

Ram Chander Mandal Vs. State

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Court : Delhi

Decided On : Oct-03-1996

Reported in : 1997IAD(Delhi)1; 1996(39)DRJ363

Judge : Arun Kumar and; K.S. Gupta, JJ.

Acts : [Indian Penal code, 1860](#) - Sections 34 and 302

Appeal No. : Criminal Appeal No. 185 of 1993

Appellant : Ram Chander Mandal

Respondent : State

Advocate for Pet/Ap. : K.B. Andley and; Mukta Gupta, Advs

Judgement :

Arun Kumar, J.

(1) The incident is of the night between 1st July 1991 and 2nd July 1991. As per the statement of Hari Shanker Singh, father of the deceased at about 1.00 A.M. his daughter Rambha came to him loudly shouting that she got burnt and asking her father to save her. Hari Shankar Singh was sleeping on the roof' (terrace) of his house Along with members of his family including his wife Indira, Public Witness -10, daughters Ramblia and Savita and Vijay Kumar, Public Witness -11, his brother-in-law. On account of the shrieks of the said Kumari Rambha, his

family members also woke up and gathered around. All of them were feeling burning sensation. Hari Shankar Singh, who later appeared as Public Witness -13 further stated that he saw Jeewan Mandal and Ram Chander Mandal (appellant) jumping from the side of the wall. Jeewan Mandal was holding a plastic box in his right hand and while jumping from the roof he threw the said box on the roof itself. Both the accused fled. According to Hari Shankar Singh, Jeewan Mandal and Ram Chandor Mandal were cousins. They had burnt his daughter Rambha and all the members of his family by pouring some liquid like acid. All the injured including Kumari Rambha were taken to the Esi hospital in a three wheeler scooter. In the hospital MLCs of Kumar Rambha, her mother Indra, her sister Savita, father Hari .Shankar Singh and Vijay Kumar were recorded. The arrival of all these persons in the hospital is shown in the MLCs as 1.30 A.M. on 2nd July 1991. As per the Mlc the patients were alleged to have suffered acid burns by somebody at home about 30 minutes back. They all received treatment. The condition of Kumari Rambha was described as serious. Her pulse and blood pressure were not recorded. She reportedly had deep acid burns. Rambha's Mlc is Ex. PW-8/E. It contains the thumb impression of the patient. She was unfit for statement. She died within about 15 minutes of her arrival in the hospital. As per the death summary Ex. PW-8/L she was declared dead at 1.45 A.M. on 2nd July

(2) In his statement recorded at about 3 A.M. on 2nd July, 1991 referred to above, Hari Shanker Singh had named two. accused, Jeewan Mandal and -Ram Chander Mandal. Jeewan Mandal could not be arrested and was ultimately declared a proclaimed offender, thereforee, only Ram Chander Mandal, appellant herein, was tried. He was convicted by the learned Addl. Sessions Judge vide impugned judgment dated 29th October, 1993 of offences. under section 302 Indian Penal Code read with section 34 Indian Penal Code and section-307 Indian Penal Code read with section 34 Indian Penal Code and was sentenced to life imprisonment and fine of Rs.500.00 for the offence under section 302/34 Indian Penal Code and to S.I. for two years and fine of Ks.500.00 for the offence under section 307/34 IPC.

(3) The learned counsel for the appellant has tried to highlight certain flaws in the reasoning contained in the judgment of the learned Addl. Sessions Judge. Apart

from the flaws in the reasoning he has endeavoured to demonstrate before us that it is not a case where the appellant can be convicted on the basis of the evidence on record. According to the learned counsel for the appellant it is a case of circumstantial evidence in which the chain of events is not complete so as to lead to the only hypothesis of the guilt of the appellant and to exclude hypothesis of his innocence. He urged the following points in this behalf :-

1: The prosecution has failed to prove any motive on the part of the appellant to commit the crime. 2. There are only two things against the appellant. First, running away from the place of occurrence along with co-accused; second, alleged recovery of a jerry can at the instance of the accused. To demolish the prosecution case, he has additionally urged :- (i) Names of either of the accused are not mentioned in the MLCs; (ii) It was dark in the night and the accused could not have been identified by the witnesses who allegedly saw them fleeing; (iii) Section 34 Indian Penal Code cannot be invoked in the absence of any statement as to who poured the acid on the injured persons. The question of common intention cannot arise; (iv) Delay in registration of the FIR; (v) No evidence to show that the substance of the FIR was recorded in the daily diary. We propose to deal with these points one by one.

