

Jagdish Vs. the State

Jagdish Vs. the State

SooperKanoon Citation : sooperkanoon.com/688856

Court : Delhi

Decided On : Nov-06-1986

Reported in : 1987(12)DRJ136

Judge : Jagdish Chandra, J.

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

Appeal No. : Criminal Appeal No. 50 of 1986

Appellant : Jagdish

Respondent : The State

Advocate for Pet/Ap. : Jagat Singh and; R.P. Lao, Advs

Judgement :

Jagdish Chandra, J.

(1) This criminal appeal has been preferred by the convict Jagdish alias Jaggi against the judgment of conviction and sentence both dated 12/3/1986 and passed by Shri P.S. Shanna, Add). Sessions Judge, Delhi. The appellant has been convicted under Section 307 Ipc and sentenced to undergo rigorous imprisonment for five years for that offence.

(2) The prosecution case against the appellant is that he was married to the injured Smt. Rani about eight years ago and had two daughters and two sons begotten to them out of this wedlock and they were all living together at House No. 16/445, Padam Singh Road, Bapa Nagar, Karol Bagh, New Delhi About 1' years after her marriage the injured Smt. Rani learnt that her husband (appellant) was keeping another woman as his mistress and whenever she protested to him on that count, he would maltreat her and even give her beatings often and was also not providing food to her for months and would also go away from the house to live with that other woman.

(3) The prosecution story further goes on to allege that on 5th January, 1984 at about 11 P.M. Smt. Rani served food to the appellant and after taking food when Smt. Rani sat to take food, the appellant poured kerosene oil on her and set fire to her as a result of which she received burn injuries on her chest, and also tried to crush her fingers by putting them in the door forcibly. Smt. Rani extinguished the fire and went to the house of her father after two days of the occurrence and her father got her medically examined. The M.L.C. was prepared in Jai Prakash Narain Hospital, New Delhi, according to which Smt. Rani injured had received superficial burns on the front of the chest and both sides of the neck and she had gone there with the alleged history of her having been burnt by her husband at 9 P.M. on 5th January, 84 by pouring kerosene oil and then setting her on fire because of some family disputes. This M.L.C. further discloses that at that time she was conscious but drowsy looking very much pale and an coated and also looking very much scared of the happening. Dehydration was stated to be mild. This M.L.C. further shows that she was referred to the Senior Resident of

burns and plastic on that very day for detailed examination and treatment. This M.L.C. did not then specify the nature of injuries, whether the same were simple, grievous or dangerous and thus remained content with describing the same as superficial. The prosecution story does not further reveal whether Smt. Rani went to the Senior Resident of Burns and Plastic or not for detailed examination and treatment.

(4) The accused did not plead guilty to the charge and claimed the trial and in his statement under Section 313 of the Code of Criminal Procedure, 1973 (in short the Code), after denying the alleged occurrence at his hands, he asserted that it was a false case and that the witnesses were false and that his wife Smt. Rani and her father and others wanted to pressurise and harass him and had planted this case upon him falsely.

(5) The only eye witness in this case is Smt. Rani injured herself as Public Witness 5 whereas her father Bhola Singh P W2 has stated that her daughter Smt. Rani told him that the accused had set fire to her by sprinkling kerosene oil on her person and that her husband was having another woman as a second wife and so had been giving beatings to her (Rani) and had set her on fire. He also stated that he had taken his daughter from the house of the accused/ appellant to Irwin Hospital and got her admitted there. Smt. Rani, however stated that after two days of the occurrence she went to the house of her father and her father got him medically examined and the police came to the hospital where her statement Ext.Public Witness 5/A was recorded. She supported the entire prosecution version.

(6) During the course of arguments the following points were urged by Mr. Jagat Singh Advocate learned counsel for the convict/appellant :-

(A)The F.I.R. Ext. Public Witness 5/A was delayed by two days of the alleged occurrence had taken place on 5/1/1984 at 11 P.M. and the F.I.R. was recorded on 7/1/1984 at 9.45 P.M. ;

(B)The extent of the burn injuries had not been mentioned in the M.L.C. in the form of percentage or the lengths and breaths and in the absence of the same and the .measurements of the burns thus not known and the burns having been described in the M.L.C. only as superficial and the affected parts i.e. the chest and the sides of the neck being amenable to the injured, these burns were self inflicted;

(C)The motive for the self inflicted burns was to teach a lesson to her husband-the appellant, by falsely implicating him in this case as he was keeping another woman as his mistress and whenever Smt. Rani protested against the same, he would beat her and would not even provide food to her for months and would also go away from the house to live with that other woman, which would not be tolerable to a married wife ; and

(D)The clothes of the injured Smt. Rani were not produced by her to the police stating that preserving the burnt clothes was supposed to be ominous for which reason she tore them off and threw them away and thus the non-production thereof could result in an adverse inference against the burning theory at the hands of the appellant.

(7) The factual position regarding the aforesaid points is not disputed by Mr. Lao learned counsel for the State and is rather borne out from the records of the case. Taking into consideration the above mentioned points one may reasonably be induced to believe that the burns in question on the chest and sides of the neck of the injured Smt. Rani could be self inflicted in order to teach her husband-the appellant, a lesson for having kept a mistress and for ignoring and giving beatings to the injured on her protest to him on that count, as the omission of the extent of the burn injuries in the M.L.C. or in any other piece of evidence could not rule out the possibility of those burns being very small in size so as to be self inflicted especially when the nature of the burns have been described as 'superficial' in the M.L.C. If the kerosene oil had been sprinkled upon her person, as alleged by the prosecution and stated by the injured in the witness box and in the F.I.R., the burns could have also been over the other parts of the body especially the hands as it was she who alone allegedly extinguished the fire, and confined not only to the chest or the sides of the neck. The omission of the extent of the burns in the M.L.C. is thus a great lapse and looks almost fatal to the prosecution case.

(8) This inference is further fortified from the delay of 46 hours and 45 minutes in the lodging of the First Information Report after the alleged occurrence. Regarding the importance of the lodging of the First Information Report at the earliest, the Supreme Court authority reported as *Thulia Kali v. The State of Tamil Nadu*, 1972 S.C.C. 543, is highly instructive when it held as follows-at page 547 :-

'FIRST Information Report in a Criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.'

(9) In that case there was delay of more than 20 hours in lodging the F.I.R. though the police station was only at a distance of two miles and it was held that this circumstance would raise considerable doubt regarding the veracity of the case and it was not safe to base conviction upon it.

(10) The delay of two days in the lodging of the F.I.R. in the case in hand has not been explained at all much less satisfactorily by the prosecution and it was not job of the defense to have put questions to the injured in her cross-examination to elicit the reasons for that delay. On account of this delay the causing of self inflicted injuries on her person in consultation with her father, cannot be ruled out as the motive for the same was very much there as already pointed out above.

(11) The disposal of the allegedly burnt clothes of the injured by the injured herself by tearing them off and throwing them away on the pica that the preservation . of the same would have been ominous, looks not very satisfactory remaining uncorroborated by any other witness and is thus a very significant lacuna in the prosecution case and taken along with the above mentioned circumstances hits it hard.

(12) In view of what has been stated above, the appreciation of evidence by the learned trial court looks erroneous and faulty.

(13) In the result it cannot be said that the prosecution case stood 'proved beyond all reasonable doubts. On the other hand, it suffers from grave doubts and the benefit of doubt being available to the accused-appellant, the appeal succeeds and the appellant is acquitted.

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