

Munna Lal Vs. State

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Court : Delhi

Decided On : May-01-1997

Reported in : 67(1997)DLT55

Judge : Arun Kumar and; N.G. Nandi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 300

Appeal No. : Criminal Appeal No. 53 of 1994

Appellant : Munna Lal

Respondent : State

Advocate for Pet/Ap. : M.C. Sharma and; R.D. Jolly, Advs

Judgement :

N.G. Nandi, J.

(1) The appellant, Munna Lal, s/o Bindeshwari stands convicted for the offence under Sections 300/34,1.P.C. and sentenced to suffer imprisonment for life and fine of Rs. 25,000.00 and in default further R.I. for 3' years by the Additional Sessions Judge, Delhi in F.I.R. No. 447/90, Police Station Saraswati Vihar, Delhi in Sessions Case No. 29/91.

(2) The facts leading to the filing of the present appeal, shortly stated, are that one Vijay Kumar had inducted Dinesh Kumar as a watchman in the property i.e., bungalow No. 75, Sandesh Vihar, P&T; Colony belonging to one Munish Kumar who was living in Bungalow No. 75, Sandesh Vihar, P & T Colony with his wife and two of his cousin brothers Munna Lal and Prakash; that on 25.11.1990 at about 7.30 a.m, a telephonic information given by one Ram Pal Anand was received at Police Station Saraswati Vihar transmitted from Police Control Room to the effect that one person was lying in burnt condition in House No. 75, Sandesh Vihar, P & T Colony whereupon police came to the place of occurrence and in the P.C.R. van, the injured was removed and admitted to Deen Dayal Upadhyay Hospital by Head Constable Jai Narain; that M.L.C. No. E-82735 dated 25.11.1990 was collected by S.I. Jugti Ram in respect of the injured Dinesh Kumar; that Dinesh was found not fit for making statement; that statement of Kiran Devi, wife of the injured Dinesh was recorded by the S.I. on the basis of which Rukka was sent to the concerned Police Station and F.I.R. No. 447/90 was registered; that Kiran Devi gave the full account of the occurrence including the facts which occurred in the afternoon of 24.11.1990 leading to the incident during the night intervening 24th and 25th November, 1990 wherein kerosene was poured on her husband Dinesh and he was set ablaze culminating into the death of Dinesh at about 8 a.m. on 26.11.1990. In the course of the investigation, the statements of the witnesses available were recorded. The charge was framed against the present appellant for committing the murder of Dinesh. The prosecution, in order to bring the guilt home to the accused, adduced oral as well as documentary evidence. The learned trial Judge, appreciating the evidence on record and considering the statement under Section 313 of the Code of Criminal Procedure found accused Munna Lal guilty for the offence charged with and sentenced him, as aforestated. It is this finding of guilt and the sentences imposed which have been assailed by the appellant/convict in this appeal. It may be noted here that co-accused Prakash, the brother of the appellant Munna Lal was also charge-sheeted for committing the murder of Dinesh in this very incident Along with the present appellant but he has been declared proclaimed offender and the trial proceeded only qua accused Munna Lal who has been found guilty, as aforestated.

(3) It may be noted that according to the prosecution, on 24.11.1990 at about 4 p.m, when Kiran Devi was alone in the house, Prakash, taking advantage of the absence of her husband Dinesh, committed rape on her. This incident was narrated to Dinesh when he returned home by Kiran Devi whereupon altercation took place between Dinesh and Prakash; that Munna Lal also subsequently came and supported his brother Prakash; that in the night Prakash and Munna Lal were sleeping in the room whereas Dinesh and Kiran Devi were sleeping in the room where they were preparing food (kitchen); that during the night, Munna Lal and Prakash dragged Dinesh to the bathroom; that Kiran Devi tried to rescue her husband but she was pushed away; that Munna Lal held Dinesh and Prakash poured kerosene oil on Dinesh and set Dinesh to fire; that Munna Lal and Prakash fled from the place of occurrence; that Dinesh, in order to extinguish fire, moved in the house and sustained some injuries; that Kiran Devi had become unconscious for some time; that after regaining consciousness, she came out of the house, went to her maternal uncle Manoj Mandal working and staying in a factory at some distance from the place of occurrence; that when she returned with Manoj, she found her injured/ burnt husband having been removed to the hospital by police. It is the say of the prosecution that when Kiran Devi was away from the house, Dinesh in burnt condition went to bungalow No. 78 i.e., to the house of retired Police Inspector Ram Pal Anand and told him that he is coming from bungalow No. 75; that he has been burnt by his two cousins Prakash and Munna Lal and that his wife is away from home whereupon Ram Pal Anand sent a telephonic information to Police Control Room, pursuant to which police van came to the place of occurrence.