(4) In a case of circumstantial evidence no doubt motive has an important role. However, absence of proof of motive does not necessarily lead to the conclusion that the prosecution case must fail. If there is otherwise cogent evidence on record which may establish the guilt of the accused, motive pales into insignificance. In the present case the motive was sought to be suggested in the sense that the appellant and his co-accused Jeewan Mandal were said to be boot loggers. Hari Shanker Singh, the head of the family of the injured party is alleged to have been making complaints against them to the police. therefore, the suggestion is that the appellant and his colleagues held a grudge against Hari Shanker Singh and his family and on account of that grudge they committed the act for which they were being prosecuted.

(5) The evidence of motive consists of the statements of the three members of the injured party. Indra, PW-10 stated that Jeewan Mandal had been arrested by the

police two or three times as he was in liquor trade. According to her Jeewan Mandal suspected that her husband Hari Shanker Singh was behind his arrest. Similarly, Vijay Kumar, PW-11 admitted in his cross-examination by the learned A.P.P. that he had told the 10 that both the accused were inimical towards Hari Shanker Singh because they suspected that he was reporting to the police about their dealing in liquor and was responsible for getting false cases instituted against them. However, when Hari Shanker Singh appeared as PW-13 he stated in his examination-in-chief about arrest of Jeewan Mandal in a case of recovery of liquor and about the fact that the accused suspected him behind this. But he could not sustain this while being cross-examined. He could not give any particulars of any challan or arrests of the two accused in this connection. This is the only evidence on the question of motive. We agree with the learned counsel for the appellant that the prosecution has not been able to lead any reliable or cogent evidence on the question of motive and the plea of motive in this case is weak.

(6) Coming to the main question about the involvement of the appellant in the present case, three members of the victims family have appeared as witnesses. All of them stated that the five members of the family whose names have been mentioned hereinbefore suffered acid burn injuries. In this connection apart from the MLCs of all the injured persons which are proved on record showing acid burn injuries suffered by them, the oral testimony of PW-8, Dr.R.K.Sharma and PW-9 Dr. Prithi Raj, Sr. Medical Officer, Esi hospital in the Surgical Department is worth noting. Dr.R.K.Sharma of the Esi hospital first attended to the injured persons and recorded their MLCs. He has referred to all the five persons who received acid burn injuries in this case. Dr.Prithi Raj who was the senior doctor who attended to the injured persons also has testified about acid burn injuries having been received by all the five persons. About the injuries suffered by Kumari Rambha, deceased, he stated that the injuries were serious being deep acid burns and the patient was in collapse state. He also prepared the death summary. In fact the learned counsel for the appellant did not dispute the fact that the acid burn injuries were received by the five persons including the deceased. The question raised is about the role of the appellant and whether he can be implicated in the crime. On this question, first we have to note that there is no eye witness to the actual act of throwing the acid on the injured persons. However, there is clear, cogent and consistent

evidence of three witnesses belonging to the injured party to the effect that immediately after the throwing of the acid the appellant was found at the place of occurrence along with the co-accused Jeewan Mandal. Actually he was seen by the witnesses fleeing from the place. Acid acts immediately and the moment it touches the body its reaction is bound to take place instantaneously. therefore, immediately the acid was thrown on the injured persons they started feeling its effect. The maximum sufferer was Kumari Rambha who ultimately died of the acid burns she received on her body. She was first to start shouting/shrieking. And all the others woke up and found burn sensation on their respective bodies. The two accused were seen by this family at that very moment at the place of occurrence and running away from there. Indra, PW-10, mother of the deceased in this connection stated:-

'AT about 1 A.M. my daughter Rambha Kumari cried and said that she was burnt and be saved. Hearing her cries all of us got up. We were also feeling irritation as some material like acid was also poured over our body. In the mean time we noticed Jeewan Mandal and Ram Chander Mandal jumping from the roof. Ram Chander Mandal is present in the Court. Jeewan Mandal (now P.O.) was having a plastic dibba in his hand, which he had thrown on the roof before jumping. Ram Chander accused was also having a dibba (Tejab ka Dibba) which he had taken himself while running. Both the accused namely Ram Chander present in Court and Jeewan Mandal now P.O. jumped from the roof and ran towards Lal Bagh. There is a temple in front of my house where light was on. The acid was thrown over us by Jeewan Mandal and accused Ram Chander present in Court.'

