

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl.App. 10/1996**

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Date of Reserve: 27.10.2009

Date of Decision: 16.11.2009

PERMA NAND. Appellant

! Through: Mr. S. Chakraborty, advocate.

versus

\$ STATE Respondent

^ Through: Mr. Arvind Kr. Gupta, APP for state

**CORAM:
HON'BLE MR. JUSTICE MOOL CHAND GARG**

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

MOOL CHAND GARG,J

1. This appeal arises out of the judgment dated 18/19.12.1995 delivered by an Addl. Sessions Judge in Sessions case no. 16/95 in respect of a challan filed in connection with FIR No. 426/1984 of P.S. Kalyan Puri under Section 147/395/436 read with Section 149 IPC in relation to the incident of rioting which took place in the area of Trilok Puri after assassination of Mrs. Indira Gandhi, the then Prime Minister of the country between 1st to 3rd Nov., 1984.

2. The FIR was a general FIR and as such no action was taken on that basis till such time Ranganathan Mishra Commission appointed by the Govt. of India on 26.04.1985 to enquire into the genesis of the riots as also to fix the identity of the persons who were involved in the incidents which occurred at that time gave its report. Before the Commission affidavits were filed by the victims. One of such affidavit was filed by one Baljeet Kumar Mehra the complainant in this case whose affidavit was then further scrutinized by a Committee headed by Shri R.K. Ahuja who recommended further investigation into the matter under Section 173 (8) Cr.P.C.

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After further investigation was conducted, a challan was filed against the present appellant and one Bishan Dass (a juvenile) for their prosecution in this case alleging that in an incident which took place in Block No. 30 of Trilok Puri in the house of Baljeet Kumar Mehra where rioting took place and house of one Gulzar, tenant in the said house, was burnt. The case was then committed to Sessions on 25.06.1993. Thereafter charges were framed against the present appellant on 12.07.1995 under Section 147/395/149/436 IPC.

3. Prosecution to prove its case examined 11 witnesses and statement of appellant under Section 313 Cr.P.C. was also recorded. No defence has been led on behalf of the appellant. The other co-accused namely Bishan Dass was tried by a juvenile Court.

4. A perusal of the charge-sheet filed on behalf of the prosecution goes to show that it is based upon reiteration of the affidavit of Baljeet Mehra filed before Ranganathan Mishra Commission on **8.9.1985**, which reads as under:

(AFFIDAVIT)

I, Baljeet Kumar Mehra S/o Shri Satpal aged about 24 years resident of 30/18, Trilok Puri, Delhi-91 do hereby solemnly affirm and declare on oath as under:

1. That on November, 1984 a strong mob of more than one thousand persons armed with lathis, spears, knives, Iron rods etc. came in our block. They were being led by the following person.

- i. Ramesh S/o Sh. Sham Singh r/o 30/83, Trilok Puri a bad character and a known Congress (I) worker of the area.
- ii. Mangal Singh r/o 30/20, Trilok Puri, an employee of the Railway and an active congress (I) worker.
- iii. Pyare Lal r/o 30/29, Trilok Puri an employee of Railway
- iv. Parmanand r/o 30/27, Trilok Puri an employee of the Post and Telegraph
- v. Tailor of 30/22, Trilok Puri
- vi. Sh. Bishan S/o Shri Pyare Lal, 30/29, Trilok Puri, Delhi

2. That we have a tenant S. Gulzar Singh. Before the arrival of the mob he had left the house to a safer place but his wife and daughter aged 2-3 years was in the house. The mob led by aforesaid 6 persons attacked the house of Gulzar Singh who was a tenant in occupation of the first floor of my house. They broke open his house and looted all his personal effects. His house was later on burnt completely.

3. That at the same time Pyare Lal and the tailor mentioned at sl . Nos. (3) & (5) respectively in Para (1) shouted to the other

people and pointing at us that we should not be spared as we also belong to Sikh family. At their instigation my brother Amarjeet (aged 22 years) and myself were beaten up mercilessly. They started looting our house in front of us. Ramesh set our house on fire.

4. That as we are Hindus, we somehow managed to escape and sought refuge in the house of Shri Krishan Lal s/o Shri Sahib Chand r/o 30/454, Trilok Puri.

5. That I saw that Ramesh and Mangal Singh killed one Sikh by beating him mercilessly near the public latrine of Block No.30, I saw this incident with my own eyes when I was staying at Krishan Lal's house.

(DEPONENT)

5. The Addl. Sessions Judge has been pleased to sentence the appellant to undergo R.I. for 2 years and to pay fine of Rs. 500/- under Section 147 of IPC; R.I. for 5 years and to pay fine of Rs. 1,000/- under Section 395/149 of IPC and R.I. for 8 years and payment of fine of Rs. 1500/- under Section 436 read with Section 149 of IPC.