(4) It is submitted by Ms. Sharma, learned Counsel amicus curiae for the appellant that Kiran Devi, the wife of deceased Dinesh does not go to the Police Station though it falls on her way to the Britannia Factory; that according to her evidence, in the morning at around 8.30 a.m, she went to the Police Station and her statement was recorded at the Police Station, yet her F.I.R. is not recorded and her statement is said to have been recorded in the hospital around 11.30 a.m. and F.I.R. recorded at 1.05 p.m; that according to the M.L.C, she was examined for rape at 9.15 p.m. in the hospital on 25.11.1990; that there is no report lodged for the incident of rape which is stated to have taken place around 4 p.m. on

24.11.1990; that if deceased Dinesh and Kiran Devi were frightened because of the threat given by the appellant and Prakash, then why the door of the kitchen was not bolted from inside and was kept open if the threat given by the appellant and Prakash was the reason for their sleeping in kitchen; that the conduct of Kiran Devi is not natural; that according to PW-15, lady Constable Maya Devi, the informant Ram Pal Anand from Sandesh Vihar informed that one person was lying in burnt condition in House No. 75, Sandesh Vihar; that according to this witness, she recorded whatever information was received by her and that nothing was added or subtracted there from by the witness; that Public Witness -2 Ram Pal Anand is an independent witness and why even Public Witness -15 say falsely and if names were given on telephone by Public Witness -2 Ram Pal Anand, why should Public Witness -15 not take down the names given by Public Witness -2 meaning thereby that Public Witness - 2 did not give the names of the assailants in the telephonic information that he gave to Police Control Room taken down by Public Witness -15 at Police Station Saraswati Vihar which is without any addition or subtraction; that Public Witness -17 Kiran Devi is a conniving party with somebody; that evidence of Public Witness -17 is full of contradictions and not trustworthy.

(5) It may be noted at the out set that the evidence by which the appellant is sought to be connected with the offence is, (1) the statement allegedly made by deceased to Public Witness . 2 Ram Pal Anand, and (2) the evidence of eye witness Public Witness . 17, the wife of deceased Dinesh.

(6) It is not in dispute that deceased Dinesh happened to be the cousin brother of appellant Munna Lal and his brother Prakash. The defense is that of total denial.

(7) We would first consider the statement stated to have been made by Dinesh to Public Witness . 2 Ram Pal Anand residing in Kothi No. 78, Sandesh Vihar stated in his evidence that on 25.11.1990, the witness and his wife returned from the morning walk at about 7.30 a.m. and somebody rang the bell no-sooner the witness entered his house; that the witness came out and saw a person in burnt condition sitting by the side of the gate of the house of the witness; that the injured person gave his name as Dinesh on enquiry by the witness and further told that he

had come from Kothi No. 75 and that Prakash and Munna had burnt him and that his wife was also not in the house. It is deposed by the witness that he informed about this fact to Police Control Room (PCR) and also informed Mr. Vijay Kumar Malhotra that his Chowkidar has been burnt. In the cross-examination, it has been stated by the witness that there are other residential houses in the locality wherein people have been living; that after informing the Pcr on telephone, the witness informed Vijay Kumar Malhotra on telephone that his Chowkidar had been burnt; that the witness had given the names of the assailants to the PCR; that Pcr van had removed the injured from front of the house of the witness.

(8) It is sought to be suggested from the evidence of this witness that Dinesh in burnt condition went to the house of the witness and disclosed the names of Prakash and Munna as the assailants. The evidence of the witness is also to the effect that on enquiry by the witness, injured Dinesh introduced him also stating that he had come from Kothi No. 75, meaning thereby that the witness did not know injured before. It is also his evidence that there are houses in the locality where the people were living. Yet the injured chose this witness to disclose the names of the assailants and also that his wife was not in the house. It is understandable that an injured may rush for help to the nearest and immediately available person. It is not suggested from the evidence as to whether any one was available in Kothi Nos. 76 and 77 at the relevant time or not. We can understand the injured telling the witness for help and for taking him to the hospital for medical treatment but according to the witness, the injured did not make any such request nor it occurs to the witness that the injured be taken to the hospital for medical treatment. And what is the purpose of the injured coming to the witness is to disclose the names of the assailants and the fact that his wife was also not in the house and that too to a unknown person. According to this witness, he informed Vijay Kumar that his chowkidar has been burnt but does not disclose the names of the persons named by the injured. According to this witness he informed Pcr of the fact told to him including the names of the assailants by injured Dinesh.

