

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

+ **CRIMINAL APPEAL NO. 220/2013**

% **Reserved on:** 11th March, 2015
Date of Decision: 21st July, 2015

PAMMI @ HEERA AND OTHERSAppellants
Through Ms. Anu Narula and Mr. Kunal Aurora,
Advocates.

Versus

THE STATE (GOVT. OF NCT OF DELHI) ...Respondent
Through Mr. Varun Goswami, APP along with
Inspector Satya Prakash, P.S. Ashok Vihar.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J.

Pammi @ Heera, Suresh, Pintu @ Bintu, Raju and Santosh Kumari children of Bahadur Singh by the present appeal impugn judgment dated 29th August 2012 convicting them under Section 302 of the Indian Penal Code, 1860 (IPC, for short) for the murder of Kamla Devi; under Section 307 IPC for having caused burn injuries to Shanti Devi (PW-1); and under Section 452 IPC for trespassing into the house No C9/292, Sultan Puri, Delhi. The trial court has attributed common intention and applied Section 34 IPC for convicting the appellants under the aforesaid sections of the IPC. By order on sentence dated 1st September, 2012, the appellants have been sentenced as under:-

	Section 302/34 IPC	Section 307/34 IPC	Section 452/34 IPC
Pammi @ Heera	RI for life and fine of Rs. 10,000/-. In default of payment of fine– RI for 6 months	RI for 5 years and fine of Rs. 5,000/-. In default of payment of fine– RI for 2 months	RI for 1 year and fine of Rs. 1,000/-. In default of payment of fine– RI for 15 days
Suresh	RI for life and fine of Rs. 10,000/-. In default of payment of fine– RI for 6 months	RI for 3 years and fine of Rs. 3,000/-. In default of payment of fine– RI for 1 month	RI for 1 year and fine of Rs. 1,000/-. In default of payment of fine– RI for 15 days
Pintu @ Bintu	RI for life and fine of Rs. 10,000/-. In default of payment of fine– RI for 6 months	RI for 5 years and fine of Rs. 5,000/-. In default of payment of fine– RI for 2 months	RI for 1 year and fine of Rs. 1,000/-. In default of payment of fine– RI for 15 days
Raju	RI for life and fine of Rs. 10,000/-. In default of payment of fine– RI for 6 months	RI for 3 years and fine of Rs. 3,000/-. In default of payment of fine– RI for 1 month	RI for 1 year and fine of Rs. 1,000/-. In default of payment of fine– RI for 15 days
Santosh	RI for life and fine of Rs. 10,000/-. In default of payment of fine– RI for 6 months	RI for 3 years and fine of Rs. 3,000/-. In default of payment of fine– RI for 1 month	RI for 1 year and fine of Rs. 1,000/-. In default of payment of fine– RI for 15 days

Benefit of Section 428 of the Code of Criminal Procedure, 1973 (Cr.P.C., for short) has been granted. The sentences are to run concurrently. The fine, if recovered, has been directed to be paid to the family of the deceased Kamla Devi and Shanti Devi (PW-1) in the ratio of 70:30 respectively.

2. The prosecution primarily relies upon the testimony of three eye witnesses, namely, Shanti Devi (PW-1), her daughter Meenu (PW-11) and Pooja (PW-4), daughter of the deceased Kamla Devi.

3. On the question whether the deceased Kamla Devi had died after suffering burn injuries, we have the deposition of Dr. Brijesh Singh (PW-

8), who has testified that on 20th July, 2007 at 6.45 P.M., Kamla was brought to the hospital in a burnt condition. She was examined and PW-8 had prepared the MLC (Exhibit PW-8/A). Kamla was unable to speak due to burn injuries, which were 100%, deep to superficial. The patient was referred to S.R. Surgery and from that department; she was referred to the LNJP Hospital. He identified signature of Dr. Anuj of S.R. Surgery, who had left services of the hospital and his whereabouts were not known. Dr. J.V. Kiran (PW-14) who had conducted the post-mortem has deposed that Kamla had died at about 11.25 P.M. on 20th July, 2007. On external examination, dermo-epidermal burn injuries involving the whole body except middle front of abdomen and soles were noticed. Degloving was also present. The total surface area involved was approximately 95%. Skin had peeled off with reddish base at some places and skin had blackened at other places. The scalp hair was burnt and singed at places. However, no smell of kerosene was present. Dr. J.V. Kiran (PW-14) proved the post-mortem report marked Exhibit PW-14/A. The death, he opined was due to burn injuries, which were ante mortem and fresh in duration.

