

**Ved Prakash Vs. State**

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**Court :** Delhi

**Decided On :** Oct-24-1997

**Reported in :** 1998IAD(Delhi)95; 1997(43)DRJ711

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

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 193 of 1996

**Appellant :** Ved Prakash

**Respondent :** State

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

**Judgement :**

**Y.K. Sabharwal, J.**

(1) Ved Parkash, Kishori and Jagga @ Jagdish were charged on 21st March 1996 by the Court of Sessions for having committed offences punishable under Sections 188, 148, 395 read with Section 149 Indian Penal Code for having disobeyed on 2nd November 1984 the prohibitory curfew orders promulgated under Criminal Procedure Code by the Commissioner of Police, Delhi, and the disobedience having caused riots in the area; for having Along with several other persons formed an unlawful assembly the common object of which was to kill Sikhs and

loot and burn their houses and property and at that time the accused were armed with deadly weapons which they used for committing the riots; that the accused were members of unlawful assembly which in prosecution of the common object looted the houses of Sikhs including House No. /39, Tirlok Puri, New Delhi, belonging to Lalki Bai. The accused pleaded not guilty to the charge.

(2) The prosecution commenced its evidence before the Court of Sessions on 15th April 1996, Public Witness 1 Lalki Bai appearing as first prosecution witness, interalia, stated in her examination-in-chief that on 1st November 1984 a large crowd of rioters came to her house in the evening; they were carrying daggers, swords, iron rods, lathies etc and her husband was killed by the rioters. She further stated that her husband was struck with a dagger on the face near ear and while he was bleeding some rioters came and sprinkled kerosene oil on him and burnt him alive and that the 3 accused were among the rioters. At this stage the Trial Court amended the charge. The charge under Sections 188 and 148 Indian Penal Code was maintained but date of the incident was altered from 2nd November 1984 to 1st November 1984. Another charge for accused having committed offence punishable under Section 302 read with Section 149 Indian Penal Code for killing of Man Singh, husband of the Complainant was added and charge under Section 395 Indian Penal Code read with Section 149 was substituted with a charge for offences punishable under Section 397 read with Section 149 Indian Penal Code for causing death of Man Singh. The witness Public Witness -1 Lalki Bai was cross examined on behalf of the accused after the amendment of the charge. In all the prosecution has examined 6 witnesses.

(3) By the impugned judgment the three accused have been found guilty of participating in the riots, looting the house of parents of Lalki Bai, injuring her husband and then burning him alive. Thus, the accused have been convicted for offence under Sections 148, 397 and Section 392 read with Section 149 Indian Penal Code Besides awarding sentence for other offences, Kishori has been sentenced to capital punishment punishable under Section 302 Indian Penal Code subject to confirmation of the sentence by this Court. The other two accused, besides award of sentence for other offences, have been sentenced to undergo life imprisonment for offence under Section 302 Indian Penal Code and a fine of

Rs. 25,000.00 and in default to further undergo rigorous imprisonment for two years.

(4) The accused have challenged their conviction and sentence in Criminal Appeal No. 193/96. The capital punishment awarded to Kishori is subject matter of confirmation in Murder Reference No. 3/96. This judgment will dispose of the criminal appeal and also the murder reference.

(5) The statement of Lalki Bai was recorded by the Police on 17th November 1984 when she, interalia, stated that on 2nd November 1981 three accused and the husband of Dropadi and Gujjars of Village Chilla took away her domestic articles and damaged the house and that they took away the ornaments i.e. Karas weighing 250 grams, Jhumkas weighing one tola and a box. While appearing on 15th April 1996 as Public Witness -1, as already noticed, she deposed about the killing and burning of her husband Man Singh on 1st November 1984. She was confronted with her statement under Section 161 Criminal Procedure Code . which is Ex.PW1/DA where these facts have not been recorded. She was also confronted with Ex.PW-1/DA in that it did not state about the weapons being carried by the rioters.

(6) The entire prosecution case hinges on the testimony of only Public Witness -1 since all other witnesses are only formal in nature. The testimony of Lalki Bai is required to be examined with utmost care and caution. It has to be borne in mind that Lalki Bai deposed about the killing and burning of her husband for the first time in Court on 15th April 1996. Under these circumstances the prosecution could have examined Si Ram Singh who had recorded Lalki Bai's statement Ex.PW-1/DA on 17th November 1984 besides Rijju Singh on whose pointing out Public Witness -5 Inspector Manphool Singh stated that accused Jagga and Kishori were arrested. We find it unsafe, on the facts and circumstances of the present case, to convict the accused for offence under Section 302 on the sole testimony of Lalki Bai coming for the first time after more than 11 years of the date of occurrence. The learned Additional Sessions Judge has observed that 'accused persons have been named not by one person but by several witnesses to be among the rioters and participating in the riots.....'. As noticed hereinbefore the only witness in the

present case who has deposed that the accused persons were among the rioters was Public Witness -1. No other witness in the present case has deposed about the accused being amongst the rioters. If any witness(s) had deposed in other Sessions cases about the accused being amongst the rioters, the depositions of other cases cannot be used as evidence in the present case. Those depositions, are not on record of the Sessions case out of which the present appeal has arisen. The learned Additional Sessions Judge has also observed that 'I believe that witness must have stated to the police about the death of her husband as well as about the other circumstances of riots but Police did not record the same.' There is no material on record in support of such a belief or conclusion. Such a conclusion cannot, therefore, be sustained. We have full sympathy with those who lost their near and dear ones during the unfortunate, inhuman and barbaric events of 1984 riots but that does not mean that conviction can be based or maintained on emotions whatever be the extent of sympathy.

(7) For the aforesaid reasons we allow the Criminal Appeal 193 of 1996, set aside the impugned judgment and conviction and sentence of all the appellants in Criminal Appeal No. 193 of 1996. The murder reference is answered accordingly.

(8) The appellants, if in custody, shall be released forthwith unless wanted in any other criminal case.

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