(9) Public Witness . 15 lady Const. Maya Devi stated in her evidence that on 25.11.1990 she was posted in PCR; that one Anand Kumar informed from Sandesh Vihar that one person was lying in burnt condition in House No. 75

Sandesh Vihar. The witness conveyed this information to P.S. Saraswati Vihar which is received in Police Station Saraswati Vihar vide Dd No. 2A. In the cross-examination, it has been stated by the witness that she had recorded whatever information was received by her and nothing was added or subtracted by her.

(10) The information from P.C.R. received at P.S. Saraswati Vihar, Delhi on 25.11.1990 is DD-2A, Ex. Public Witness -9/D. The same suggests that a telephonic information was received through Pcr at 7.50 a.m. that Smt. Maya Devi, lady Constable No. 1956 had informed from Pcr that one Anand had transmitted a telephonic information through telephone No. 7228086 to the effect that one person is lying in burnt condition at House No. 75, Sandesh Vihar, P&T; Colony, some officer may kindly be deputed at the place; that on the receipt of the telephonic information, a report to this effect was entered in the Roznamcha. A copy of the report was separated and was handed over to Shri Jugti Ram, Si, who Along with Shri Jagdish Prashad Constable, No. 576/NW left for the spot.

(11) It may be seen from the above that in DD-2A received/recorded at P.S. Saraswati Vihar, the name of the informant is mentioned as one Mr. Anand from telephone No. 7228086, the place of incident to be H.No. 75, Sandesh Vihar and the information conveyed was to the effect that one person was lying in burnt condition at the said house. It is pertinent to note that DD-2A Ex. Public Witness - 9/D does not refer to the name of any person as the assailant. Public Witness . 15 has in categorical terms stated in her cross-examination that she did not add or subtract anything from the telephonic information received by her. We see no reason for Public Witness . 15 not to convey the names of the assailants if told to her in the telephonic message by Public Witness . 2. Public Witness . I deposed in his evidence that after 5-6 days Dinesh was kept as Chowkidar and permitted to live in Kothi No. 75 with his family, the witness had come to Kothi No. 75 and saw two boys sitting on a cot. Though not strictly required, if Public Witness . 2 could inform Vijay Kumar about his Chowkidar having been burnt, he could have as well given the names of the assailants, if named by injured Dinesh to Vijay Kumar because Public Witness . 1 Vijay Kumar has stated in his evidence to the effect that he had come to Kothi No. 75 after receiving the telephonic call from Ram Pal; now if Public Witness . 1 Vijay Kumar comes to Kothi No. 75 in response to a

telephone call from Public Witness . 2 Ram Pal about his Chowkidar having been burnt, Public Witness . I would naturally meet Public Witness . 2 when he came to Kothi No. 75 and ask him about the incident. Nothing of the sort has been deposed by Public Witness . 1 or Public Witness . 2 and Public Witness . 2 having told Public Witness . 1 about the names of the assailants.