4. Shanti Devi (PW-1) too had suffered burn injuries, which is proved and established beyond doubt by Dr. Brijesh Singh (PW-8), who had examined her at about 6.50 P.M. She had 25% burn injuries on the right hand, right side of the face, right lower limb below knee, left hand, left forearm and right side of the back. Her MLC was marked Exhibit PW-8/B. She was declared fit for statement. She was referred to S.R. Surgery, and then to the LNJP Hospital.

5. Dr. Brijesh Singh (PW-8) also examined Pooja (PW-4) at about 8 P.M. vide MLC (Exhibit PW-8/C). She had superficial burns on her left

hand and thenar area. She was given dressing and first aid before being discharged.

6. This brings us to the testimony of Shanti Devi (PW-1), Meenu (PW-11) and Pooja (PW-4), the professed eye witnesses; implicating the appellants as the perpetrators.

7. Shanti Devi (PW-1) and Meenu (PW-11) have deposed that the occurrence had taken place in house No. C-9/292, Sultan Puri, Delhi where Shanti Devi (PW-1) and Meenu (PW-11) used to reside. The deceased Kamla Devi was residing in house No. C-9/261, Sultan Puri, Delhi, which was in front of house No. C-9/292. Deceased Kamla Devi was the sister of Shanti Devi (PW-1). Thus, Pooja (PW-4) and Meenu (PW-11) were cousins. The appellants herein were related to them, being the children of jeth of Shanti Devi (PW-1), named Bahadur Singh. They were living in the neighborhood. Shanti Devi (PW-1) and Meenu (PW-11) have deposed that at about 6 P.M. on 20th July, 2007, the deceased Kamla Devi and Shanti Devi (PW-1) were speaking to each other when the appellants came there. The Appellant-Pammi had thrown kerosene oil on them and Bintu, who had a danda with a cloth wrapped around it had set the deceased Kamla Devi and Shanti Devi (PW-1) ablaze. The other appellants-Suresh, Raju and Santosh had caught hold of Shanti Devi (PW-1) and the deceased Kamla Devi. At that time, Pooja (PW-4) and Meenu (PW-11) were studying in the inner room in C9/292, Sultan Puri, Delhi. On hearing the noise, they came out and tried to put off the fire. The appellants had shouted and warned Pooja (PW-4) and Meenu (PW-11), who had come out. Pooja (PW-4) was hit on her head by a danda and a burnt cloth had thereupon fallen on her hand thereby causing burn injuries.

8. Learned counsel for the appellants has submitted that the versions given by Shanti Devi (PW-1) and Meenu (PW-11) should not be accepted as Pooja (PW-4) has contradicted them. Pooja (PW-4) has stated that on 20th July, 2007, she along with her cousin Meenu (PW-11) was present inside her house i.e. C-9/261, Sultan Puri, Delhi when all of a sudden accused Pammi, Raju, Suresh, Bintu and Ms. Santosh had entered. In her cross examination conducted by the Ld. Counsel for the accused, she again deposed that she was in the inner room of her house along with Meenu (PW-11). PW-4 has accepted that the house of Shanti Devi was situated just opposite to her house and she was younger to Meenu by two years and sometimes they used to study together. She could not understand the scaled site plan (Exhibit PW-2/A) wherein pt. E is stated as the position from where Pooja and Meenu had witnessed the occurrence. The said point was just outside House No. C9/292, Sultan Puri, Delhi.