(7) He two accused were residing in the same neighbourhood. Actually the site plan Ex. PW-2/A. shows that the house of one of them was adjoining the house of the injured family. All the three witnesses of the family who appeared in court have clearly brought out that both the accused were very well known to the family earlier. Indra, PW-10 stated that they had identified the accused Ram Chander Mandal and Jeewan Mandal and they were seen running away jumping from the parapet wall which was only about nine inches high. In cross-examination in fact she stated that Ram Chander Mandal, the appellant was just at a distance of three paces/feet from her. Looking at the assailant from such a close distance would be

sufficient to identify him even if it was a dark night and there was no light on the roof especially in view of the fact that the accused were already known to them. Some evidence has been led that there was light coming from an electric bulb lighted at a nearby temple. We are of the view that even if the light of the bulb was not sufficient to reach the place of occurrence and whether the bulb was there or not, it would not be difficult to identify the accused when seen from such a close distance even on a dark night specially when both were already known to all of them. In fact the learned counsel for the appellant did not rightly press the aspect of absence of sufficient light to identify the accused. Vijay Kumar, PW-11 spoke on the same lines. The relevant portion of his testimony is reproduced as under:-

'AT about I Am on 2.7.91 Rambha Kumari cried loudly. We all got up. I was also feeling burning sensation. As soon as we got up we saw accused Ram Chander present in Court and Jeewan Mandal (P.O.) whom I knew from before running. Both of them jumped from the roof from the side of wall. Jeewan Mandal was carrying a plastic mug. At that time I saw nothing in the hands of Ram Chander Mandal, accused present in the Court, Jeewan Mandal had thrown the plastic mug on the roof before jumping from the roof. Ram Chander and Jeewan Mandal went towards Public Latrine side towards Lal Bagh.'

(8) Similar is the position about the testimony of Hari Shanker Singh, PW-13 who stated:-

'While we were sleeping at our roof I heard the cries of my daughter Rambha Kumari. She was saying 'Papa Jal Gayey Bachao Bachao' All the family members who were sleeping there woke up. some -liquid substance was thrown on us and all of us were feeling burns. My daughter Rambha Kumari was badly burnt due to that liquid substance which was thrown on us. After awaking we saw that accused Ram Chander Mandal now present in the Court and Jeewan Mandal (P.O.) were jumping from our roof and they were running via latrine towards Lal Bagh. One plastic container (Dabba) was found lying on our roof. Jeewan Mandal was having that plastic dabba in his right hand while we saw him on the roof and he left that dabba on the roof.'

(9) From the above statements of the three members of the injured family, it is established that both the accused were seen running away from the place of occurrence. One of them (Jeewan Mandal) had a plastic mug in his hand which he threw away on the roof while fleeing. About the appellant, Indra, PW-10 stated that he also had a mug in his hand and he fled along with mug but this has not been stated by the other two witnesses. A plastic mug was recovered from the spot. It was seized and sent to the CFSL. The CfsI report shows that the mug tested positive for presence of sulphuric acid. Some of the bed sheets and pillows used by the injured party for sleeping were also seized and sent to the CfsI for its report. The report shows the presence of sulphuric acid.

(10) We have no reason to doubt the above statements of PWs-10, 11 and 13. The cross- examination of the witnesses has not shown any flaws in the testimony of these witnesses. The presence of the appellant at the scene of occurrence immediately after pouring of acid on the injured persons stands fully established. Another fact fully established is their fleeing together from the place of occurrence with one of them throwing the plastic mug which was in his hand on the roof while fleeing. The said mug has been tested as containing sulphuric acid by the CFSL. At that hour of the night what the appellant was doing there? Why did he run away seeing the victims waking up from their sleep? No other person was present on the scene. Acid is not something which could drop on the injured persons from the sky. All this coupled with the fact of throwing the plastic mug which had Sulphuric acid while fleeing clearly point to the involvement of the appellant in the crime.