(12) Public Witness . 17 Kiran Devi, wife of Dinesh Kumar stated in her evidence that Munna and Prakash are the cousins other deceased husband Dinesh; that two years prior to the incident, she Along with her husband, who was working as Chowkidar, was living in Kothi No. 75 Saraswati Vihar; that Prakash and Munna were also living with the witness and the deceased in the area of Saraswati Vihar; that on 24.11.1990 when she was alone in the Kothi and her husband had gone out, Munna and Prakash after closing the door, committed rape upon her; that in the evening when her husband came back she narrated him the entire story; that her husband rebuked accused Munna and Prakash and there was exchange of hot words between them; that the witness and her husband went to sleep in the room during the night where they used to cook their meals; that Munna and Prakash slept outside; that both of them dragged her husband out of the room and sprinkled kerosene oil on him and when the witness tried to save her husband, they pushed her away; that thereafter, both the accused persons set her husband ablaze; that she extinguished the fire by throwing water on her husband; that she went to inform her maternal uncle Manoj Mandal who was living at some distance; that when she returned with her maternal uncle to Kothi No. 75, she learnt that her husband was removed to hospital by the police; that she went to the police station and thereafter went to the hospital; that the police met her in the hospital and recorded her statement and she put her right thumb impression on the statement. In the cross-examination for the prosecution, she stated that when her husband was not in the house during the day time, only Prakash committed rape on her and that her husband was dragged out of the kitchen and taken to bath room; that Munna had held her husband whereas Prakash poured kerosene oil on him. In the cross-examination for the defense, it has been deposed that the distance between Kothi No. 75 and the place where Manoj Mandal is working is about half Kose (Mile/KM); that she informed Manoj Mandal about the incident and both of them immediately returned to Kothi No. 75 on foot; that it had taken about half hour to

reach the factory of Manoj Mandal; that the police station is at a walking distance of 10 minutes from Kothi No. 75 and the police station falls on way to Britannia Factory; that there is also an entry from the back side as well as from the front side of Kothi No. 75; that they had not bolted the door of the kitchen from inside where they had slept on that day; that the witness and Manoj Mandal were made to sit in the police station till the evening of that day; that Si Jugti Ram was also present in the police station at that time and he was told the entire incident by the witness in the police station; that the witness reached the hospital at 4.00 p.m; that she was got medically examined at about 9.00 p.m; that she had come to know. on the next date of incident that her husband had died; that she did not meet her husband in the hospital on the day of incident; that the police had recorded her statement 2-3 times; that her thumb impression was obtained by the police only once in the hospital; that her statement was recorded in the police station at about 8 p.m. on the day of occurrence. She has denied the suggestion that she met the police at about 8.00 p.m. on the day of incident and till then she was hiding herself for the whole day.

(13) Public Witness . 18 Manoj Mandal, the maternal uncle of Public Witness . 17 Kiran Devi, the wife of deceased Dinesh, stated that Public Witness . 17 is his niece; that she was the wife of Dinesh Mandal, who has since died; that she was living with Dinesh as his wife; that in 1990 the witness was living in Shiv Flour Mill, Lawrence Road; that on 25th day of the month, about two years back Kiran Devi came to the witness at about 7.00 a.m. and told him that accused Munna present in Court had caught hold of her husband and accused Prakash poured kerosene oil on him and was set ablaze; that Along with Kiran, the witness went to the Kothi where they were living and there they came to know that the police had already removed Dinesh to hospital and then the witness and Kiran Devi came to the police station. In the cross-examination, it has been stated by the witness that he immediately started with Kiran Devi when she informed him about the incident; that the distance between the factory where the witness was working and the place where Kiran was living was about 2 tans., the police post is situated at a distance of about 1 km from the factory of the witness; that from the factory, the witness and Kiran had gone to Kothi No. 75 on foot; that the distance between police post and Kothi No. 75 is about 10 paces; that from his factory, police station

fell on way to Kothi No. 75; that there are residential houses around Kothi No. 75; that they came to police station after about 10 minutes from Kothi No. 75 and it was about 8.00 a.m. then they narrated the entire incident to police official; that Kiran had narrated it; that the police wrote the papers in the police station and also got the thumb impression of Kiran Devi; that the witness came back to his factory at about 10.00 a.m.; that police official had told him that Dinesh had been removed to hospital; that the police did not allow the witness or Kiran Devi to go to the hospital; that on the next date, the witness came to know that Dinesh had died; that the witness had come back after leaving Kiran Devi in the police station; that the witness did not go to see Dinesh in the hospital; that he had come to know that Kiran Devi was handed over the dead body of Dinesh for last rites after three days; that the police had made Kiran Devi sit in the police station and a lady constable was sitting besides her; that the witness had come to know after three days that Kiran Devi had not been shown as an accused in this case and cited as a witness. The witness has denied the suggestion that Kiran Devi had not come to the witness to inform him about the occurrence. It is also denied that the witness Along with police had been searching for Kiran Devi for the whole day and that in the evening, the witness produced her in the police station after tracing out her and that Kiran was hiding herself for the whole day.

