

Duli Chand Vs. State

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Court : Delhi

Decided On : Oct-24-1997

Reported in : 1997VIAD(Delhi)706; 1998CriLJ988; 1998(1)Crimes38; 1997(43)DRJ699

Judge : Y.K. Sabharwal and; A.K. Srivastava, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148

Appeal No. : Criminal Appeal No. 287 of 1996

Appellant : Duli Chand

Respondent : State

Advocate for Pet/Ap. : R.K. Bali and; M.S. Butalia, Advs

Judgement :

Y.K. Sabharwal, J.

(1) These matters arise out of judgment of conviction passed by Court of Sessions in respect of Kishori, Mohd. Abbas and Duli Chand, who are appellants before this Court. The learned Additional Sessions Judge has held that these accused were among the rioters and the unlawful rioters assembly had the common object of killing Sikhs, looting and burning their properties and with this common object accused persons Along with their associates killed Sajan Singh, Inder Singh and

Hoshiar Singh and burnt their house 2/85, Tirlokpuri, Delhi, and thereby committed offence under Sections 148, 302 Indian Penal Code read with Sections 149 and 436 read with Section 149 Indian Penal Code It has also been held that rioters assembly also killed Gyan Singh, Mahinder Singh and Kishan Singh, the relatives of Ganga Kaur.

(2) Along with these appellants, one Ram Pal Saroj was also held guilty but case against him abated due to his death during the trial.

(3) For offence under Section 302 Indian Penal Code Kishori has been awarded death sentence subject to confirmation by this Court ; Duli Chand and Mohd. Abbas have been awarded life imprisonment with a fine of Rs. 25,000.00 each and in case of default in payment of fine to further undergo rigorous imprisonment for 3 years. For offences under Section 148 accused have been awarded 3 years rigorous imprisonment with fine of Rs. 5,000.00 each and in case of default in payment of fine they have been directed to undergo rigorous imprisonment for 6 months and under Section 436 Indian Penal Code they have been sentenced to under-go rigorous imprisonment for 10 years each with a fine of Rs. 25,000.00 and in default of payment of fine to further undergo rigorous imprisonment for 3 years. All the sentences have been directed to run concurrently.

(4) Duli Chand and Kishori have challenged their conviction and sentence by preferring Criminal Appeal No. 287 of 1996 and Mohd. Abbas has challenged his conviction and sentence in Criminal Appeal No. 62 of 1997. The confirmation of death sentence awarded to Kishori is subject matter of Murder Reference 1 of 1997. This judgment will dispose of the murder reference as well as these two appeals.

(5) The prosecution has examined 14 witnesses to bring home the charge against the accused persons. The prosecution case, however, hinges upon the testimonies of Public Witness -3 Asaudi Kaur, Public Witness -4 Barphi Kaur, Public Witness -5 Bhakti Bai, Public Witness -6 Vidya Kaur and Public Witness -7 Hari Singh. The deceased Sajan Singh was father of Public Witness -7 and husband of Public Witness -5 Bhakti Bai. The deceased Inder Singh was husband of Public Witness -3 Asaudi Kaur whereas deceased Hoshiar Singh was husband

of Public Witness -4 Barphi Kaur. Public Witness -6 Vidya Kaur is sister of Public Witness -7 Hari Singh and daughter of Sajan Singh. Inder Singh and Sajan Singh were brothers.

(6) Learned counsel for all the three accused have vehemently contended that there are material contradictions on vital aspects in the evidence of aforesaid relation witnesses and, therefore, the impugned verdict of conviction returned by learned Additional Sessions Judge is not liable to be sustained and the appellants are entitled to acquittal. Before considering the contradictions pointed out by learned counsel we may notice peculiar circumstances of the present case which deserve to be kept in view while considering submissions of learned counsel for the appellants.

(7) These matters relate to killings which took place more than a decade prior to the recording of the evidence. Following the assassination of Mrs. Indira Gandhi large scale riots broke out in Delhi resulting in killing of human beings belonging to a particular community, burning them and looting their properties. There was total apathy and inaction on the part of the Police during the riots. Many dead bodies were recovered. None was, however, booked for offence under Section 302 at that point of time. Various commissions of Enquiries were constituted by the Government. It resulted in Police undertaking some investigation. Some cases were brought before the Courts for alleged involvement of the accused persons during the riots resulting in killing, burning and looting of helpless victims. In 1984 though 107 persons were arrested for cases of rioting and under Section 436 Indian Penal Code but neither police remands were taken nor any recoveries made. We may hasten to add that it is not being suggested that even in absence of legal evidence but on account of these peculiar circumstances the verdict of conviction has to be returned in every case pertaining to 1984 riot which is brought before the Court because of barbarous and wholly inhuman happenings of 1984. The manner in which the country lost a Prime Minister is most unfortunate but no amount of provocation and condemnation of killing of Mrs. Indira Gandhi can justify what happened in the aftermath. Further, howsoever barbaric the killings of members of one community may be after the assassination of Mrs. Gandhi, the emotions cannot be substitute for evidence to answering a verdict of conviction