6. Assailing the impugned judgment and the order of sentence it has been submitted by the appellant that there is enormous delay in filing the challan in this case. It is also stated that there is no admissible evidence on record which can justify his conviction in this case. It is also his case that there is enormous delay in the investigation of this case. The user of section 105 of the Evidence Act by the learned Trial Court is also not justified. In fact by adopting this novel method the onus to prove the case of the prosecution has been shifted upon the appellant/accused which could not have been done. Merely because the appellant was the resident of the same area i.e. Trilok Puri it cannot be taken as a evidence against the appellant being a part of the riot because thousands of the people were residing in Trilok Puri and there were number of houses even in Block No. 30. It is a matter of record that the appellant was not arrested at the spot. He was also not sent for Test Identification Parade despite the fact that a number of persons were part of the rioters. He also submits that the witnesses who deposed in the Court have not assigned any specific role to the appellant. In fact the wife of the tenant has shown complete ignorance

about the incident as alleged by the prosecution and has denied that any rioting took place in her house without correctly appreciating the evidence which has come on record. It is also submitted that there is no evidence about burning of the house or taking of any goods by the appellant out of the robbed articles. Even if the evidence of the prosecution is to be taken at its face value then also no case is made out against the appellant in respect of either of the Sections for which he has been convicted. It is also stated that the sentence awarded to the appellant is also not justified as he is not a previous convict and it is not a case where any mens rea was involved. It is also submitted that the Trial Court has accepted the case of prosecution.

7. At the outset the learned APP has submitted that in view of the judgment reported as 1996 (3) Recent Criminal Report 519, the Division Bench of this Court has observed as under:

“The contention of the learned counsel for the appellants is without any merit. It is a well-recognized principle of Criminal Jurisprudence that the delay by itself in lodging the FIR is not fatal to the case of the prosecution if it is explained to the satisfaction of the Court as is also manifest from the authority alluded to above. Admittedly, the instant case relates to the riots which took place on account of the assassination of late Prime Minister Mrs. Indira Gandhi which led to the complete break-down of the law and order machinery. Chaos and anarchy permeated every nook and corner of the city. People ran amuck for the blood of the members of the Sikh Community which was held responsible for the assassination of late Mrs. Indira Gandhi. It was in the above circumstances that there was a delay of 11 days in lodging the FIR. Thus, we feel that delay has been satisfactorily explained.”

8. The learned public prosecutor has filed written submissions & has submitted that the affidavit of Baljeet Kumar Mehra who reiterated his statement as a witness in Court goes to show that there is ample evidence against the appellants which establishes his participation in the riot. It is submitted that in his affidavit Shri Baljeet Kumar Mishra delivered to Ranganathan Mishra Commission on 08.09.1985 Ex. PW8/A has stated:

“...That the family of Baljeet Kumar Mehra was having a tenant Sd. Gulzar Singh. He had left the house before the arrival of mob to a safer place but his wife and daughter were in the house. The mob lead by aforesaid six persons, attacked the house of Gulzar Singh, the tenant, they broke open his house and looted at all his personal effects and latter on burnt his house completely. At the same time, Pyare Lal and Tailor, persons mentioned at sl .No.3 & 5, shouted to other rioters pointing out to the family of deponent that they should not be spared as they also belong to Sikh family. At their instigation, Amarjeet, aged 22 years Brother of deponent and the deponent were beaten up mercilessly and the rioters started looting their house. Ramesh set out their house on fire. The family of deponent was of Hindus so they somehow managed to escape and sought refuge in house on one Krishan Lal S/o Sahib Chand in Trilok Puri. Then deponent saw that Ramesh and Mangal Singh killed on Sikh by beating him mercilessly near the public latrine of Block No.30...”

9. It has been submitted that on the basis of aforesaid affidavit R.K. Ahuja Committee directed further investigation into the matter vide their letter dated 12.03.1991 which is Ex.PW2/A. This letter dated 01.02.1991 was issued by the said Committee after scrutinizing the affidavit filed before Ranganathan Mishra Commission.

10. PW6 Shri Badhan Singh, retired Inspector also appeared before the Court and deposed that he had recorded statement of Baljeet Kumar Mehra under Section 161 Cr.P.C. during the course of investigation which is Ex.PW6/A.