(14) Taking the evidence of Public Witness . 17 and Public Witness .18, it is sought to be suggested that around 7.00 a.m., Kiran Devi went on foot to call Public Witness . 18 at Shiv Flour Mill residence which is at a distance of about 2 kms. from Kothi No. 75; that both of them returned on foot to Kothi No. 75 and from Kothi No. 75, both of them came to police station, which is at a distance of about 10 minutes from Kothi No. 75 which falls on way to Kothi No. 75; that Public Witness . 17 Kiran Devi narrated the entire incident in the police station. According to Public Witness . 17, her thumb mark impression was not obtained in the police station whereas according to Public Witness . 18, the police wrote the papers in the police station and also got the thumb mark impression of Public Witness .17. According to Public Witness . 18 he left Public Witness . 17 in the police station and returned to his factory at about 10.00 a.m. Public Witness . 18 does not go to the hospital to inquire about the health of Dinesh though Public Witness s. 17 and 18 were informed by the police in the police station that Dinesh had been removed

to the hospital. According to Public Witness . 18 he came to know that Kiran Devi was handed over the dead body of Dinesh for last rites after three days and that police had made her sit in the police station and a lady constable was sitting beside her and that after three days, the witness came to know that Kiran Devi had not been shown as an accused in the case and had been cited as a witness. It may be appreciated that according to P.W. 17 she went to Public Witness . 18. We take it for assistance for the purpose of providing medical aid to injured Dinesh. It is understandable that the primary concern of a near person, namely, the wife, son, brother, father, etc. would be to provide medical assistance to injured and one would not first think of going to police station and narrate the incident. Quite natural on the part of Public Witness . 17 to first go to Public Witness . 18. After returning to Kothi No. 75, Public Witness s-17 and 18 went to police station. According to Public Witness . 18 the incident was narrated by Public Witness . 17, the police prepared papers, thumb mark impression of Kiran Devi was obtained in police station and at 10.00 a.m, Public Witness . 18 returned to his factory. This conduct of Public Witness . 18 is far from being convincing for the reason as to what assistance he rendered to the injured or to Public Witness . 17 Is the conduct of Public Witness . 18 of leaving Public Witness . 17 in the police station all alone returning to his factory at 10.00 a.m. without going to the hospital to inquire about Dinesh, consistent with a normal and natural human conduct of a near relation It does not occur to Public Witness . 18 to go to the hospital to inquire about the health of the husband of his niece when his niece Public Witness . 17 had rushed to him in the early morning and Public Witness . 18 comes to know on the next day that Dinesh had died meaning thereby not only till the death of Dinesh but even thereafter, Public Witness . 18 does not appear to have gone to the hospital and after three days he lean-its that the dead body of Dinesh had been handed over to Public Witness . 17 for last rites.

(15) According to Public Witness . 17, she came to know on the next day of the incident that her husband had died and she did not meet her husband in the hospital on the day of incident. According to Public Witness . 2 deceased told him that his wife also was not in the house. It may be appreciated that the root cause leading to the incident of pouring kerosene oil and setting ablaze Dinesh is the incident of rape which took place on 24.11.1990 when Dinesh was stated to be

away from his house and this fact is also alleged in the F.I.R. by Public Witness . 17. It may be appreciated that no complaint is filed for the alleged rape on Public Witness . 17 by Prakash. The F.I.R. suggests the reporting of the incident at 1.05 p.m. on 25.11.1990. According to Public Witness s-18 and 17, the incident was narrated to the police in the morning of 25.11.1990 around 8.30 a.m. and the police had prepared the papers and the thumb mark impression of Public Witness . 17 obtained in the police station. If that be so why the offence of 376 and 307, Indian Penal Code was not registered in the morning of 25.11.1990 and Public Witness . 17 got medically examined at least in the forenoon. According to Public Witness . 17, she was not allowed to go to the hospital till 4.00 p.m. of 25.11.1990. According to Public Witness . 18, Public Witness . 17 was made to sit in the police station with a lady constable sitting by her side. According to Public Witness . 17, her statement was recorded at 8.00 p.m. in the police station on 25.11.1990 and as per the Medical Legal Certificate (MLC) of Kiran Devi, she was examined for alleged rape at 9,15 p.m. on 25.11.1990 in the Ddu Hospital. If she was in the police station from around 8.00 a.m. of 25.11.1990 and if she had narrated the incident then why she was taken by the police of P.S. Saraswati Vihar to Ddu Hospital for her medical examination for the alleged rape only at 9.15 p.m. On her own say, she did not meet her husband for the whole day. Very curious and beyond one's comprehension that the wife would not attempt to meet/see her husband in such a condition.

