A DELHI ADMINISTRATION

v.

TRIBHUVAN NATH AND ORS.

APRIL 11, 1996

B [B.L. HANSARIA AND K. VENKATASWAMI, JJ.]

Indian Penal Code, 1860 :

Ss. 302/149, 147, 148—Delhi Riots of 1984—Three accused identified
C *as part of mob which had killed two person—Trial Court convicting the accused—High Court setting aside conviction for contradictions in evidence of eye witnesses and non production of corpus delicti—Held High Court not justified in recording acquittal—When the mob murdered several persons and thrown the bodies in adjoining nullah, it would be too much to expect production of corpus delicti—What a witness had said during investigation*
D *cannot be used to discredit him unless that statement was put to the witness while deposing in Court—Prosecution succeeded in establishing that the accused were part of the mob which had murdered two persons—Conviction under section 302/149 and sentence of imprisonment for life, as recorded by trial court restored.*

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 84 of 1996.

From the Judgment and Order dated 2.1.95 of the Delhi High Court in Crl. A. No.55 of 1991.

F Uday Umesh Lalit for the Appellant.

R.K. Khanna, Deepak and C.S. Ashri for the Respondents.

The following Order of the Court was delivered :

G Delhi had seen a carnage about a decade back. The country had then lost its Prime Minister at the hands of an assassin. Delhi thereafter lost thousands of innocent humans and what is more shocking that the victims belonged to one community, namely, Sikh. The wrath fell on that community because the assassin of the Prime Minister was supposed to be a Sikh. The materials on record portray a hair raising scenario of Delhi
H starting from Ist November, 1984 - the assassination of the Prime Minister

having taken place on 31st October, 1984. A

2. It seems that Ist November, 1984 onwards, mob had taken control of the city for a few days and Sikhs of different localities subjected to all sorts of atrocities. They were murdered, thrown into drains or set ablaze. Their properties were looted and their houses were burnt. The three respondents are among those who were subsequently put on trial for such B offences. The trial court found all of them guilty under various sections of law, to wit, 302/149, 436/149, 395/147 and 148 of Penal Code. Various sentences were awarded on the respondents. We may mention about the one under section 302/149 which was imprisonment for life. All the sentences were ordered to run concurrently. C

3. On appeal being preferred by the convicts, the High Court of Delhi by the impugned judgment has, however, acquitted them of all the charges. Hence this appeal by the Delhi Administration.

4. We have heard Shri Lalit for the appellant and Shri Khanna for D the respondents. Both the learned counsel have taken us through all the relevant material on record, which includes the testimonies of PW.1 - Mohan Singh, PW.2 - Satnam Kaur, PW.4 - Rukki Kaur, PW.6 - Desh Singh and PW.8 - Harvinder Singh. We have also been referred to the relevant portion of the judgment of the High Court by Shri Khanna wherein reasons E for disbelieving the witnesses, have been set out.

5. If the evidence of aforesaid PWs is read as a whole, which has to be, what we found is on 1.11.1984, at first around 11 a.m., a mob of about 200 people came to Block No. P-1, Sultan Puri, which then had 30 to 35 jhuggies. Deceased Himmat Singh and Wazir Singh used to live in those F jhuggies. The mob which came around 11 a.m. was said to have been armed with iron rods and sticks; but then it was not causing any damage. Rather, it was being advised by this mob that the persons staying in jhuggies should get their hairs cut if they wanted to save their lives. The inmates felt inclined to accept this advice and they were in the process of cutting their hairs. But then another mob came which, according to PW.1, considered G of 200-250 persons - this number has been given as 1000-1200 by PW.2. According to PW.4 the mob consisted of 100 persons. PW.8 did not give the number. We are really not concerned with the number as such. Suffice it to say that the mob was a big one. This mob caused havoc and the members of this mob too were armed with iron rods and sticks. It is at the H

A hands of this mob that, according to the aforesaid PWs, Himmat Singh and Wazir Singh lost their lives. Not only this, to believe PW.4, her son Wazir Singh was burnt to death and thrown to adjoining nullah. PW.2 also had stated about the mob throwing the murdered persons in adjoining nullah. As thousands of persons have been so dealt with, it would be too much to B expect production of *corpus delicti*. We have mentioned about this aspect at this stage itself because one of the reasons which led the High Court to acquit the respondents is non-production of corpus delicti. We are afraid the High Court mis-read the situation; mis-judged the trauma caused.