against those who are brought before Court as accused for killing, looting etc. during 1984 riots. The verdict of conviction can be given only on the basis of the reliable antrust worthy evidence before the Court. The contradictions in evidence have, however, to be appreciated in the light of aforesaid peculiar facts and circumstances prevalent at the relevant time. We may also notice that there is no legal bar in basing conviction on the sole testimony of a witness who may be relative of the deceased so long as the testimony of such a witness is credible and there are no material contradictions on vital aspects. In that event it would not be essential to necessarily look for corroboration of the testimony of the relations of the deceased.

(8) Learned counsel appearing for Kishori laid a great emphasis on the absence of the mention of the name of his client in the affidavit (Ex. Public Witness 5/DA) of Bhakti Bai (Public Witness 5) dated 7th September 1985. The omission, in our view, is of no consequence because Ex. Public Witness 5/DA is only an English translation of the affidavit of Bhakti Bai. The original affidavit is in Gurmakhi language and in that Kishori has been named as one of the rioters. The absence of Kishori's name in the translation is of no consequence.

(9) Next, it was pointed out by learned counsel for Kishori that in the statement of Bhakti Bai recorded by the Police on 28th February 1991 (Ex. Public Witness 5/B) Duli Chand has not been named as one of the rioters and, therefore, it is contended that in view of this material omission no reliance can be placed on her testimony before the Court. The witness (Public Witness -5) was confronted with her statement recorded by the Police on 28th February 1991. The name of Duli Chand has not been mentioned therein. The said statement, however, names accused Kishori and Abbas being amongst the rioters. The commission to name Duli Chand as one of the accused in the statement dated 28th February 1991 recorded by the Police may throw a doubt on the involvement of Duli Chand in the absence of any other reliable evidence but it does not necessarily follow that the entire deposition of Public Witness -5 in Court against Kishor, deserves to be discarded.

(10) It was further contended that Hari Singh (Public Witness -7) son of deceased Sajan Singh and Bhakti Bai, does not fully support the statement of his mother Public Witness -5. It was pointed out that Hari Singh in his statement had not named Duli Chand, Abbas or Ram Pal Saroj. The statement of Hari Singh was recorded by the Police under Section 161 Criminal Procedure Code . on 3rd November 1984 wherein he has only named Kishori and not the other accused. It has, however, to be borne in mind that when Hari Singh was examined in Court in August 1995 his age was 22 years. Thus during riots in 1984, Hari Singh was a child of less than 12 years of age. Hari Singh has also explained that he did not know the other three accused. The discrepancies and contradictions pointed out in the testimony of Public Witness -7 are only minor and are of no consequence. We are unable to accept the submission that the contradictions and discrepancies in the statement of Public Witness -7 when compared with the statement of Public Witness -5 in any manner create a doubt on the entire case of the prosecution.

(11) Another discrepancy pointed out is about the dates of killing i.e. 1st November 1984 or 2nd November 1984 given by the witnesses. On the facts and circumstances of the case, in our view, it is not such a discrepancy which would result in discrediting the entire prosecution story. It has to be kept in view that considering the large scale killings which took place on 1st and 2nd November 1984 the contradictions about date particularly after lapse of many years are likely to occur and are natural and it would not discredit the witnesses.

(12) PW-3 Asaudi Kaur wife of Inder Singh deposed that she had identified accused Kishori and Lambu who were members of the mob. She, inter alia, stated that Kishori had cut the arms of her husband and gave knife blows on his person. The overall trend of the statement of Public Witness -3 is same as that of Public Witness -5 Bhakti Kaur. The contradiction in the deposition of Public Witness -3 and her statement before the Police Ex. Public Witness 3/DA are only minor and natural and the same do not discredit the testimony of Public Witness -3. The contention that one `Lambu' named by Public Witness -3 to be amongst the rioters has not been named as an accused and thus it affects the entire prosecution story, is misconceived. The appellants cannot be heard to say that since Lambu has not been named as an accused they are entitled to acquittal. Article 14 of the

Constitution has no applicability in these matters. One accused cannot be heard to say that since other has not been made the accused though named by one of the eye witness, even he is entitled to be acquitted.

(13) In view of other overwhelming evidence on record, the fact that Public Witness -4 Barphi Devi did not support the case of the prosecution and was declared hostile, is of no consequence.

