

Deva Nand Vs. the State

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Court : Delhi

Decided On : Oct-10-1986

Reported in : 1987(1)Crimes314; 31(1987)DLT184

Judge : M.K. Chawla, J.

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

Appeal No. : Criminal Appeal No. 137 of 1985

Appellant : Deva Nand

Respondent : The State

Advocate for Pet/Ap. : Y.P. Bhasin,; N.B. Sinha,; V.K. Bhatia and;

Judgement :

M.K. Chawla, J.

(1) Shri Deva Nand, appellant before this Court, is not satisfied with the finding of the learned Lower Court by which he was convicted u/s 307 Indian Penal Code . and sentenced to undergo R 1. for a period of 7 years.

(2) His challenge is that in no way he has been connected with the offence charged. However, before advertng to his pleas, it will be relevant to keep in mind the salient features of the prosecution case against the appellant. Smt Prem Lata

was married to the present appellant. However, after sometime, their relations became strained, as a result of which she started living with her father in the servant quarters of Kothi no. 5, Mal Road, Timarpur, Delhi, As per the prosecution allegations, on the intervening night of 26th and 27th of May, 1984, while Prem Lata was asleep, the accused threw on her sulphuric acid, as a result of which she was permanently disfigured and also lost one eye. On the basis of these allegations, a charge under Section 307 I P.C. was framed against the accused, who pleaded innocence and claimed a trial.

(3) The Lower Court relied upon the evidence of Prem Lata, which found corroboration from the evidence of PW-1. B.L. Gupta, PW-4 Dwarka Prasad and PW-9, Ram Milan, raising an accusing finger on the accused for throwing sulphuric acid and causing the injuries. The learned Lower Court also found corroboration from the recovery of a steel glass from the spot bearing the finger-prints of the accused and the recovery of his pyjama giving positive test for sulphuric acid.

(4) Learned Counsel for the appellant before this Court has challenged the testimony of the injured and the alleged eye-witnesses and has also tried to find fault with the Report of the CF.S.L. with regard to the finger-prints on the steel glass as well as the Exhibits showing positive tests for sulphuric acid. None of these arguments prima facie have any substance and are not borne out from the record.

(5) Prem Lata is the most important witness. She is the victim of the assault. In her statement before the Court, she deposed that on the intervening night of 26th and 27th May, 1984, while she was lying asleep outside her quarter, Along with other persons. The accused came to her at about 12 mid-night and told her that he would like to sleep with her. She resisted the attempt but before leaving, the accused threatened her that he would throw acid upon her and will not allow her to live any longer. She further goes on to depose that the accused came back at 1.45 A.M. that night while she was still awake. At that time, the accused threw acid on her person with the help of a steel glass which fell on her face, breasts, neck, right arm and on her backside, as at that time she was lying sideways on the wooden Takht. She immediately got burning sensation and cried out for help as a result of

which the persons sleeping over there got awakened. However, the accused succeeded in his escape. She was immediately removed to the hospital in a taxi by B L. Gupta, Dwarka Prased and Ram Milan, who got her admitted.

(6) PW-1 Shri B.L. Gupta has supported her version in all material particulars. PW-3 Dwarka Prasad and PW-9 Ram Milan had not supported Prem Lata insofar as seeing the accused running away from the place of occurrence or Prem Lata telling them immediately after the incident that it was the doing of her husband, but both of them were responsible for removing her to the hospital and the recovery of the articles from the place vide memes. Ex. PW3/B, PW3/C and PW3/D.

