

Jote Ram Vs. State

Jote Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/695825

Court : Delhi

Decided On : May-02-1994

Reported in : 1994IIAD(Delhi)539; 54(1994)DLT648

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 308

Appeal No. : Criminal Appeal No. 61 of 1977

Appellant : Jote Ram

Respondent : State

Advocate for Pet/Ap. : A. Ahlawat, Adv

Judgement :

Jaspal Singh, J.

(1) The incident is of 26/05/1974, and the judgment under appeal of 22/09/1975. The wait for this final culmination must have been an ordeal in itself.

(2) The prosecution story is set in village Bawana. The day, as already noticed above, was May 26 in the year 1974. The time about 4 p.m. The main characters are Kumari Shantey, her brother Brahm Parkash, sister Kamlesh and mother Bhagwanibe sides of course the appellant Jote Ram who is projected

before us as the villain. It so happened that on the fateful day noted above, while Shantey, Kamlesh and Brahm Parkash were returning home with their buffalo, Jote Ram abused them. The children narrated the incident to their mother who lost no time in lodging protest with him. One would have expected the things to cool down. Instead the tempers ran high and we are told that Jote Ram, a neighbour otherwise, went on to the rooftop of his house and started hurling bricks at the family. One such brick hit Shantey leaving her unconscious. While she was being rushed to the hospital her father Risal Singh met them on the way and on being told about the incident, rushed to the Police Station. The next day saw the recording of the statement of Bhagwani which led to registration and consequent prosecution of Jote Ram under Section 308 of the Indian Penal Code.

(3) The learned Additional Sessions Judge lost hardly any time in concluding the trial and pronouncing Jote Ram guilty. Aggrieved, he preferred this appeal. We have taken almost 20 years for its disposal.

(4) Shantey, a female child of 6 years of age did enter the witness box but the learned trial Judge did not examine her as he, on putting her some questions, came to the conclusion that she was not 'in a position to understand the questions put to her much less the sanctity of oath'. Her father Risal Singh was also not examined. He could not possibly be. He was dead by that time. Of course, the prosecution did examine Bhagwani (PW2), Brahm Parkash (PW5) and Kamlesh (PW6) and one Pyare Lal (PW9) as eye witnesses to the alleged occurrence. Two other persons namely Ganeshi (PW4) and Siri Chand (PW7) also need to be noticed as they claim to have reached the spot soon after the occurrence.

(5) True, the eye witnesses do repeat the prosecution version, and the learned Sessions Judge has believed them. However, I do tend to agree with the learned Counsel for the appellant that despite parrot-like repetition of the prosecution version, the witnesses do leave big question-marks and fail to inspire, what we call, the confidence of the Court. Let me, very briefly, proceed to show how.

(6) Let me first deal with the question as to where the occurrence allegedly took place and its significance in the context of the merits of the prosecution version. I am doing so as I do consider it to be of considerable importance. Well, Bhagwani

is not very specific about it though it does appear from her statement that she was outside her house when she herself was hit by a brickbat. Public Witness 5 Brahm Parkash is however certain. He says Shantey was hit while she was in the street. Public Witness 6 Kamlesh says nothing about the spot. However, she does make a significant statement. As per her the brick was thrown at her brother but it hit Shantey. As already noticed, the brother (Brahm Parkash) claims to be standing in the street. It may thus be assumed that Shantey too, at that time, was standing in the street. In any case Pyare Lal (PW9) is sure. He says that Shantey was in the eight feet wide street when she was hit by a brickbat. Now, if brickbats were thrown while they were standing in the street and if Shantey and Bhagwani were hit in the street, how is it that the next day the police found the brickbats not in the street but well inside the house of Shantey? The site plan prepared by the Investigating Officer too shows that bricks were lying inside the house. Inanimate things do not move by themselves. Who took them inside the house and why

(7) Bhagwani tells us that besides Shantey, she too was hit by a brickbat thrown by the appellant and that she too had become unconscious and had regained consciousness only after 1' hours. Her son Brahm Parkash (PW-5) lends her version a full throated support. He says that her mother was still unconscious when she was put in a taxi Along with Shantey. So far so good. However, unfortunately for the prosecution there is no medical evidence to support it. To add to prosecution's misery, Bhagwani's own daughter Kamlesh (PW-6) belies the version. She categorically states that besides Shantey no other person was hurt. And to add to it all, Shri Chand and Pyare Lal who took Shantey to hospital also falsify Bhagwani's claim.