9. The place of occurrence cannot be disputed as the match stick, burnt clothes, burnt bottle etc. are recovered from House No. C9/292, Sultan Puri, Delhi. The site/ exact place of occurrence was proved by the two eye-witnesses i.e. Shanti Devi (PW-1) and Meenu (PW-11). Pooja (PW-4) also does not dispute that the occurrence had taken place in House No. C9/292, Sultan Puri, Delhi. The discrepancy and difference is that Pooja (PW-4) has stated that she and Meenu (PW-11) were studying in the room of House No. C9/261, whereas Shanti Devi (PW-1) and Meenu (PW-11) have stated that the two were studying in the inner room of House No. C9/292. It is not disputed that the two houses are in front of each other, on either side of the street, about 10-13 feet in width. It is apparent that Pooja (PW-4) did get confused about the place where they were studying and had wrongly stated that she and Meenu (PW-11) were studying in the inner room of property No. C9/261, Sultan Puri, Delhi. From the said location, neither Pooja (PW-4) nor

Meenu (PW-11) could have seen the occurrence, about which they have lucidly elaborated in their testimonies. Thus, we are inclined to accept the versions given by Shanti Devi (PW-1) and Meenu (PW-11) as they had deposed in seriatim as to the presence of Pooja (PW-4) and Meenu (PW-11) in the inner room in premises No. C9/292, Sultan Puri, Delhi. The two have given an elaborate description of the room, and have deposed as to the window in the inner room where the two cousins were studying. The discrepancy in Pooja's deposition should not distract us from the primary and core statements made by Shanti Devi (PW-1), Meenu (PW-11) and Pooja (PW-4), which are in seriatim.

10. SI Rajesh Kumar (PW-19) and Insp. Mohd. Iqbal (PW-21) in their testimonies have stated that the place of occurrence was C9/292, Sultan Puri, Delhi. SI Suraj Bhan (PW-12) had also deposed that he had received information on the wireless set to reach at the scene of crime i.e. C9/292, Sultanpuri, Delhi and denied that in the wireless message the premises number was told as C9/261, Sultanpuri, Delhi. However, Ct. Rajshri (PW-13) has deposed that at about 6:25 pm, the wireless operator informed him that there was a fire in House No. C9/261. Although PW-13 had changed his position in cross-examination but we notice and accept that in DD No. 56B (Exhibits PW-13/A) refer to fire in house No. C9/261. This variation is trivial and should not result in exoneration of the appellants. The variation is possible as the two houses were opposite to each other and were occupied by the two sisters i.e. C9/261 Sultanpuri, Delhi by the deceased Kamla Devi and C9/292 Sultanpuri, Delhi by Shanti Devi (PW-1). The depositions of Shanti Devi (PW-1), Pooja (PW-4) and Meenu (PW-11), in concert, state that the deceased Kamla Devi and Shanti Devi (PW-11) had come on the street outside property numbers C-9/261 and C-9/292 and were standing there, when the public gathered. Kamla Devi was

residing in C-9/261 and it is possible that the person, who gave information, assumed that she had caught fire at her residence. As recorded above, there is overwhelming and incontrovertible evidence to show that the occurrence had taken place when the deceased Kamla Devi and Shanti Devi (PW-1) were present in property number C-9/292 and not in C-9/261. There is ample evidence and material to conclusively and affirmatively hold that place of occurrence of the offence was C9/292, Sultanpuri, Delhi.

11. Sohan Lal (PW-10) had deposed that he saw Kamla, who was completely burnt in her house i.e. C9/292, whereas Kamla used to reside at C9/261. Ct. Sri Chand (PW-15), had deposed the place of incident to be as House No. C9/259 but in his cross-examination, he accepted that he had in his police statement given the House No as C7/292. The said ambiguity and difference as to the house number should not distract us from the weighty and conclusive evidence to show that the occurrence in question had taken place in House No. C-9/292, Sultan Puri, Delhi, which was in front of house No. C-9/261 as is clear from the unscaled site plan (Exhibit PW-19/B) and the scaled site plan (Exhibit PW-2/A), the exhibits collected from the said spot, photographs marked Exhibits PW-7/1 to 8 and their negatives marked Exhibits PW-7/1A to 8A, depositions of Shanti Devi (PW-1), Meenu (PW-11), SI Rajesh Kumar (PW-19) and Insp. Mohd. Iqbal (PW-21). Suraj Bhan (PW-12), Crime Mobile Team In-charge also denies it being C9/261. Hence it is evident that the incidence took place in C9/292 and it would be incongruous and inappropriate to hold that the incidence took place in house No. C9/261.

