

State Vs. Sushil Kumar

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Court : Delhi

Decided On : Aug-01-2006

Reported in : 2006(92)DRJ165

Judge : R.S. Sodhi and; P.K. Bhasin, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sectin 34, 302 and 394; Code of Criminal Procedure (CrPC) - Sections 8, 83 and 207

Appeal No. : Death Sentence Reference No. 1 of 2005 and Criminal Appeal No. 762 of 2005

Appellant : State

Respondent : Sushil Kumar

Advocate for Def. : S.C. Paul and; J.S. Mann, Adv.

Advocate for Pet/Ap. : Ravinder Chadha, APP an; Jagdish Prasad, Adv

Judgement :

R.S. Sodhi, J.

1. By this common judgment, we propose to dispose of-Death Sentence Reference No. 1 of 2005 as also Criminal Appeal No. 762 of 2005. The State seeks to justify the judgment and order of conviction as also the sentence

imposed.

2. Brief facts of the case, as narrated by the Additional Sessions Judge, Delhi, vide his judgment and order dated 9.8.2005 are as follows:

The brief facts of the prosecution case are that DD No. 18A dated 28.1.2002 was recorded at police station Sarita Vihar at 7.40 P.M. that on 5.57 P.M. an information was received that at House No. 172 Madanpur Khadar, Khari Kaun a lady has been murdered. A copy of DD was sent to SI Harish Kumar through Ct. Sudhir Kumar. On receipt of DD, SI Harish Kumar along with Ct. Brij Bhushan reached at the spot at house No. 172 Madan Pur Khadar Khari Kaun where in the second floor of the house in a room on the rack, three suitcases were lying, out of which middle suit case was having its lock broken and in the kitchen by the side of the room, a dead body of Anita was lying facing towards ground and on the dead body of Anita, the dead body of her daughter Megha was also lying facing towards ground. Their heads were towards North and faces were towards South and on the dead body of Anita, there were injuries with sharp weapon, behind the feet on both wrists, neck, cheek and on the dead body of Megha, there was injury on the neck with sharp edged weapon. The dead bodies were lying in a pool of blood. SI Harish Kumar recorded the statement of Anil Kumar, the complainant. He stated that he has been living at the given address with his wife Anita and daughter Megha aged about 2 years since 6th January 2002 as tenant and he used to work at plot No. C-60/2 Okhla Phase-II, N.D. where he used to carry out the business of stitching the buttons on the clothes. On that day on 28.1.2002 at 10 A.M he went for his work and returned in the evening at 6.15 P.M and reached the house by 6.35 P.M by his motor cycle No. BR-06D-9240. After parking his motorcycle, he went in the room which he found opened and TV was on and he also saw one brief case out of three suitcases which is having broken lock and he went out to look for his wife and daughter. He also noticed that cash of Rs. 1700, one pair of gold jhumke and one golden ring were missing from the said briefcase. He did not find his wife and daughter inside the room. Then, he saw that the door of the kitchen was bolted from outside.

He opened the same and went inside and saw that his wife Anita and daughter Megha were lying on the ground facing downward in the pool of blood. The dead body of Megha was over the dead, body of his wife. He got scared and screamed. Hearing the sound, the neighbours collected. Somebody rang up to the police. He stated that some unknown persons has committed murder of his wife and daughter and looted the articles. Finding the case of Section 302 and 394 IPC, a tehrir was prepared and sent through Ct. Sudhir for the registration of the case. Crime team and photographer were called. SI Kavar Sahab Singh with the staff reached at the spot. IO prepared the site plan at the pointing out of complainant. The crime team inspected the place of occurrence. The photographer took the photographs. Blood stained floor and earth control found at the spot were seized. The statement of witnesses were recorded. During the investigation on 30.1.2002 accused were arrested. The postmortem on the body of Anita and Megha was got conducted and the pulandas given by the doctor were seized. The accused was interrogated and he made his voluntary disclosure statement confessing his involvement in the crime. He disclosed the name of Amlesh who joined in the crime and has committed murder of Megha by the knife. He disclosed the motive of committing the crime as business rivalry as Anil Kumar was getting more business which he was doing. Accused Sushil got recovered the clothes from his jhuggi which he was wearing at the spot. Accused Sushil also got recovered the cycle used in the crime. Accused was got medically examined. He also got recovered the knife used in the crime from the bushes near the railway line. The accused was second time medically examined. His blood sample was taken. Accused Amlesh was searched but could not be arrested despite process Under Section 82/83 Cr.P.C. He was declared PO on 5.6.2002. The seized articles were deposited in the malkhana and thereby exhibits were sent for testing to FSL Malviya Nagar. Accused was sent to JC. After completion of the investigation, Charge sheet was filed and case was committed for trial after complying the provisions of Section 207 Cr.P.C.

