

Daya Chand Vs. State

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Court : Delhi

Decided On : Feb-02-2007

Reported in : 138(2007)DLT479

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

Acts : Indian Penal Code (IPC) - Sections 302; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 314 of 2002

Appellant : Daya Chand

Respondent : State

Advocate for Def. : Ravinder Chadha, APP for ; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : V.K. Raina, Adv

Disposition : Appeal dismissed

Judgement :

R.S. Sodhi, J.

1. Criminal Appeal No. 314 of 2002 challenges the judgment dated 10.10.1997 of the Additional Sessions Judge, Shahdara, Delhi, in Sessions Case No. 51/96 arising out of F.I.R. No. 575/1990 registered at Police Station, Trilok Puri, whereby

the learned Judge has held the appellant guilty under Section 302 IPC and further by his order dated 15.10.1997 sentenced the appellant for life imprisonment with a fine of Rs. 5,000/- (rupees five thousand) and in default of payment of fine to further undergo rigorous imprisonment for four months.

2. Brief facts of the case, as noted by the Additional Sessions Judge, are as follows:

On 13.12.1990 at about 12.20 p.m., complainant Daya Chand, son of Khimman, was present in his house in Balmiki Basti where his nephew Sanjay aged 5-6 years and niece Pinki, aged 4-5 years, came and informed him that Pushpa had been stabbed by Daya Chand, resident of the house having blue coloured door. The complainant ran to the gali where he saw his elder brother Ramesh's daughter Pushpa aged about 12-13 Yrs. lying in a pool of blood. The injured was still alive and reeling with pain. The complainant was also told by a neighbourer Smt. Chanderawati that her neighbourer Daya Chand had escaped from the spot after stabbing Pushpa. The complainant lifted Pushpa in his lap and brought her to his house, but she expired in between. The complainant went to the police station on whose information a DD entry 6A/Ex. PW 8/A was recorded. The statement of the complainant was also recorded thereafter on which case FIR No. :575/90, copy of which is Ex. PW 2/E, was recorded. Investigations were carried over by Inspt. Jeet Singh Joon who visited the spot where the injured was stabbed and also the house of the complainant where the injured had been brought by her uncle Daya Chand. From the spot, a pair of Hawai Chappal, one shawl bearing several cut marks, two school bags containing school books, Tiffin boxes, blood sample and sample of control earth were lifted and sealed in parcel with the seal of JS. Inquest proceedings were conducted on the body of the deceased which was then sent to mortuary for postmortem. On 15.12.90, accused

Daya Chand, son of Gurdayal was arrested from ISBT, Kashmiri Gate. The pant and the shirt worn by the accused were taken in possession. The postmortem report was obtained which opined the cause of death being shock and hemorrhage resulting from injuries which were antemortem, caused by sharp edged weapon and injuries No. 1, 2, 3, 4, 5, 7, 12, 13 and 14 being individually

sufficient to cause death in the ordinary course of nature. Some inimical feelings are said to be existing between family of the complainant and father of this accused. It is under the above allegations that the present challan has been filed against this accused for his trial for an offence punishable under Section 302 I.P.C.

3. In his statement recorded under Section 313 Cr.P.C., the accused denied the entire charge and allegations claiming full innocence. The accused further stated that the relations between the family of the complainant and his (accused's) father were strained and inimical because of some misunderstanding about the non-giving of an information to the complainant's family regarding the dead body of the complainant's father being in L.N.J.P. hospital mortuary sometime back where father of the accused was employed and the dead body of the complainant's father had been brought due to death in a road side accident.

4. The Prosecution, in order to establish the case, examined PW-1, Bhagmal, who states that about two years prior at about 12.30 noon he was informed of the murder of Pushpa, daughter of Ramesh, and was told that the murder had been committed by her neighbour, Daya Chand. On receipt of this information, he rushed to her house, 239, Balmiki Basti, Patparganj, and identified the dead body of Pushpa before the Police who was already there. Daya Chand was also there. Police prepared inquest report and took the dead body into their possession. His statement is Exhibit PW-1/A.