(16) The perusal of Mlc of Dinesh suggests that with 50-60% burns, he was admitted in Ddu Hospital at 8.45 a.m. on 25.11.1990. It is suggested from the evidence that injured Dinesh was carried to the hospital by Police Const. Jai Narain, P.W. 12; that the patient was transferred to Lok Nayak Jai Prakash Narain Hospital (LNJPN Hospital) at 11.00 a.m. The doctor on duty in Lnjpn Hospital certified that the patient was disoriented and not fit for statement. Ex. Public Witness -9/A Report No. 5A of Daily Diary dated 25.11.1990 maintained at P.S. Saraswati Vihar, Delhi suggests that the same has been given telephonically at 8.50 a.m. from Ddu Hospital by Duty Constable Ranga Rao informing that Dinesh s/o Bachu Singh, r /075, Sandesh Vihar (P&T; Colony) Saraswati Vihar has been got admitted in the hospital in burnt condition, by H.C. Jai Narain. Thus the message of Dinesh having received burn injuries and having been admitted in Ddu

Hospital has been conveyed to P.S. Saraswati Vihar at 8.50 a.m. from Ddu Hospital by the duty constable.

(17) Public Witness . 23 S.I. Jugti Ram, the Investigating Officer, stated that from House No. 75, he came to Ddu Hospital and collected the Mlc of injured Dinesh; that the doctor had opined the injured to be unfit for statement. It may be noted here that the endorsement regarding the patient not oriented and not fit for statement, is by a doctor of Lnjpn Hospital and not by the doctor of Ddu Hospital. According to this witness, the injured was referred to Lnjpn Hospital. So the witness went to Lnjpn Hospital. Thereafter Kiran Devi, Along with her maternal uncle, met him in the Lnjpn Hospital and that thereafter he recorded the statement of Kiran Devi in the hospital and on that basis the Fir recorded at 1.05 p.m. Even if we accept the say of P.W. 23 with regard to the recording of the statement of Kiran Devi in Lnjpn Hospital and the F.I.R. having been recorded at 1.05 p.m, why Kiran Devi was required to be sent with a Police Officer from P.S. Saraswati Vihar to Ddu Hospital for her medical examination at 9.15 p.m. Firstly why delay in her medical examination and secondly why sent her from P.S. Saraswati Vihar, as suggested by the MLC. It is pertinent to note that neither Public Witness . 21 Inspector V.K. Malhotra nor Public Witness . 23 S.I. Jugti Ram deposed that the statement u/Section 161, Criminal Procedure Code of Public Witness . Ram Pal Anand was recorded in course of the investigation nor it is suggested from the evidence of either Public Witness . 21 or 23 that the telephonic information received in P.C.R, stated to have been given by Public Witness . 2 Ram Pal Anand to P.C.R. was collected in course of investigation. The information received in P.C.R. on telephone especially about the commission of cognizable offence would certainly be noted down/reduced into writing. The telephonic information received in P.C.R. will have significance especially in view of the fact that injured Dinesh is said to have named the assailants in his statement to Public Witness . 2 and Public Witness . 2 in turn is said to have conveyed this information to P.C.R. inclusive of the names of the assailants as told to him by injured Dinesh. We are at a loss to find any information collected from the P.C.R. conveyed by Public Witness . 2 in connection with this incident recorded in P.C.R. In our opinion, the Investigating Officer ought to have obtained/collected the copy of the telephonic information received/recorded in P.C.R. so as to lend assurance to the say of

Public Witness . 2 that telephonic information given by him to P.C.R. also contained the names of the assailants as deposed by Public Witness . 2 having been told to him by injured Dinesh.