11. It is also submitted by the Learned APP that even PW8 when he appeared in the witness box has deposed:

“...After assassination of Mrs. Indira Gandhi on 01.11.84 I was present at my house at about 11 AM. At that time a huge crowd came from the side of block No.29. The mob was being led by Ramesh Kumar, a bad character of the locality whom I know from earlier to the incident. When this mob was passing through/ by my house, Bishan Dass, father of the Bishan Dass Piare Lal, and Mangal Singh fold the mob that the Sikhs/Sardars are residing in my house. S Gulzar Singh was living as a tenant in my house at that time. He had come to my house as a tenant 1-1/2 months prior to the incident. The members of the mob were having sticks, lathis, iron rod etc. etc. We requested that mob not to damage the property, the Sikhs had come to my house one and half month back and they have left the premises because of disturbances. Bishan Dass, his father and Mangal Singh told the mob that I too was a Sikh as I am related/attached to Sikhs from maternal side, as out of five three of my maternal uncles are Sikhs by religion. The mob did not pay any heed to my request and they pelted stones and indulged in ‘marpeet’. The (members of the mob) entered my house and came to the first floor. Accused Bishan present in the Court correctly identified by the witness, hit stone on the person of my younger brother. The members of the mob started taking and

took entire house hold articles including cash kept for my engagement on the very next day. Ramesh Kumar (not present at in the Court) took the cane of Kerosene, sprinkled the kerosene all in my house and set the same on fire. My younger brother Amarjeet Singh had injury due to pelting of stones and become semi unconscious. Both the accused were the members of the mob. They were also standing in the mob...?.

12. It is submitted by the learned APP that in the cross examination of Baljeet Kumar Mehra no suggestion has been given that the appellant was not a part of the mob which attacked Gulzar Singh. Similarly, even with respect to affidavit Ex.PW3/A no suggestion has been given by the appellant that he was not the part of the rioters.

13. Reliance has also been placed on statement made by PW9 Amarjeet Singh who has deposed:

“In the month of Nov., 1984 I was residing in house No. 30/18 Trilok Puri along with my brothers Baljit and other family members. On 01.11.1984 at about 2/3 PM I was present at that time in my house. A huge mob came. The accused present in the court were the members of the mob. They were Parmanand, Bishan, Bishan’s father and Mangal. Out of the members of the mob. Witness correctly identify accused Bhishan and Parmanand. I know the accused persons prior to the incidents Accused Bishan, his father and Mangal had informed the mob that the Sikhs were living in the house where I was residing. Bishan hit brick bat army forehead. Other members of the mob including the accused looted my house. They also burnt my house. I escaped from the place of incident and stayed with my friend at night”.

14. It may be observed here that in his affidavit Shri Baljeet Singh has not made any specific mention about the involvement of Perma Nand. In this regard in his cross-examination he has stated that:

“I did not mention in my affidavit that accused Bishan Dass hit my brother with bricks. I did not mention in my affidavit the name of the persons or the accused who entered the house of Gulzar Singh at first floor”.

15. According to the prosecutor no suggestion was given to this witness in the cross-examination that the appellant was not part of the mob. Learned APP submits that whatever contradictions which have appeared in the statement of the witnesses as referred to by the appellant have all been considered by the Learned ASJ. The

appreciation of evidence by the Addl. Sessions Judge in the peculiar facts of this case is fully justified. It is also submitted that the Trial Court while considering as to whether the appellant was part of the mob or not which indulge in looting and rioting of the houses of the complainant has relied upon the statement of PW8 and PW9 who have identified the accused persons and assigned the role to them. It has been submitted that as per Ex.PW3/A, affidavit of Baljeet Kumar Mehra, the accused has been named in the affidavit. It is submitted that that the testimony of PW8 and PW9 and the affidavit of Baljeet Kumar Mehra Ex.PW3/A leaves no room for doubt that appellant was one of the rioter and has been correctly identified by the witness. Thus, the judgment of the Trial Court is fully justified.

16. Learned Counsel for the appellant, however, submits that there are number of material contradictions in the statement of the witnesses examined on behalf of prosecution with respect of Baljeet Kumar Mehra on whose affidavit the entire case of prosecution rests. It is submitted that the said witness appearing as PW8 before the Trial Court in his cross-examination has submitted that:

“on 3rd and 4th November, 1984 he went to P.S. Kalyan Puri and lodged a general report about riots which took place in Trilok Puri but had not mentioned the name of the participants specifically. He also deposed that he had not taken specific names of the accused persons on account of depression and insecurity on account of deterioration in law and order”.

17. He submits that the affidavit of Baljeet Kumar Mehra had been given in 1985 i.e. much after the date of incident which does not specify the role of the appellant inasmuch as what has been said in the affidavit is that the appellant was one of the persons who were leading the mob on 01.11.1984. However, no specific role has been assigned to the appellant with respect to any overt act done by him as part of the mob. Sh. Mehra has also been found to be non-reliable witness in connected case, i.e., Pyare Lal Vs. State where the judgment has been delivered by the Sessions Court in Sessions Case No.2/1996 on 10/11.10.1996

18. It may also be observed that in his statement before the Court regarding the role assigned to the appellant it has been stated:

“Both the accused were the members of the mob. They were also standing in the mob. Parmanand was also standing in the mob but he was not provoking the mob but he took some goods along with other members of the mob. On 3rd and 4th November, 1984 I went to P.S. Kalyan Puri and lodged a general report. I did not name any of the accused in the report.