12. Noticeably, Pooja (PW-4) in her deposition has stated that she had seen the occurrence and her mother, i.e., deceased Kamla Devi and her

aunt, i.e., Shanti Devi (PW-1) had raised an alarm. Pooja (PW-4) deposed that the deceased Kamla Devi and Shanti Devi (PW-1) were sitting in the courtyard of the house and were chatting, when all of a sudden accused Pammi, Raju, Suresh, Bintu and Ms. Santosh entered the house. Accused Pammi was having a plastic can in his hand; accused Bintu was having a danda, having a cloth wrapped on its one end. Accused Santosh and Suresh caught hold of her mother, the deceased Kamla Devi and accused Raju caught hold of her maushi, Shanti Devi (PW-1). Accused Pammi poured the kerosene oil from the can on Kamla Devi and Shanti Devi and accused Bintu was having a danda which was wrapped with a piece of cloth which he lighted and had set Kamla Devi and Shanti Devi on fire. Pooja (PW-4) could not have witnessed all this sitting in the inner room of C9/261.

13. Pooja (PW-4) has also deposed that Amit (PW-6) had reached the spot and had taken Shanti Devi (PW-1) and the deceased Kamla Devi to the hospital. Amit (PW-6) has deposed that on 20th July, 2007 he was present in DDA Market, C-9, Sultan Puri when he learnt that his mother had been burnt and on reaching home he found that his Aunt Kamla Devi was lying on the ground in a burnt condition. His mother Shanti Devi (PW-1), who was also present, had sustained burn injuries on her arms, face, chest, legs and other parts of the body. He lifted the deceased Kamla Devi and took her to SGM Hospital, Mangol Puri in a three wheeler scooter. His mother Shanti Devi (PW-1) followed them in a rickshaw to the hospital. Kamla Devi was treated in SGM Hospital and was later referred to the LNJP Hospital, but she expired on the same night.

14. Shanti Devi (PW-1), Amit (PW-6), Meenu (PW-11) and Madan Lal (PW-5), husband of Kamla Devi, have spoken about the cause and motive behind the occurrence. The appellants absurdly believed that the deceased

Kamla Devi and Shanti Devi (PW-1) were responsible for the death of wife of the appellant-Pammi. The Appellants perceived that the deceased Kamla Devi and Shanti Devi (PW-1) had resorted to witchcraft. Pooja (PW-4) in her cross-examination by the counsel for the accused was specifically asked whether they had visited the house of Pammi after the death of his wife. Pooja (PW-4) replied in negative, and had stated that there was no enmity with the appellants. Thus, it is apparent that the two or rather the three were closely related, but the relationship was rather sullen and crabbit. This is apparent as the deceased Kamla Devi, Shanti Devi (PW-1) and their families had not visited the house of Pammi, after the death of his wife which had occurred a few days earlier. The reason forthcoming was the baseless and senseless insinuation that the death was attributable to witchcraft and sorcery practiced by the deceased and PW-1.

15. The FSL reports marked Exhibits marked PW-24/A and B, proved by Dr. A.V. Hingrajia, Scientific Officer, Directorate of Forensic Science Laboratory, Ahmedabad, Gujarat, corroborate the aforesaid deposition of Shanti Devi (PW-1), Meenu (PW-11) and Pooja (PW-4). The FSL report opines presence of kerosene in the scalp hair of the deceased Kamla Devi. Presence of kerosene was also found in Exhibit Mark 1, i.e., burnt match stick and a match box, Exhibit Mark 2, i.e., burnt clothes, Exhibit Mark 3, i.e., burnt plastic bottle and Exhibit Mark 5, i.e., burnt wooden danda with some burnt clothes. Hence absence of the smell of kerosene oil on the deceased deposed by Dr. Brijesh Singh (PW-8) and Dr. J.V. Kiran (PW-14) pales into insignificance. Importantly, PW-8 and PW-14 have stated that Kamla Devi had suffered burn on 95% of the total body surface.