(11) This brings us to the second important incriminating evidence against the appellant, i.e., the recovery of a jerrycan containing Sulphuric acid at his instance. The recovery memo is Ex. PW-18/F. According to this document, the appellant voluntarily walked ahead along with the police party and pointed out to the bush under the Azadpur railway bridge. -He took out a white coloured plastic bottle from the bush and produced it before the police officers accompanying him. The bottle was opened and inside a white liquid was found which was smelling acid. A sample of liquid was taken in a separate bottle. Both the bottles were duly sealed with the seal of the S.H.O. and taken into possession by the police. This bottle was sent to the CfsI and as per the report of the CfsI, it tested' positive for presence of

Sulphuric acid. The learned counsel for the appellant argued that this recovery is no recovery in the eye of law and cannot be taken into consideration under section 27 of the Evidence Act. ' The argument proceeds further that the recovery was made from an open place which was accessible to the public at large. therefore, the element of concealment was missing. We do not agree with this contention of the learned counsel for the appellant. The place of recovery of the object may be such where the public may have access yet if there is an element of concealment and it appears that it was within the special knowledge of the person at whose instance the recovery was effected, such recovery can always be taken into consideration. In the present case, the place of concealment, i.e., the bush under the Azadpur railway bridge may be accessible to the public but the fact that the object was taken out by the appellant from the bushes cannot be lost sight of. This shows that the appellant alone knew where the bottle was concealed. This fact was within his exclusive knowledge. He alone could have known about the place where the plastic bottle containing Sulphuric acid was hidden. This recovery at the instance of the appellant is a significant fact pointing to the guilt of the appellant. The bottle which was recovered at the instance of the appellant contained Sulphuric acid. The Sulphuric acid was used in the present case as a weapon of offence. Recovery of the weapon of offence at the instance of the appellant points to the involvement of the appellant in the crime.

(12) The next question raised by the .learned counsel for the appellant is about invoking section 34 Indian Penal Code to implicate both the accused for the offence under 302 IPC. It is argued that nobody saw acid being actually thrown on the victims and, therefore, it is not possible to say as to who out of the two accused threw Sulphuric acid. Only that person who actually threw Sulphuric acid could at best be held guilty. This argument on the face of it looks attractive. However, it does not stand scrutiny when considered in depth. It has been clearly established in evidence that Jeewan Mandal the other accused had a plastic mug in his hand when both the accused were seen fleeing from the place of occurrence by the members of the injured party. It is also in evidence that Jeewan Mandal threw the plastic mug on the roof itself while flee- ing. As already noted this mug was recovered by the investigating agency and was sent to the Cfsi for its report. The Cfsi report shows presence of Sulphuric acid in the mug. This fact has to be

considered in the light of certain other facts, i.e., -

1. Both the accused were seen on the roof together at the relevant time, i.e., immediately after the pouring of Sulphuric acid on the members of the injured party. 2. Both of them started running away from the place when they saw the injured persons waking up with one of them shrieking and shouting. While running away one of them threw the plastic mug on the roof.

(13) These facts clearly establish common intention on the part of both the accused and section 34 was rightly pressed into service. The togetherness of the two accused at the time of the incident and soon after the incident clearly establishes their common intention to commit the crime. A question arises that if there was no common intention why did the appellant accompany Jeewan Mandal, the co-accused on the roof and why did he run away along with Jeewan Mandal from the roof? The only answer to this question is of the complicity of both the accused in the crime. Thus we find no merit in the argument that section 34 Indian Penal Code cannot be invoked in the facts of the present case so as to convict the appellant.