(7) The contention of the learned Counsel for the accused is that the conduct of Smt. Prem Lata in not telling the other witnesses of her husband having come at 12 mid-night with a view to indulge in forced cohabitation is a circumstance which will throw doubt on her testimony of the accused having poured the sulphuric acid at a later time. In my opinion, Smt. Prem Lata had given a valid explanation. According to her, she did not feel terrified after the threats and continued to sleep where she was earlier sleeping, thinking that her husband was in the habit of uttering such like threats. Even though she had strained relations with the accused but being the husband was within his rights to have a go with her. As regards the subsequent incident, her statement is clear and unambiguous. She is emphatic and forthright in implicating the accused At that time. she was wide awake and had seen the accused throwing acid on her. In spite of the lengthy cross-examination learned Counsel for the accused had not been able to point out a single sentence or a circumstance showing any ambiguity. To some extent, her statement implicating the accused also finds corroboration when soon after the occurrence, she told B.L. Gupta that. accused Deva Nand had thrown acid on her person and that she had got acid burns on that account. This witness for reasons best known to the accused was not cross-examined on this aspect even though an opportunity was afforded. The evidence of Prem Lata coupled with the statement of of B.L. Gupta and the other two Shri Ram Milan and Shri Dwarka Prasad, responsible for taking her to the hospital, lead to the only conclusion that it was none other but the accused who had thrown the sulphuric acid on her.

(8) Smt. Prem Lata was also categorical in her statement that the accused was holding the steel glass Ex. P-I, while throwing euphoric acid on her and that before running away from that place, he had thrown the said glass on the spot. This very glass Ex P-I Along with the empty quarter bottle Ex. P-4 were taken into possession vide memo. Ex. PW-3/D by the Investigating Officer after they were converted into a sealed parcel and sealed with the seal of RPG. PW-6 Rajeshwar Singh was the Moharrar Mal Khana Police Station Civil Lines. According to him, on 27-5-85. 4 sealed parcels bearing seal Rpg alleged to contain one pillow, one banian, one pair of chappals, one bottle and one steel glass were deposited in the Malkhana vide entry at Seriall no. 1456. These very articles were handed over to Constable Rajinder Singh on 20-6-84 for being taken to the office of C F.S.L. According to this witness and that of Rajinder Singh, so long as these parcels remained in the custody, nobody was allowed to tamper with the same. During the course of the investigation, the fingerprints of the accused were obtained vide Memo Ex. PW-13/E. The specimen fingerprints were forwarded to the office of the C.F.S.L. for report on the fingerprints found on the steel glass. On examination, the fingerprints Expert was of the opinion that the fingerprints on the steel glass correspond with the specimen right thumb impression of the accused.

(9) Learned Counsel for the accused had tried to challenge this incriminating circumstance by alleging that in his statement u/s 313 Cr. P.C. he has explained the circumstances under which his fingerprints on the steel glass were obtained. In reply to question no. 21, the accused has taken up the plea that his fingerprints were taken by the Police on Ex. Public Witness 13/E, and also on the steel glass after giving him beating. I his plea has been raised for the sake of raising a defense but in substance it is of no avail to the accused. It is just not possible that the Police would take out this very steel glass after having been deposited in the Malkhana. If that be the intention of the Police, then there must be some entry in the appropriate Malkhana register, of these articles having been taken out of the Malkhana. However, the evidence is to the contrary. After these articles were deposited in the Malkhana, they were only taken out on 20-6-84 for being forwarded to the office of the C F.S.L. for their Report. The witnesses to the deposit of the articles and the persons who had taken the same to the office of the C.F.S.L. go to show that nobody was allowed to tamper with the same during the

period they remained in their custody. This circumstance to my mind is the conclusive evidence that it was the accused who, on the fateful night threw acid on the person of Prem Lata from the steel glass.

(10) Learned Counsel then tried to raise doubts on the Report of the C.F.S L. who gave the positive test of sulphuric acid. He pointed out that while giving the description of the articles, there is a mention that one quarter bottle in a sealed parcel containing few drops of black colour required, whereas while giving the result of analysis the Expert mentioned that the contents found on Ex. No. 1, 2, 3 and 4 (damaged clothes consisting of pillow with cover, baniyan, one quarter bottle, steel glass and pyjama respectively) gave positive test for sulphuric acid. His submission is that Sulphuric acid will not turn into a black colour liquid. This argument also to my mind is devoid of any substance. One has only to go by the result of the analysis conducted by the Scientific Officer (.Chemistry) of the office of the C.F.S.L. the injuries found on the person of Prem Lata resulting in the disfigurement of her face and other parts of the body do indicate that it could only be the result of throwing a Sulphuric acid and no other substance.