3. The appellant was charged under Sections 394/34 and 302/34 IPC vide order dated 21.8.2002.

4. The Prosecution, in order to establish its case, examined as many as 19 witnesses. Of these, PW-10, Anil Kumar, is the husband of Anita, deceased, and father of Megha, deceased. He deposed to the effect that on 28.1.2002, he was living along with his wife and daughter, both deceased, on Plant No. 7/2, Okhla, Phase-II, and his work was of stitching buttons on shirts. On the fateful day, the witness left for work at 10 a.m. and returned at 6.30 p.m. when he found the door of the house open and the television switched on. He noticed that the lock of the brief case was broken and his wife and daughter were not present in the room. He also found some, cash and gold ornaments missing. He put on the gallery light and went into the kitchen, the door of which he found was bolted from outside. On releasing the bolt, he saw the dead bodies of his wife and daughter, Megha, lying on the ground. In shock, this witness started crying which attracted the neighbours. The Police was informed and a crime team as also the local Police reached the spot and inspected the place of incident. Photographs of the scene of the incident were taken.

5. This witness states that he did not inform the Police who had, in the meantime, come to the spot. The Investigating Officer prepared the site plan and inspected the place of occurrence. The articles, namely, the blood stained chappal, pieces of broken bangles, garland, blood stained earth, blood stained scarf and shawl etc. were seized and sealed. Blood was seized vide; Memo Ex. PW-9/A, blood stained earth was seized vide Memo Ex. PW-8/C, pair of chappals was seized vide Memo Ex. PW-8/E, broken bangles were seized vide Memo Ex. PW-8/D, mala/garland was seized vide Memo Exs. PW-8/F, darat was seized vide Memo Ex. 8/G. All these Memos bear his signatures. The Police also took into possession the earrings of the deceased vide Memo Ex. PW-8/M which bears his signature.

6. Various other articles such as buttons, clothes and other household artifacts were also taken into possession vide various Memos. The Investigating Officer dispatched the dead bodies for post mortem and after post mortem the bodies were handed over. This witness identified the dead, bodies to be of his wife and daughter.

7. On 30.1.2002 at about 5.00 p.m., this witness went to the jhuggi of his brother-in-law, Mohan Kumar, where the Investigating Officer 'along with the accused was present. The witness goes on to depose that he knew the accused as he was working with him in the same company and previously used to live in the neighbourhood in Sanjay Colony near his jhuggi. The accused was also looking after the work of the company which was later passed on to him. This aroused jealousy and the accused was not well disposed towards him. The accused was interrogated in his presence who made a disclosure statement, Ex. PW-8/5. He disclosed that he had concealed the clothes in his room which could be got recovered. The accused thereafter led the Police party and pointed to his jhuggi and got recovered a cream colour shirt having blood stains on its arms, brown colour pant with blood stains on the left pocket of the pant and ladies green sweater having blood stains. The articles were taken into possession vide seizure Memo Ex. PW-10/F. Thereafter the accused led the Police party to Govindpuri where, on the pointing out of the accused, a black colour cycle HERO brand, which was used by the accused and the co-accused, Amlesh, for going to the place of incident, was taken into possession vide Memo Ex. PW-8/T. The accused subsequently led the Police party to Bengal Clinic in Sanjay Colony of Dr. Vinay Kumar Sarkar and disclosed that, he got medical treatment from the clinic after the incident of 28.1.2002. The Doctor handed over the patient register which was taken into possession vide Memo Ex. PW-3/A. On 31.1.2002, the accused led the Police party to the place of incident and pointed out the room vide Memo Ex. PW10/G. The case property was shown to this witness and he correctly identified the same.

8. In cross-examination, it was elicited from this witness that Mohan Kumar is his brother-in-law. The landlord was not living in the building of which the witness was a tenant and that the witness lived along with his family on the top floor. There was another person living on the first floor which had a common staircase. It is also stated that the witness is self-employed and starts his work at 11.00 a.m. whereas there is no fixed time of closing, as that depends upon the jobs supplied by the company. He admitted that the accused was also engaged in the same company. In further cross-examination, he states that on reaching home he saw the broken briefcase and cash missing. Thereafter he searched for his wife who was not in

the room. The light of the room and the television was on. He made inquiries regarding the whereabouts of his wife. At about 6.45 p.m. he made inquiries from neighbours. He did not tell about the broken lock and missing cash and jewelery. He did not call his neighbours who had thereafter collected on hearing his cries. Several persons collected there. He did not call the Police. The Police recorded his statement at the spot which was read over to him before signing. He did not lift up the body of his daughter or his wife and left the spot undisturbed till the Police came, In his presence, the Police did not record any other statement. The Police seized articles in his presence. Lengthy cross-examination was directed at this witness who, it appears, has only reiterated his examination-in-chief.

9. PW-1, Smt. Chauhan is the neighbour who deposes to the effect that on 28.1.2002 at around 4.20 p.m. she was at the roof of her house and had inquired of Anita, who was present along with her daughter in the corridor, to the effect as to whether Anil had come home since she was hearing sounds from the television. Anita had told this witness that Anil had not come but two of his friends, Sushil and another person were waiting. Thereafter around 6.30 p.m. she came, to know that Anita and Megha had been murdered. Statement of this, witness was recorded by the Police. Nothing meaningful has been elicited from this witness in cross-examination. On the contrary she has been allowed to reaffirm her examination-in-chief.