16. Inanimate contention of the appellants that the deceased Kamla Devi and Shanti Devi (PW-1) may have suffered burn injuries due to bursting of

a kerosene stove or otherwise as Kamla Devi was cooking, is a mere pretence and precipitous. The kerosene oil stove found at the spot and seized, was sent for FSL examination. The FSL reports (Exhibits PW-24/A and B), opines that the kerosene stove 'Mahan' contained 500 ml blue colored liquid which on chemical examination, tested positive for kerosene. Presence of kerosene oil in the stove incontrovertibly establishes that the said stove had not burst and had not caught fire. The stove was not the cause for the ablaze, which was specifically targeted and directed towards the deceased Kamla Devi and Shanti Devi (PW-1). It is a case wherein the fire was deliberately ignited by throwing kerosene oil on the persons, the deceased Kamla Devi and Shanti Devi (PW-1). Pooja (PW-4) had also suffered injuries. Versions of Shanti Devi (PW-1) and Pooja (PW-4) implicating the appellants are thus duly corroborated. FSL Reports (Exhibits PW-24/A and B) as noticed above records that kerosene oil was found in the scalp hair of the deceased Kamla Devi.

17. Learned counsel for the appellants has referred to the testimony of Sohan Lal (PW-10). Sohan Lal (PW-10) was residing in House No. C-9/246, Sultan Puri, Delhi and also had a jewellery shop at the said address. At about 6 P.M., he had heard noise in the street and thereafter had seen Shanti Devi (PW-1) crying. Kamla Devi, he noticed, was completely burnt. He had then made a call at number 100 and Shanti Devi (PW-1) and Kamla Devi were taken to the hospital. PW-10 claims that thereafter he had returned to the shop for work. In his cross-examination on behalf of the appellants, Sohan Lal (PW-10) claimed that the appellants Bintu and Suresh were present at his shop. He had engaged the two for doing white wash in his shop. The Appellants Bintu and Suresh, PW-10 professed had followed him from the shop to the spot and after the incident they had left. The Trial court has disbelieved this version given by PW-10, in his cross-

examination, as worthless and an untrustworthy attempt to absolve and exonerate the appellants-Bintu and Suresh. We agree with the reasoning given by the trial court in this regard. Sohan Lal (PW-10) in his re-examination on behalf of the Public Prosecutor has stated that he had not told the police that the appellants-Bintu and Suresh had followed him. He accepted as correct that whatever was stated by him to the police was correctly recorded. PW-10 also accepted as correct that he had known the appellants-Pammi, Santosh and Raju for the last 16-17 years. There are thus good and cogent reasons and grounds not to accept the improbable version given by Sohan Lal (PW-10) that the appellants-Suresh and Bintu were at his shop, when the occurrence in question had taken place. This statement by Sohan Lal (PW-10), as accepted by PW-10 in his cross examination can be contrasted with his statement under Section 161 Cr.P.C., which PW-10 has accepted is the correct and true version given by him to the police. There was no reason and cause for Sohan Lal (PW-10) not to inform and tell the police, that the appellants Suresh and Bintu had been wrongly implicated as they were working in his shop and were thus not the perpetrators.

18. It is noticeable that the appellant-Santosh had claimed that she had gone to *katran* market at Sultan Puri and that appellant-Raju had gone along with his partner Bhupesh to Chandni Chowk. The said *alibi* has not been substantiated as the said appellants have not led any defence evidence. There is no material and evidence, to accept the said stand and stance.

19. Learned counsel for the appellants had also drawn our attention to the death summary report of Kamla Devi, (Exhibit PW-22/A). In the said death summary report, it is recorded that the deceased Kamla Devi had

expired at 11.25 P.M. on 20th July, 2007. Under the column ‘short history’, it is recorded that the deceased had alleged history of homicidal chemical and flame burn as given by her sister Shanti. The patient was cooking food on kerosene stove in her home when suddenly son of her brother-in-law had rushed with a container of acid and kerosene and had first poured acid and then kerosene oil and ignited the kerosene oil. The said death summary report was prepared by Dr. Mohd. Amir (PW-22). He was posted at the LNJP Hospital on 20th July, 2007. The report (Exhibit PW-22/A) records that it was a case of 95% burns of total body surface. The said report does refer to homicidal death and the factum that the son of brother-in-law had ignited the fire after pouring chemical and kerosene. The said history it is stated was given by Shanti Devi (PW-1). We do not think that the aforesaid recording made by PW-22 in the death summary marked (Exhibit PW-22/A) should be read and accepted as if only one son of Bahadur Singh was involved in the occurrence and the other children have been falsely implicated by Shanti Devi (PW-1), Pooja (PW-4), the injured witnesses and Meenu (PW-11). Their court depositions on the said aspect are candid and clear. The names of the appellants are also recorded and mentioned in the FIR (Exhibit PW-20/A), which was seen and signed by the Metropolitan Magistrate on 21st July, 2007 at 10 A.M. The said FIR specifically mentions the name of Santosh as one of the perpetrators, who had come to the spot and had committed the said offence.