5. PW-2, is the complainant, Daya Chand. He states that on 13.12.1990 he was employed as a sweeper in the MCD. He was present in his house when Sanjay and Pinki, his niece and nephew, came and told him that Pushpa had been caught by Daya Chand, the person who resides in front of their house. On hearing this, he and one or two neighbours rushed to the spot which was about 100 yards away from their house and saw that Pushpa was lying in the street in a pool of blood and was in great pain. He was told by Chandrawati that accused Daya Chand had stabbed Pushpa with a knife. He was told that the accused had run away from the spot thereafter. Police came there and took into possession a pair of hawai chappals, one shawl of green colour, two school bags, blood and blood sample

and also blood stained earth were seized vide memo Exhibit PW-2/A. Before the arrival of the Police this witness had lifted Pushpa and brought her to his house No. 239, Balmiki Basti, Patparganj, in order to take her to the hospital. The place where Pushpa was kept had blood stains, a sample of which was taken into possession vide memo PW-2/B. This witness states that after about two days, the accused was arrested but thereafter nothing happened in his presence. Pushpa died while being taken to the house from the spot. The Police had got the postmortem conducted on the dead body which was then handed over to them. The witness identified the articles seized in his presence. On his cross-examination the witness states that his place of duty is about one kilometer away from his house and that the school is about ten minutes walking distance from his house. He states that the Police Station is about one kilometer from the spot and at about 12.00 to 12.30 p.m. when they went to the Police Station his clothes were blood stained. He met Chandrawati before he reached the Police Station. Prosecution Witnesses, Mukesh and Fattoo were with him.

6. PW-3 is Chandrawati. She deposes that six years prior she was present in the house and at about 12.00 to 12.30 noon she heard some sound. She came out on hearing the shrieks of a girl and saw the accused present in Court stabbing that girl whose name was Pushpa, residing in her neighborhood. After stabbing Pushpa, accused ran away from the spot and the girl fell on the ground and started bleeding profusely. She did not see any other person around. Public collected around and the uncle and aunt of the injured girl, Pushpa also came there. The uncle and aunt removed the injured to their house. In cross-examination this witness states that her house is situated about 10' 15 minutes walking distance from the house of the accused. The house of Ramesh is just in front of accused Daya Chand. The incident took place at about ten paces from their house. Children of Ramesh are studying in Patparganj Government School. Pinki is niece of Ramesh and is residing at Khora. Pinki and Sanjay used to come from school around 12.00 to 12.30 p.m. The witness goes on to say that when she came out of her house she saw the accused in the gali. No children were in the street. She heard the shrieks of Pushpa who was shouting - ' MERE KO MAT MARO'. This witness further states that she cannot say at about what distance Pinki and Sanjay were from Pushpa. She only claims to have seen a glimpse of

the incident and states that thereafter hid in her house. After about 15 '20 minutes Pushpa was removed by PW-2, Daya Chand to their house. She does not remember by which mode Pushpa was removed. She admits that she did not go near Pushpa nor put a cloth on her injuries. At the spot when Police came only Daya Chand was present and not Ramesh. She does not remember whether the police recorded any statement in her presence. The police met her in the first instance at 3.30 p.m. and recorded her statement. They obtained her thumb impression on this statement. She further in cross-examination states that she saw only one knife blow being inflicted on the stomach of Pushpa. She is also not aware whether the accused is mentally unstable. The witness also says that she concealed herself out of fear behind the door till after the assailant left the spot.

