

Prem and anr. Vs. State of U.P.

Prem and anr. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/484142

Court : Allahabad

Decided On : Jan-11-1995

Reported in : 1995CriLJ3888

Judge : S.C. Jain and ;I.S. Mathur, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 301, 302 and 307

Appeal No. : Criminal Appeal Nos. 555 and 726 of 1980

Appellant : Prem and anr.

Respondent : State of U.P.

Advocate for Def. : Dy. G.A.

Advocate for Pet/Ap. : N.K. Roy and ;A.K. Rathore, Adv.

Judgement :

S.C. Jain, J.

1. Both these appeals have been preferred by the appellants against one and the same judgment and order dated 28-2-1980 passed by IInd Addl. District and Sessions Judge, Allahabad in Sessions Trial No. 81 of 1979, whereby the appellant, Prem, was convicted under Sections 302 and 307, I.P.C. and was sentenced to life imprisonment under Section 302, I.P.C. and ten years' rigorous

imprisonment under Section 307, I.P.C. while the appellant, Kallu was convicted under Section 301, I.P.C. punishable under Section 302, I.P.C. and also under Section 307, I.P.C. and was sentenced to life imprisonment under Section 302, I.P.C. and ten years' rigorous imprisonment under Section 307, I.P.C., as such we propose to dispose of these two appeals by a common judgment.

2. The facts giving rise to these appeals are that on 28-5-1973 at about 9.45 p.m. near the betel shop of Hari Lal in Mohalla Fatehpur Bichwa Police Station, Colonelganj, Allahabad, deceased, Munir Ahmad, was present. Hari Lal and Nanhey, injured, were also present there. As per prosecution version appellants, Lallu and Prem, on the exhortation of one Bhullan threw two hand made bombs towards the injured and deceased causing injuries to all these three persons and the injuries received by Munir Ahmad were proved fatal and he succumbed to his injuries in the hospital on 28-5-1973.

3. On the basis of the first information report, Ex.Ka-6, and the statements of injured and one Kishori Lal all these three accused persons, Lallu, Bhullan and Prem, were prosecuted. The trial Court, however, disbelieved the version of the prosecution as far as involvement of Bhullan was concerned and acquitted him by giving him the benefit of doubt. However, Lallu and Prem were held guilty under Section 301 punishable under Section 302, I.P.C. and also under Section 307, I.P.C. and were convicted and sentenced as mentioned above. Their sentences were, however, made to run concurrently.

4. Feeling aggrieved by the said judgment and order of the trial Court, Prem and Lallu, appellants, have filed these appeals.

5. The only question which arises for determination in this case is regarding identity of the accused persons. It has come in the cross examination of PW 1, Hari Lal, who is injured as well as the informant, that bomb was thrown from western side of his shop from inside the boundary of Kamla Nehru Hospital. There was darkness inside the boundary of the said Hospital and the hospital building was at some distance of that place. The light which was on the infront side of the house of Devi Prasad was on but that light was not reaching the boundary wall. He further stated that he had not seen as to from how much distance bomb was

thrown from the boundary wall as it was darkness there. He has also stated that he could not see as to from how much distance the bomb came from inside the boundary wall.

6. Similarly PW 2, Nanhey Lal, who is also injured, also stated that before this incident he had not seen either the witnesses or the accused persons. According to him when the first bomb exploded, he received injuries on his leg and head. According to him that bomb came from northern side of Gomti.

7. According to the learned counsel for the appellants there is a lot of contradiction in the statements of both these witnesses/injured persons as far as identity of the accused persons is concerned. According to him, from which side the bomb came both the witnesses have spoken differently. Even according to the witnesses there was darkness inside the boundary of the hospital from where allegedly the bomb was actually thrown. Both these witnesses were also not believed by the trial Court in as much as Bhullan was acquitted by the trial Court itself on the versions given by these two witnesses.

8. Besides this, these two witnesses have got reasons to falsely implicate the accused persons as allegedly there was some enmity between the parties earlier as there was a case under Section 307, I.P.C. between the parties and Lalloo was also involved at the instance of Hari Lal.

9. According to the learned counsel for the appellants the presence of Kishori Lal, third alleged eye-witness, is also doubtful. He is a chance witness. He could not state as to why he had gone to Chowk to make purchases when the said articles could be available at Katra at the same price where he was residing. He also could not give the name of the shop, price of goods which he had purchased. He has also not explained as to why he left the Rikshaw 20 or 25 paces earlier from his house and why he did not take that Rikshaw in which the goods purchased by him were kept right up to his house. According to him the direction from which the bomb came was north, which is contrary to the statement of PW 1, Hari Lal. He did not talk about this incident to any one. Even the trial Court has not put much reliance on the statement of Kishori Lal, being a chance witness.

10. It is settled law that when a part of the statement of one witness is disbelieved, the evidence of that witness should be scrutinised with care and caution to find out whether remaining portion of his evidence can be treated as credible. Coming to the statements of these witnesses in such type of material contradiction which goes to the root of the matter, it is very unsafe to rely on the statements of these witnesses for conviction of the appellants. Even the Investigating Officer has not cared to investigate the case properly and to find out the actual culprit and this fact has also been observed by the learned trial Court in his judgment. The examination-in-chief of a witness is subject to the cross-examination and these witnesses have not been able to stand the test of probabilities in their cross-examination and, therefore, putting reliance on the statements of these witnesses for conviction of the appellants is most unsafe. The learned trial Court while convicting these appellants only relied upon the examination-in-chief of these witnesses without discussing the cross-examination part.

11. Keeping in view the circumstances of the case, we refrain from relying upon the statements of these interested witnesses against these two appellants and as such we accept the appeal, set aside the judgment and order dated 28-2-1980 passed by the learned trial Court in Sessions Trial No. 81 of 1979 and acquit the appellants, Prem and Lallu, of the charges levelled against them by giving them benefit of doubt. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties discharged.