6. The important question is whether the three respondents were part C of the mob which had caused death of Himmat Singh and Wazir Singh and indulged in other criminal activities. Shri Khanna has taken pains to persuade us that these persons were not the members of the second mob, which had indulged in murder, arson, loot etc., because PWs 1 and 2 have stated that they were among the first mob who had advised the jhuggi D dwellers to cut their hairs to save their lives. It is asked and to some extent rightly, whether the saviors could have been the murderers ? Shri Khanna contends that, at best, the respondents were present when the second mob was perpetrating the barbarous acts. That this was so is said to be brought home by reading that part of the evidence of PW.2 - the widow of deceased Himmat Singh - where she had stated that "at the time my husband was E assaulted all the three accused persons were standing there". It is, therefore, urged that they were mere spectators and might have found themselves helpless to save their neighbours, whom they had earlier advised to save lives by cutting their hairs.

F 7. We have given our very careful consideration to this submission. We have, however, to understand the aforesaid statement of PW.2 in the light of her entire evidence. Not only this, we have to bear in mind the evidence led by others as well and to see whether there are materials to show clinchingly and convincingly that the respondents were part to the mob which had murdered Himmat Singh and Wazir Singh and had done G other illegal acts. Shri Lalit urged that if the evidence of the aforesaid witness is read in toto, there will be nothing to doubt that the respondents were part of the mob, even if it may be the they were not armed, as is the evidence of PW.8.

H 8. Let it be seen whether the aforesaid statement of Mr. Lalit merits

acceptance. We may state that PW.1, after having stated that the three respondents who were among the mob had advised the inmates of the jhuggies to cut their hairs, also deposed that they mere to be seen in the second mob. Of course, he had not named respondent-Wazir Singh to be among the second mob; but he is categoric about the presence of two other respondents, namely, Tribhuvan Nath @ Raju and Sita Ram. He had categorically stated that these two respondents were in the mob which had murdered his brother-Himmat Singh. The evidence of PW.2 is also to the same effect. She deposed about the presence of not only Raju and Sita Ram, but of all the three as a member of the mob which had murdered her husband and had thrown him in the adjoining nullah.

9. Though PW.8 is not an eye-witness to the murdering of Himmat Singh and Wazir Singh, he was also living in one of the jhuggies in Block P-1, Sultan Puri, and deposed, in general, about what the mob had done. According to his evidence, the three respondents were present in the mob. At this stage, we may say something about the identity of the three respondents. Though no T.I.P. (Test Identification Parade) was held, that is not material in the present case inasmuch as, admittedly, the three respondents were Pradhans of the Block and, as such, were well known to the witnesses, which assertion of the PWs had not been challenged in cross-examination.

10. We are left with the evidence of PW.4 - Rukki, on whom the High Court came down heavily; according to us, unjustifiably. Rukki is the mother of Wazir Singh and she started her evidence by saying that at the relevant time her husband, whose name was Sunder Singh, was missing. She further stated that her husband was missing even when she deposed in the Court, which was on 28.10.1987. On the face of such a clear evidence by Rukki, we fail to understand how the High Court could say that Rukki had stated about killing of Sunder Singh also by the mob. We are afraid the High Court committed patent error of law in attributing this to PW.4 because of something which she had purportedly said in her police statement. The law is well settled that what a witness had said during investigation, cannot be used to discredit him/her unless that statement had been put to the witness while deposing in the Court. The evidence of PW.4 clearly shows that she had not been asked anything about her police statement regarding killing of Sunder Singh by the mob. The High Court used another police statement of this witness according to which the mob

A had not killed her son Wazir Singh, who was then around 17, but her younger son aged about 12. This police statement also had not been put to PW.4 when she was in witness box. The High Court, according to us, was not justified in stating that there were "glaring absurdities" in the evidence of PW.4. As for us, we say PW.4 is reliable, far from having made any absurd statement(s). We are sorry to state that the High Court went wrong B not only in law but also on facts in not only criticising PW.4, but in throwing out the case of the prosecution, which, according to us, has been proved to the hilt.

11. We, therefore, set aside the impugned judgment of the High C Court and restore the judgment of the trial court by which it had convicted the three respondents, inter alia, under section 302/149 and for which the sentence awarded was imprisonment for life. Having come to this conclusion, we have not fell called upon to decide whether the respondents were guilty under sections 395 and 346 also, though they had apparently committed the offences under sections 147 and 148. We do not propose to D award any separate sentences for these offences.

12. The result is that the appeal is allowed and the three respondents are convicted and sentenced, as aforesaid. Their bail bonds are cancelled and they would surrender to serve out their sentence.

E 13. Before parting, we would state that Shri Khanna, who appeared for the respondents, did plead very well to show their innocence. It is a different matter that we have not been able to agree with him.

R.P. Appeal allowed.