(14) The learned counsel for the appellant relied on the fact that the names of the accused are not mentioned in the MLCs of the injured party to urge that their names have been introduced as an after-thought. This argument again is not at all open to the appellant in the facts of the present case. The appellant as well as his co-accused Jeewan Mandal were both already known to the members of the injured party and they were clearly seen and identified at the place of occurrence. therefore, this argument has no force. Non-mentioning of the names of the accused in the MLC has absolutely no bearing or relevance in the facts of the present case. It must be noted here that an MLC is not an FIR. It is not necessary to mention the names of the accused persons in the MLC and failure to mention the names of the accused in the MLC does not necessarily weaken the prosecution case. The significance of this depends on facts of each case. In the present case this has no significance at all.

(15) The learned counsel has relied on Jagir Singh vs. The State 1975 Scc (Cri.) 129 in support of this point. The facts of this case are totally different. In this case

the question was about not informing the names of the assailants to the Sub-Inspector of police who visited the hospital. The non-disclosure of the name of the assailant to the investigating agency cannot be treated at par with non-disclosure of the name of the assailant to the doctor attending on the injured who is brought to the hospital for treatment. thereforee, this authority does not help.

(16) The learned counsel also relied on Panda Nana Kare vs. State of Maharashtra 1980 Scc 128 in this behalf. The facts of this case are also 371 clearly distinguishable from the facts of the present case. In the authority '- cited by the learned counsel the alleged eye witness did not disclose the name of the assailant before the doctors or the police for the reason that the assailant was his brother-in-law. Thus he had a reason to hold back the name of the assailant and the alleged eye witness was, thereforee, disbelieved. The evidence of the alleged eye witness was discarded. In the case before us Hari Shanker Singh had disclosed the name of the assailant to the police officer who recorded his statement at the very first opportunity. Non- disclosure of the names of the assailants before the doctor who recorded the Mlc was, thereforee, not very material.

(17) Similarly delay in registration of the Fir and delay in sending copy of the Fir to the Magistrate as well as absence of proof of recording of substance of the Fir in the daily diary are not such factors as to destroy the prosecution case. The incident is of about 1 A.M. The dispatch of Rukka is at about 3.05 A.M. of the same night and the registration of the Fir is 3.30 A.M., same night. We see hardly any delay in registration of the FIR. About delivery of the copy of the Fir to the Sdm, there is some controversy in the present case. According to the evidence of the police officer who delivered the same to the Magistrate, it was done before 6.00 A.M. on that day because this is the time when the Dd entry about his return to the police station after delivering the document is recorded. However, the learned counsel for the appellant has shown that the copy of the Fir delivered to the Magistrate shows an endorsement of receipt at 2.00 P.M. The prosecution has failed to explain this discrepancy. In the facts of the present case, we feel that this flaw does not have' any significant repercussion. No benefit can be said to flow to the appellant for this. His guilt is otherwise established by other overwhelming

evidence on record to which reference has already been made. thereforee, this point need not detain us any further. Likewise for the failure to lead evidence about recording of substance of the Fir in the daily diary, we cannot throw away the prosecution case. In a given case this fact may have significance, but in the present case this lapse, even if we assume it to be so, is not very material or significant. The most important feature of the case. which establishes the guilt of the appellant is the proximity of time between pouring of acid on the victims and being seen at the place of occurrence. This excludes the possibility of anyone else being involved in the crime. At that hour of the night everyone was asleep. The appellant and his co-accused appeared to have taken advantage of this fact in order to commit the crime. None could have actually seen the appellant and his co-accused pouring acid on the injured party at that hour of the night. However, the acid had its immediate reaction on contact with human body and the persons, on whom acid was poured started waking up and shouting. The first to wake up was Kumari Rambha, the deceased, who had suffered the maximum. She bore 'the brunt of the acid .attack on the injured party and she ultimately scrummed to her injuries, Im- mediately the members of the injured party started waking up. They saw the appellant and his co-accused Jeewan Mandal and no one else. They were also seen running away together from the place with a plastic mug in the hand of one of them. The plastic mug was. found to be containing Sulphuric acid by the CFSL. All these facts are sufficient to clearly establish the guilt of the appellant. Every hypothesis points to the guilt of the appellant and there is nothing which leads to any hypothesis suggesting innocence of the appellant.

(18) The result of the above discussion is that this appeal fails and is dismissed as such. The conviction and sentence of the appellant as pronounced by the trial court is maintained.

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