(18) It may be seen that as stated by Public Witness . 2 in cross-examination, the P.C.R. van had removed the injured from front of the house of the witness i.e. House No. 78 and that the P.C.R. official had inquired from the witness about the burnt person and the witness pointed out to them towards Dinesh. It may be appreciated that according to the prosecution the occurrence took place in House No. 75 and the injured as per Public Witness . 2 was removed from the front of House No. 78 and Public Witness . 2 had pointed out to P.C.R. officials towards Dinesh. Public Witness . 12 H.C. Jai Narain deposed that he received an information from the Control Room that one person was lying in burnt condition in House No. 75, Sandesh Vihar, whereupon the witness went to the spot (House No. 75) and found Dinesh son of Bachu in burnt condition and the witness removed Dinesh to Ddu Hospital in P.C.R. van. Thus according to Public Witness . 12, he came to House No. 75, found Dinesh there in burnt condition and removed Dinesh from House No. 75 to Ddu Hospital. According to Public Witness . 15, the information was received from one Anand Kumar from Sandesh Vihar that one person was lying in burnt condition in House No. 75, Sandesh Vihar. As far as the evidence of Public Witness s. 12 and 15 is concerned, the same is consistent. Public Witness . 2 suggests contrary to the effect that the injured was removed from front of House No. 78 and the witness had pointed out to P.C.R. officials towards Dinesh. In light of the evidence of Public Witness . 15, Dd No. 2A Ex.PW-9/D and the evidence of Public Witness . 12, in our opinion the evidence of Public Witness . 2 with regard to injured having gone to House No. 78 appears highly doubtful.

(19) It may be appreciated that Public Witness . 18 does not say in his evidence that Public Witness . 17 told him that either Prakash or Munna or both had committed rape on her on the previous evening taking advantage of the absence of Dinesh from the house and that led to the further incident of pouring of kerosene oil on Dinesh and setting him ablaze by Munna and Prakash. The conduct of Dinesh, if such an incident had taken place on 24.11.1990 then it is highly

unnatural that the husband would swallow the incident of rape on his wife and remain contended only by entering into exchange of words with Prakash and Munna. It may be seen that Munna and Prakash are cousins of deceased Dinesh and not the real brothers and stated to be staying in the house of Dinesh. The minimum that Dinesh could have done was to drive away Prakash and Munna from Kothi No. 75. Instead, Munna and Prakash are allowed to sleep inside the house and Dinesh and his wife sleeping in the kitchen again not bolting the door of the kitchen from inside, especially when Dinesh was threatened by Prakash and Munna in the evening during hot exchanges, as deposed by Public Witness . 17. All these do not appeal to the reasons and if the incident of rape had taken place as deposed by Public Witness . 17, then the conduct of Dinesh and Public Witness . 17 would not have been as what is suggested from the evidence on record, as pointed out above.

(20) The evidence of Public Witness s-17 and 18, for the reasons aforestated, appears far from being convincing and reliable. Public Witness . 17 approaching Public Witness . 18 does not appear convincing especially appreciating the conduct of Public Witness . 18, as disclosed from his own evidence, as pointed out above. It also, at the same time, cannot be believed that Dinesh in injured condition would approach Public Witness . 2 a total stranger only to disclose the names of the assailants. The evidence of Public Witness s. 2, 17 and 18 and the fact that the F.I.R. is recorded at 1.05 p.m. though the Mlc of Dinesh suggests H/O burnt by some persons and the information about the commission of cognizable offence was received in P.S. Saraswati Vihar at 8.50 a.m. from Ddu Hospital and Public Witness . 23 having gone to Ddu Hospital and collected the Mlc and if according to Public Witness . 17, around 8.30 a.m. Public Witness . 17 had narrated the incident to S.I. Jugti Ram, then the offence could have been registered much earlier. All this, in our opinion, renders the prosecution version to be highly suspicious and not free from reasonable doubt. It appears that the prosecution has not been coming out with true facts. The evidence of Public Witness s. 2,17 and 18 is far from being convincing and it appears that the investigation has not proceeded as it ought to have been.

(21) In our opinion, on appreciation of evidence, the learned trial Judge cannot be said to be justified in recording the finding of guilt against the accused and taking the over-all view of the evidence, we are of the opinion that the accused would be entitled to the benefit of doubt as nothing beyond suspicion at the best can be said to be suggested against the accused and suspicion howsoever strong cannot take place of proof.

(22) In the above view of the evidence, the accused would be entitled to the benefit of doubt and the finding of guilt recorded and the sentence imposed by the learned trial Judge are liable to be set aside.

(23) In the result, the appeal is allowed. The accused Munna Lal son of Bindeshwari is given benefit of doubt and acquitted of the charge leveled against him in F.I.R. No. 447/90, Police Station Saraswati Vihar, Delhi in Sessions Case No. 29/91. The accused be set at liberty forthwith, if not required in any other case.

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