7. PW-4, Pinki, is 11 years old. She was questioned by the Court, which found her well oriented and then administered oath. Pinki states that she was present in Kumharon ki Gali, Balmiki Basti around 12.00 to 12.30 noon when she was coming from school along with her brother, Sanjay and Pushpa who was her aunt, the accused present in Court resides in the same gali in the house with blue doors. He caught hold of Sanjay and when Pushpa tried to free him from the accused the accused caught her by her hair and threw her into the nali and then stabbed her with a knife. Her aunt told them to run away from there and inform the family. The accused had given several blows to Pushpa. The witness states that she ran away and informed mama Daya Chand and Mami who went there and brought Pushpa to their house, who died. In cross-examination this witness states that Pushpa was her Mausi. She was about thirteen years and was not studying. Pushpa used to bring the children back from school daily. Many other children used to go to school from the nearby houses. On the day of the incident except three of them no other child was with them. The witness does not remember the clothes worn by Pushpa. The gali in which the incident took place is wide enough for any car to pass. It is correct that on both the sides there are houses. The witnesses admits that there were no residents outside their houses on that day. When Pushpa was caught hold of by accused they stayed there. The house of Chandrawati is about 25' 30 ft. from the place where they were standing. She did not come back at the spot after informing Mama Daya Chand. She also admits that she was told by the advocate about the statement which she can make in Court but denied having been tutored.

8. PW-5, Sanjay, aged 12 years was questioned by the Court and upon satisfying itself that Sanjay was capable to make a statement, administered oath. He states that on 13.12.1990 at about 12.30 noon he was coming from school with his sister Pinki and Pushpa, when they were in Kumharonwali Gali, the accused present in court, who was called as 'Nile Darwaje Wala Daya Chand' came there and caught his hand and when Pushpa tried to free him the accused caught Pushpa by her hair and threw her on the ground and stabbed her. The accused had also covered Pushpa's mouth with his hand. Pushpa told them to go to the house upon which he and Pinki informed Mama Daya Chand, who came to the spot and took Pushpa to the house where she died. In cross-examination this witness states that Pushpa used to accompany them to school in the morning and bring them back from school. The gali in which the incident took place was very narrow and even a rickshaw could not pass from there. There were houses on both sides of the gali. No public persons were present at the time of the incident. The house of Chandrawati is about 10 -12 feet from the spot. This witness claims that he had not seen Chandrawati at that time and cannot say whether she was around at the time of the occurrence. He did not notice the door of the house of Chandrawati was close at the time he left the spot for his house. He states that he did not return to the spot after informing his family. Pushpa was brought to the house after five minutes of their giving information. There were blood stains on the clothes and hand of Daya Chand PW-2, who laid Pushpa on the cot, which too got blood stained.

9. The rest of the witnesses depose about the procedural aspect of the matter which has not been challenged before us. It is contended by counsel for the petitioner that the appellant has been wrongly framed due to enmity. He also draws our attention to the contradiction between the statement of Pinki and Sanjay, prosecution witnesses, to the extent that the width of the gali has not been correctly stated. Counsel also criticizes the statement of PW-3, Chandrawati and submits that Chandrawati is not a natural witness and that she would have raised hue and cry had she been a witness to the occurrence of stabbing of a young girl.

10. We have heard counsel for the parties and have with their assistance gone through the record of the case. We find that Pinki, PW-4 and Sanjay, PW-5, to be

trustworthy witnesses. They had no reason to implicate the accused falsely nor does it appear from the testimony that they have improved their versions on account of their being tutored. Besides these two witnesses we have the statement of Chandrawati, PW-3, who states that upon hearing the shrieks of Pushpa she opened the door and saw the accused stabbing Pushpa. She also states that out of fear she hid herself behind the door and did not come out till the accused had fled. Although, counsel had challenged this as being unnatural, we are of the view that Chandrawati could very well have been petrified at the sight of the gruesome incident and there is nothing unusual about her having hidden herself from the eyes of the assailant who could as well have attacked Chandrawati.

11. From an analysis of the statement of Chandrawati, PW-3; Pinki, PW-4 and Sanjay, PW-5, there is hardly any doubt that they are truthful witnesses. There does appear to be a ring of truth around their statements. The Trial Court has also examined these witnesses with great care and believed them while returning its finding. Nothing has been pointed out to us to show that the judgment of the Trial Court is not sustainable. Having re-examined the material placed before us, we find that the reasoning of the Trial Court suffers from no infirmity. Consequently, we uphold the judgment of the Trial Court dated 10.10.1997 and order of sentence dated 15.10.1997. Criminal Appeal 314 of 2002 is dismissed.