19. In his cross-examination he also stated:

I did not recollect if I stated to the police in my statement that accused Bishan had hit my brother with brick and thus injured. I did not mention in my affidavit that accused Bishan had hit my brother with bricks. I did not mention in my statement or in my affidavit the name of the persons of the accused who entered the house of Gulzar, at first floor. I have mentioned in my affidavit that I have stayed in the house of Kishan Lal.

20. A suggestion was given to the witness that he was deposing falsely and that accused persons were not part of the mob and further that they did not burn her house.

21. The appellant submits that the entire case of prosecution is that the house of Gulzar the tenant of Baljeet Mehra was looted and burnt. However, PW7 Amarjeet Kaur wife of Gulzar Singh (the tenant) tells a different story. She has deposed:

During November 1984 I was residing as a tenant H.No. 30/18, Trilok Puri belonging to shri Baljeet Kumar Mehra along with my daughter aged 3 years. My husband had gone out. I did not see the incident. I simply heard the noise.

At this stage SPP requests to cross examine the witness. Heard. Allow.

I don't remember if any statement was recorded. I did not say that the rioters had burnt my house. Surrounded with police A to A statement matta 'A' recorded on 22.10.91. It is incorrect to say that due to lapse to the forgot the facts told by the police . It is incorrect to say that due to lapse of time I am in a position to identify the accused who are the culprits and were the amongst the rioters who looted my home and burnt the same.

22. Her statement completely belies the testimony of PW8 and PW9 so far as the role of present appellant is concerned. Her statement clearly goes to show that even though the riot took place but as far as house of Gulzar is concerned, nothing happened and therefore the entire allegation made by Baljeet Kumar Mehra and his brother only appears to be a basis of obtaining compensation and alternate

accommodation whether or not their house was burnt because there is no specific evidence that the house of Baljeet Kumar Mehra was burnt which is also the case of Baljeet Mehra in his statement. This also shatters averments made by him in his affidavit Ex.PW3/A.

23. This is more so because even with respect to his allegations made that her house was also burnt which he saw from the house of one Kishan Lal where he has taken shelter is again not corroborated even by Kishan Lal (who appeared as PW1) who has denied and stated as under:

I do not know Baljeet Kumar Mehra. I do not remember if any Sikh had taken shelter in our said house on 01.11.1984.

24. In his cross-examination he also stated that:

“ I have not stated to the Police in my statement that the mob had looted the entire household goods of Gulshan Singh on 01.11.1984. I have not stated to the Police in my statement that the mob also looted the entire house goods from the house of Baljeet Kumar and set the house on fire. I did not tell the police that out of fear Baljeet Kumar stayed in my house for a night and left my house on 02.11.1984.”

25. It is surprising that Baljeet Kumar Mehra the main witness in this case also made a statement under Section 161 Cr.P.C. making allegations against the accused in this case and one Pyare Lal alleging commission of murder of one Sardool Singh and burning his house. As regards his own house he has mentioned that it was burnt by one Ramesh. This resulted in filing of a separate case which was registered as Sessions Case no. 2/96. That case was also tried by the same Judge and where Baljeet Kumar Mehra's affidavit was also relied upon by the prosecution for the purpose of filing challan in that case. However, in the said case Baljeet Kumar Mehra made a different statement stating that that at the time of incident he was living in the house of one Ram Kumar and from there he saw the incidents whereas in the present case he stated that he took shelter in the house of Kishan Lal (PW 1), who, as stated above, has not corroborated the version of the complainant. In fact,

statement of Baljeet Kumar Mehra has not been accepted by the same Judge in that case as far as murder of Sardool Singh is concerned. Moreover, the statement that his house was burnt by the same mob is contrary to not only his affidavit given before the Commission as quoted above but is also contrary to his own statement given in this case. As such, it is apparent that Baljeet Kumar Mehra is not a truthful witness.

26. It is true that it was a serious incident, which took place in 1984 where a number of people were affected but the possibility of false claims cannot be ruled out. The possibility that the statements of Baljeet Kumar Mehra and his brother Amarjeet were made for obtaining benefits by making false representations in view of the statement of PW1 and PW7 cannot be ruled out. Thus, the appellant is entitled to the benefit of doubt.

27. In view of the aforesaid, the appeal is allowed and the conviction of the appellant is set aside. Bail bond of the appellant shall stand discharged. Pending applications, if any, stand disposed of. Trial court record, if any, be sent back along with a copy of this judgment.

MOOL CHAND GARG, J.

November 16, 2009
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