(8) Bhagwani also tells us that at about 7 or 8 p.m. while Shantey was being taken to the hospital her husband Risal Singh had met her on the way and it was then that the entire incident was narrated to him. She thus clearly rules out the presence of her husband at the place of occurrence. However, the statement of Brahm Parkash would go to show that soon after Shantey having been hit, Risal Singh had also reached the place of occurrence and that he was very much present there when Shantey was taken to the hospital. Kamlesh (PW-6) is however, more specific. She clearly says that her father Risal Singh had reached

home at 6 p.m. and that at that time her mother was still in the house. This still is not the end of the matter. While Bhagwani has stated that it was Shri Chand (PW7) who had asked Risal Singh to rush to the Police Station, as per Shri Chand, Risal Singh did not meet him at all on the day of occurrence.

(9) To make the confusion worse confounded, Pyare Lal (PW9) who also claims to be an eye witness states that the brick which had hit Shantey was thrown by the appellant 'from near his staircase' and that only one brick had been thrown. As per Kamlesh (PW6) and Brahm Parkash (PW5), the appellant had thrown brickbats from the roof of his house. While as per Brahm Parkash the brickbats so thrown were three in number, Ganeshi (PW-4) gives their number as six. However, as per Bhagwani the entire incident took place while she and the appellant were standing outside their respective houses meaning thereby that bricks were thrown by the appellant while he was still outside his house. And as if all this was not enough, she tells us that when she regained consciousness she noticed no brick or brickbat lying at the place of occurrence. Interestingly the site plan Ex. Public Witness 11 /C prepared by the Investigating Officer Asi Dharam Singh (PW11) does not show the place of occurrence. It merely shows that brickbats were picked up from inside the Courtyard of the house of Bhagwani. And, it may also be mentioned that although as per Ganeshi (PW4) blood was lying inside the Courtyard, the Investigating Officer tells us that besides 'brickbats' he had not found 'anything' there.

(10) A word or two more. It is admitted by Bhagwani that her husband Risal Singh was having litigation with the appellant. The evidence has to be examined and analysed keeping this fact in mind. Of course, enmity provides a motive for the hurt caused but it may also provide a cause for false implication. The alleged eyewitnesses are none other but the mother, sisters and brother of the alleged victim. Ganeshi (PW4) had stood surety for Risal Singh, Shri Chand (PW7) and Pyare Lal (PW9) admits to be close to Risal Singh. Thus all the witnesses are highly interested. Although it is in evidence that a large number of persons had witnessed the occurrence, not even a single independent and uninterested witness has been cited or produced. And, as far as the persons examined are concerned, I have already shown how they have contradicted each other on all material

particulars and what scant regard they have for truth. No, I do not think the prosecution has proved its case beyond doubt. It falls to the ground on this ground alone.

(11) The appellant has taken the plea that he was not present at the spot and that actually at the relevant time he was on duty and in support he has examined DW-1, Sarup Sagar who has categorically stated that on 26/05/1974 the appellant was on duty from 2 p.m. to 10 p.m. He has proved the entry to that effect in the Attendance Register (Ex DW1/A & Dw I/B). Yet another witness examined in defense is DW-2 Amar Singh under whose direct supervision the appellant had worked on that day from 2 p.m. to 10 p.m. Both the witnesses are Government officials and as such totally independent. Even otherwise they have come out unscathed from the test of cross-examination and I find no reason to disbelieve them. It is unfortunate that the appellant has suffered the ordeal of criminal charge for 20 years. Fortunately for him it ends on a happy note. I accept the appeal and acquit him of the charge.

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