(14) PW-9 is Ganga Kaur wife of Kishan Singh who has deposed about the killing of her husband on 2nd November 1984. She named Kishori as the person who struck her husband with a big knife and also Gyan Singh, brother of Kishan Singh. She also stated that Ram Pal Saroj who was the leader of the locality told them to run away. Learned counsel for Kishori contends that Public Witness -9 admitted that Kishori was named by her for the first time in Court and not in her statement recorded in the relief camp. That is so but the Explanationn given by her is that at that time she was too dazed and was not in senses. Mr. Bali further contends that at another place in cross examination she deposed having told the Police that accused Kishori and other rioters had hit her husband and younger brother of her husband with the result that they fell down and the rioters put oil and petrol upon them and put them on fire, though when confronted with her statement recorded by the Police (Ex.PW9/DA) it came to light that these facts had not been recorded in the Police statement. She described as incorrect the suggestion of her telling the Police that she did not know any of the rioters or that her husband had got separated from them on 1st November 1984 and was killed on 2nd November 1984, though, as pointed out by Mr. Bali it was so recorded in her statement recorded by the Police with which she was confronted. We cannot, however, lose sight of the fact that police hardly performed its duties and as a result of various Commissions of Enquiries some of the cases could be brought before the Court. These omission and improvements have thereforee, to be seen in the light of peculiar circumstances of the present case. In our view, undue significance cannot be attached to these defects in investigation if otherwise the prosecution has been successful in proving its case beyond reasonable doubt.

(15) PW-6 Vidya Kaur is daughter of deceased Sajan Singh. It appears that she was very young at the time when riots took place in the year 1984. In August 1995 when her statement was recorded in Court she gave her age as 22 years and, therefore, in 1984 she would even be less than 12 years of age. She is stated to have watched the inflicting of sword blow on Inder Singh and identified Kishori being a member of the mob which gave knife blow to her uncle Inder Singh. She has also stated that she found her father lying in an injured condition at the door of the house and had some life in him and on being asked as to who had caused injury to him his father told her that it was Kishori. She is stated to have been removed to Farash Bazar Relief Camp on 3rd November 1984 in a military truck where she stayed for 4 months and thereafter she went to Tilak Vihar. Her statement was not recorded during stay at Farash Bazar Camp and was also not recorded in Tilak Vihar by the Police. She stated that she did not recollect if Police had recorded her statement on 18th December 1991. She has denied Ex. Da being her purported statement recorded by the Police on 18th December 1991. What we have stated above about the part played by the Police would be applicable here too.

(16) Learned counsel for the appellants further contended that non discovery of the bodies of the deceased or the weapon of offence throws a reasonable doubt on the entire case of the prosecution and their clients are liable to be acquitted on this short ground without even going through discrepancies in the evidence and material contradictions on various vital aspects. We do not agree. The manner in which the riots took place, the manner of killing of various persons belonging to one community and the chaotic conditions which prevailed then and also the factum of the Police machinery having come to a halt, when kept in view, would lead only to one conclusion that the non recovery of dead bodies or weapon of offence cannot result in throwing overboard the entire prosecution case. In *Delhi Administration v. Tribhuvan Dass & Ors*, 2 (1996) C.C.R. 152(SC), dealing with a 1984 riot case, the Supreme Court held that it would be too much to expect production of corpus delicti. Whether the non-production of the corpus delicti or the weapon of offence is fatal or not to the prosecution case would depend upon facts and circumstances of each case and it cannot be held as a general proposition that in every case absence thereof has to result in failure of prosecution case and

acquittal of the accused persons. As already stated, on the facts and circumstances of the present case, these factors are not fatal to the prosecution case.

(17) It is no doubt true that the entire case of the prosecution hinges upon the near, relations of the victims who may be interested in securing the conviction of the accused persons but no rule of law prescribes that conviction cannot be based on the testimony of such witnesses. The only requirement of law is that the testimony of such witnesses shall be examined and analysed with utmost care and caution and if the testimony of the witness is truthful and worthy of credence, the plea of guilt can be answered without looking for anything more.

(18) The contradictions pointed out by Mr. Bali, as noticed hereinbefore, in our view, are minor in nature keeping in view the facts and circumstances of the case and also the fact that witnesses were deposing after more than a decade of the incidents. The same would be position of the improvements alleged to have been made by the witnesses in their depositions in Court. It has also to be kept in view that the witnesses tend to exaggerate when deposing in Court but that does not necessarily has to lead to rejection of their entire testimony. The absence of mention of the name of the accused in the Fir or that of even victims, on the facts and circumstances of the case, is not fatal. The accused cannot be permitted to take advantage of tardy investigation. The guilt of Kishori stands established from evidence of record. It has to be borne in mind that all the witnesses have unequivocally named Kishori being one of the rioters responsible for killing, looting and burning. On the facts of the case he cannot be permitted to contend that since there are contradictions regarding Duli Chand and Mohd. Abbas or that no specific role has been attributed to them he deserves to be acquitted. All the material witnesses have identified Kishori. From the evidence on record it appears that Kishori was living in the same area and was well known to the victims and their families. We wish to emphasise that the main duty of the Court is to find out the truth so that innocent person does not suffer conviction but at the same time it is equally the duty of the Court to see that no guilty person escapes conviction and sentence. The evidence of prosecution witnesses read as a whole proves the prosecution case against Kishori beyond any reasonable doubt.