10. PW-7 is Vinod, who deposed that on 28.1.2002 at about 4.00 P.M., he saw Sushil and Amlesh entering the house while this witness was on a house-hunt. In cross-examination he states that he saw the accused persons climbing up the stairs towards the room of Anil but did not see them entering the room of Anil. He denied his friendship with Anil. PW-2, Sh. Kohtas Singh Chauhan has deposed to the effect that on 28.1.2002 he returned home at about 7.30 p.m. when he saw a gathering around the house and came to know that Anita and her daughter had been murdered by some one. This witness physically saw the deceased lying in the kitchen and informed the Police; His statement was recorded at about 11.00 p.m. on the same day.

11. PW-5, Shri Mohan Kumar Singh, has deposed that on 27.1.2002 around 8.30 p.m. he overheard the conversation between. Sushil and Amlesh to the effect that 'Anil ki wajah se mera kamchaupat ho gaya, islie Anil ko sabak sikhainge'. He further deposed that on 28.1.2002 at around 8.30 p.m., he received telephonic call regarding the murder of his sister and. niece, He went to the spot and his statement was recorded by the Police. In cross-examination, he has asserted that Sushil was talking with Amlesh outside the jhuggi and that Amlesh used to visit Sushil on Sundays and that the jhuggi of this witness is adjacent to the jhuggi of Sushil. This fact was not narrated to Anil Kumar since the witness forgot.

12. PW-3, Dr. V.K. Sarkar, has deposed to the effect that he treated the injury on the left hand of the accused and recorded the treatment in the patient, register at serial No. 1348. PW-9, Shri Gorakh Nath Yadav, is witness to the recovery of blood stained knife. He has stated that he was working as Chowkidar in LIG Flats, Sarita Vihar and that on 31.1.2002 Police met him near railway line, Okhla along with the accused Sushil Kumar in their custody. On inquiry he was told that Sushil was in custody for some purpose. The accused led the Police party to the bushes near the railway line from where he got recovered a knife from the bushes and handed it over to the police. The knife was blood stained. In cross-examination, the witness states that the knife was lying under the bushes at a distance of 10 meters from the railway track. The public persons were at a far distance therefrom. He denied that his signatures were obtained on a blank paper.

13. PW-4, Ct. Sudhir Kumar, has deposed to the recording of DD No. 18-A on 28.1.2002 at 7.45 p.m. and handing over the same to SI Harish Kumar who was present at the Appolo Hospital. PW-6, SI Kunwar Sahab Singh, deposed that on 28.1.2002 he along with the Investigating Officer visited the place of incident. He ensured that the articles recovered were sealed at the spot. PW-8, Ct. Brij Bhushan accompanied the Investigating Officer to the place of occurrence) and has narrated the details of the Prosecution case. PW-14, Dr. Parthasarathi Pramanik has proved the MLC, Ex. PW-14/A. PW-15, HC Satinder is the Mohrrar HC Malkhana and has deposed to the deposit of 12 pulandas sealed with the seal of 'HK' entered into the register at serial No. 609. Dr. Abhijit Rudra, PW-16, conducted the post mortem on the body of Anita and gave his report, Ex. PW-

16/A. PW-19, SI Harish Kumar, has deposed to the steps taken by him in the process of investigation.

14. From an analysis of the evidence on record, the circumstances which need consideration, are spelt out by PW-1, PW2, PW-5, PW-7 and PW-10. The deceased were present in their house when the appellant was sitting there waiting for Anil. Thereafter, Anita and her daughter were found dead. The accused was seen by PW-7 climbing the staircase leading towards the house of Anita. Recovery of blood stained knife made at the instance of the accused was witnessed by PW-9. The blood on the knife was identified to be that of the deceased. The links in the chain of circumstances are complete and points to the only hypothesis that the accused has committed the murder as made out by the Prosecution.

15. We have analysed the material independent of the judgment under challenge and have come to the conclusion that the trial court has correctly appreciated the material placed before it and that there is no infirmity in the finding of guilt returned. We, therefore, have no hesitation in upholding the conviction of the appellant under the charges framed against the appellant.

16. Coming to the question of sentence, the trial court has primarily sentenced the appellant to death on account of the fact that there are multiple injuries inflicted on the person of Anita and the child, Megha. According to us, the murder is, no doubt, cold blooded and caused in a cruel manner, yet we feel that the appellant who was only 21 years of age and the only bread winner of the family, can be spared the death penalty which must visit in cases which are heinous, diabolic in nature and revolting so as to send a trauma of repulsiveness in the society. It cannot be said that there is no alternative but to impose death sentence and that there is no possibility of rehabilitating the appellant to society. We are, therefore, of the opinion that in this case of circumstantial evidence, sentence of life would suffice the interest of justice. Consequently, we modify the order of sentence dated 17.8.2005 to life imprisonment instead of death sentence.

17. Death Sentence Reference No. 1 of 2005 and Criminal Appeal No. 762 of 2005 are disposed of accordingly.