(11) I do not propose to agree with the submission of the learned Counsel for the appellant that the Police was asked to go back and find out the source of obtaining the acid by the accused as it will have no bearing on this case, in view of the result of the analysis by the C.F.S.L.

(12) Lastly, learned Counsel for the accused tried to raise doubts on the prosecution version that Prem Lata could not have received the burns on her face, neck, chest, eyes, on the front as well as on the back of her chest if the throw of the acid was one-act-play. This argument finds a complete answer from the statement of the Prem Lata. According to her, the acid fell on her face, breasts, right arm, neck and also on her backside as at that time, she was lying sideways on the wooden Takht. The possibility of the acid having trickled down to her backside under these circumstances cannot be ruled out.

(13) The accused tried to create a wedge in the defense evidence by producing defense witnesses to show that he had been arrested from Meerut and not from Delhi as deposed by the investigation Officer, PW-13, Rajeshwar Prasad, Sub-

inspector. In my opinion, the learned Additional Sessions Judge was right in rejecting the defense version as the witnesses are none else than his father, mother and a person closely know to the accused. All of them are highly interested witnesssss. The reason rejecting their evidence is more probable than the arguments now sought to be raised turn placing reliance on their testimony.

(14) The net result of the above discussion leaves no doubt in my mind that the prosecution has proved beyond doubt that it was none other but the accused who, on the fateful night, threw sulphuric acid on his wife Prem Lata.

(15) On the question of sentence, learned Counsel submitted that the accused is just about 21 years old and is the first offender. He has no previous criminal history. The incident if at all occurrence was due to the strained relations between him and his wife. The accused must have acted under impulse and had in fact no motive to cause such bodily injuries on the person of his wife as have been made out by the doctors. Learned Counsel submits that the accused be given a chance to reform himself and be treated with leniency. Even this argument has not impressed me. The parties were having strained relations and about 15 days back, the accused brought Prem Lata to the house of her father and thereafter never cared for her. On the fateful night, he came to his wife at mid-night but was sent away. Though at that time he may have felt hurt but he had sufficient time at his disposal to think over the consequences of his act which he had planned. The circumstances go to show that he had already purchased the the Sulphuric acid and bad all the intentions to teach a lesson to his wile. The throwing of Sulphuric acid has caused such a disfigurement of Prem Lata that it has become impossible for her to move about in liie society. She has lost one eye and is in he process of losing eye-sight from the other. She was admitted in the Hospital on the night between 26th and 27th of May, 1984 and was brought from there for her statement on 10-1-1985 with the permission of the doctor. She was again admitted there. Prem Lata has still to go alone way and will always be cursing herself for having been married to the accused. She has suffered much agony due to the dastardly act of the accused for which he cannot be pardoned.

(16) From the perusal of the order, dated 14-11-85, I find that G.R. Luthra. J. had directed a notice to be given to the accused to show cause as to why the sentence be not enhanced in the event of dismissal of his appeal on account of disfigurement of body and loss of eye of the victim. The Lower Court has sentenced the accused to undergo R.I. for 7 years which under the circumstances appears to be quite reasonable. No cogent or convincing ground has been urged for enhancing the sentence. The ends of justice in my opinion will be fully met if the accused is required to undergo the imprisonment already awarded by the Lower Court.

(17) As a result of the above discussion, I see no convincing ground in the appeal and the same is hereby dismissed. If the accused is, on bail, his bail bonds are hereby cancelled and he be taken into custody to serve the remaining part of his sentence.