submitted that the real cause of death of her husband was not the burning inasmuch as CrI.A. No.675/2001 Page 5 of 8 firstly he was admitted in hospital, discharged from the hospital after getting treatment and ultimately died at his home due to improper care as at that time she was in jail.

15. To establish her defence, the appellant had examined her son DW1 Kamal as defence witness. DW1 in his testimony has clearly stated that on the fateful night of 24/25th March, 1995 his mother as well as his two sisters were all sleeping outside the house along with this witness. This witness stated that on hearing a noise, he woke up to find his mother extinguishing the fire which had caught his father. Thereafter, a few neighbours and police reached the spot and the police interrogated this witness.

16. From the testimonies of the relevant witnesses and evidence placed on record it is clear that there are no eye witnesses to the alleged incident of the night of 24/25th March, 1995. DW1 has stated in his testimony that the appellant was sleeping along with him and his sisters outside of the jhuggi and upon waking up found his mother/appellant trying to put out the fire caught on his father.

17. From the testimony of PW13 Dr.B.N. Acharya, it is found that the cause of death was cardio respiratory failure consequent to septicaemia resulting from infected burn. PW13 had stated that he found the burn injuries to be old and infected which led to the death of the deceased. Thus it is apparent that the

deceased did not Crl.A. No.675/2001 Page 6 of 8 die immediately on the day of burning and was certainly on his way to recovery at his home and not at the hospital. Further, it is also evident from the facts of the case that the appellant was already in judicial custody when the deceased succumbed to his injuries and this was due to his unhealed injuries developing an infection. The deceased while trying to recover at his home, did not tend to his injuries in the right manner owing to the lack of necessary and needed medical attention and care for want of both financial help and lack of support of his wife who was in judicial custody at that time. Thus, it is apparent that due to the deficiency of outside yet imperative factors the deceased failed to heal and succumbed to his injuries and did not die an immediate death due to the alleged burning on the intervening night of 24/25th March, 1995.

18. In view of the above discussion, this Court is of the considered opinion that the prosecution has not been able to prove its case against the appellant beyond reasonable doubt. Thus, the appellant is entitled for acquittal while extending benefit of doubt.

19. Consequently, from the totality of evidence, facts and circumstances discussed above, the judgment of conviction and order on sentence passed in the present case are set aside. The appellant is accordingly acquitted of the charge framed. Crl.A. No.675/2001 Page 7 of 8 20. The appellant is out on bail. The bail bond and surety bond stands discharged.

21. The appeal is accordingly allowed. APRIL25 2017 dd (P.S.TEJI) JUDGE Crl.A. No.675/2001 Page 8 of 8

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