(19) Mr. Bali also submitted that the evidence in respect of specific role allegedly played by his client Kishori is discrepant and unreliable. As do think that it is necessary to go into this aspect as Kishori has been charged with the aid of Section 149 Indian Penal Code It has been proved beyond reasonable doubt that Kishori was member of unlawful assembly which shared the common object of murder, loot and burning and in furtherance of this object members of assembly committed the offences for which Kishori has been found to be guilty. In such a situation proof of specific overt act is not even necessary (See: Lalji and others Vs . State of Up, : 1989 CriLJ850 and Ranbir Yadav v. State of Bihar 1995(2) Crimes, 161.

(20) The case of the other two accused Duli Chand and Mohd.Abbas, however, would be different. Though every material witness has pointed out accusing finger towards Kishori it is not so as far as these two accused are concerned. As already noticed except for one, other witnesses have not named these accused. Except one, these accused have not been identified by other witnesses. Except for Bhakti Bai other eye witnesses could not identify Duli Chand or Mohd.Abbas. We do not think it is safe to answer verdict of guilt against these two accused solely on account of testimony of Bhakti Bai, since there are material contradictions in her statement on vital aspects insofar as these two accused are concerned. Public Witness -3 Asaudi Kaur not only identified Kishori alone but further deposed that 'Except Kishori none of the other accused were the members of the mob.' She was, of course, declared hostile. Duli Chand and Mohd. Abbas were also not identified by Public Witness -7 Hari Singh as also Public Witness -9 Ganga Kaur and Public Witness -6 Vidya Kaur. On the evidence produced by the prosecution, it cannot be safely held that these two convicts were amongst the rioters.

(21) In view of the above, we would partly allow Criminal Appeal 287/96 and acquit Duli Chand while maintaining the conviction of Kishori. We would also allow Criminal Appeal No. 62/97 and set aside the impugned judgment insofar as it convicts Mohd.Abbas. We would give benefit of doubt to Duli Chand and Mohd.Abbas and acquit them.

(22) On the question of sentence, we have bestowed considerable thought to decide whether to confirm the death sentence awarded by learned Additional Sessions Judge or to convert it into imprisonment of life. We are conscious of the fact that the offence took place more than 12 years ago and the trend of judgments on the question of sentence is not to award death sentence after long lapse of many years. We are, however, of the view that not awarding of death sentence after long lapse of number of years is not an inflexible rule of general application. It would depend upon the facts and circumstances of each case to award or not to award death sentence. In the present case it has to be borne in mind that the long lapse of number of years took place mainly on account of total apathy of the Administration and Police during riots of 1984. It was only after the Government had constituted various Commissions to find out about the happenings of 1984 and the role of the Police that some cases could be brought before the Court. In our view, in this case, the lapse of time by itself is not a sufficient ground to convert death sentence into life imprisonment.

(23) It is not an ordinary routine case of murder, loot or burning. One of the basic structure of our Constitution is secularism. It is a case where the members of one particular community were singled out and were murdered, and their properties looted and burnt. Such lawlessness deserves to be sternly dealt with. The very thought of the manner in which Kishori indulged in riots resulting in killing of innocent persons and looting and burning their properties would send shivers to any person. In November 1984 Delhi witnessed a carnage. The mob caused havoc. Having balanced on one hand the number of years that have gone by and on the other trauma caused by the mob of which Kishori was a member, we are of the firm view that any leniency, mercy or sympathy would be misplaced. As has been said by Supreme Court in Surja Ram vs. State of Rajasthan, 1997 Cr.L.J. 51, the Court has also to keep in view the Society's reasonable expectation for appropriate deterrent punishment confining to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused. In our considered view the crime here falls in the category of rarest of rare case and the sentence has to be deterrent so as to send a message for future.

(24) Having regard to the aforesaid circumstances, in our view, the death sentence deserves to be confirmed.

(25) therefore, the Criminal Appeal 287/96 insofar as it relates to Kishori is dismissed. Insofar as Murder Reference 1 of 1997 is concerned, the death sentence awarded to Kishori is confirmed.

(26) The appellant Kishori, if on bail, shall surrender forthwith and his bail bond, shall stand cancelled. Appellants Duli Chand and Mohd. Abbas, if in custody, shall be released forthwith unless wanted in any other criminal case.

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