20. The nature and extent of injuries suffered by the deceased Kamla Devi and that the fact that Shanti Devi (PW-1) had suffered burn injuries when the two were present in the latter’s house, indicates that the offence in question was committed by a group acting in concert with a desire and object to cause burn injuries. The ocular testimonies state that the perpetrators had carried kerosene oil in a can which was thrown on the two

ladies and then fire was ignited. Meenu (PW-11) and Pooja (PW-4) were present at that time but could not react and were taken aback. Pooja (PW4), when she had tried to intervene and help, had suffered minor burn injuries. The ocular versions given by Shanti Devi (PW-1), Meenu (PW-11) and Pooja (PW-4) clearly and categorically index and names the five appellants as perpetrators. Their versions are reliable and get duly corroborated and get support from the manner in which the offence was committed at the residence or house of Shanti Devi (PW-1). The occurrence was premeditated and carried out with precession and was certainly not an act of one or two persons. Kamla Devi and Shanti Devi (PW-1) hardly had any opportunity to fight or save themselves. They were simply over powered, by the perpetrators.

21. Learned counsel for the appellants has drawn our attention to the testimony of Shanti Devi (PW1) recorded on 17th September, 2008, wherein she has professed that she was unconscious when she was shifted to the LNJP hospital and has also accepted that she was unconscious when she was taken to SGM hospital and had regained consciousness in the morning on 21st July, 2007. However, in the immediate earlier portion, PW1 has stated that she had informed the doctors about the assailants and the case history, while accepting that she was not in proper senses in the SGM hospital. It is apparent that Shanti Devi (PW1) in her deposition recorded on 17th September, 2008 had tried to magnify and exaggerate as to her poor medical condition on account of burn injuries and thus the aforesaid difference or discrepancy has arisen. PW1 is categorical that she had informed the doctor about the assailants and the case history which implies that she was in her senses and in a position to speak and state facts. The MLC (Ex. PW8/B) of Shanti Devi (PW1) specifically records that she was fit for statement. Dr. Brijesh Singh (PW8) who had examined Shanti

Devi (PW1) at about 6.50 PM on 20th July, 2007 has deposed that she had 25% burns on right hand and right hand side of her face and left hand forearm and right side of back, but was fit for statement. In his cross-examination PW8 reiterated that the general condition of Shanti Devi (PW1) was conscious and she was oriented. The aforesaid statement of Dr. Brijesh Singh (PW8) should be accepted.

22. The appellants have been convicted under Section 452 IPC for having committed house trespass after having made preparation for causing hurt or assaulting any person etc. Possibly, the appellants had committed a more severe offence under Section 449 IPC (see *Matiullah Sheikh and Others versus State of West Bengal*, (1964) 6 SCR 978). However, we refrain going into the said aspect as the appellants already stand sentenced to imprisonment for life for the offence under Section 302 IPC and the State has not raised the said plea or argument. We have also not issued notice.

23. In view of the aforesaid discussion, we find that the appeal is sans merit and the trial court was correct in convicting the appellants under Section 302 IPC for having committed murder of Kamla Devi, under Section 307 IPC for attempt to murder Shanti Devi (PW1) and Section 452 IPC for having committed trespass in house number C-9/292 Sultan Puri, Delhi. We also do not find any reason to interfere with the order of sentence dated 1st September, 2012. The conviction and sentence of the appellants are upheld. The appeal is dismissed.

(SANJIV KHANNA)
JUDGE

(ASHUTOSH KUMAR)
JUDGE

JULY 21, 2015/VKR