

**Chander Prakash and ors Vs the State**

**Chander Prakash and ors Vs the State**

**SooperKanoon Citation :** [sooperkanoon.com/905049](http://sooperkanoon.com/905049)

**Court :** Delhi

**Decided On :** Jul-12-2010

**Judge :** Mr. Badar Durrez Ahdmed ; Mr. V.K. Jain. J J

**Acts :** Indian Penal Code (IPC) - Section 302,34 120,B ; Cr. Pc - section 161

**Appeal No. :** CRL.A 196/1997

**Appellant :** Chander Prakash and ors

**Respondent :** The State

**Advocate for Def. :** Mr Lovkesh Sawhney , Adv.

**Advocate for Pet/Ap. :** Mr Anu Narula, Adv.

**Judgement :**

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

**ORDER**

1. This appeal is directed against the judgment dated 5.4.1997 and Order on Sentence dated 8.4.1997, whereby the appellants were convicted under Sections 120-B and Section 302 of IPC read with Section 34 thereof and were sentenced to

undergo imprisonment for life and to pay fine of Rs.1,000/- each or to undergo R.I. for one month each in default under Section 302/34 of IPC, and were given identical punishment under Section 120-B of IPC. It was also directed that the substantive sentences shall run concurrently.

2. On 5th November, 1993, at about 8.50 pm, Police Control Room informed PS Sultan Puri that an unclaimed gunny bag was lying, on the road going to Village Kironi from Sector 20 of Rohini. On receipt of this information, the police officials reached the spot. On opening the gunny bag, the dead body of a young woman was found inside. The hands, legs and neck of the deceased were found tied with a cotton cord. The dead body was identified to be of one Smt.Pushpa, wife of Mukesh and resident of I-98, Krishna Vihar, Delhi. The Post Mortem Report revealed that cause of death was asphyxia consequent to ligature constriction of neck. Five persons, namely, Mukesh Kumar, husband of the deceased, Bobby alias Sanjiv, brother of Mukesh Kumar, Smt.Veerbala, sister of Mukesh and Sanjiv, Chander Prakash, husband of Veerbala and Dharam Prakash, brother of Chander Prakash,were charge-sheeted on the allegations that they hatched a criminal conspiracy to commit murder of deceased Pushpa and after committing her murder pursuant to that criminal conspiracy, they disposed of her body in a gunny bag.

3. The prosecution examined 19 witnesses in support of its case. One official witness was examined in defence. The trial court while convicting the appellants, acquitted the accused Mukesh and Veerbala.

4. PW-1 Ram Pal, PW-2 Ram Kishan, PW-3 Yaad Ram PW-9 Rajbala are the material witnesses.

5. There is no direct witness of the murder of deceased Pushpa and the charge against the appellants was sought to be proved by establishing following circumstances.

(i) Deceased Pushpa was taken by the appellant Sanjiv with him on 5th November, 1993, at about 2.30 pm on the pretext that he being sick she should sweep his room and prepare Khichri for him.

(ii) Deceased Pushpa accompanied by the appellant Sanjiv, went to the shop of one Ram Pal at about 2.30 pm on 5th November, 1993 to buy some articles.

(iii) At about 3.30 pm on 5th November, 1993, Yaad Ram, brother of the deceased, found the appellants Sanjiv, Chander Prakash and Braham Prakash (who has since been acquitted) standing outside the house of Sanjiv and when he went inside, he found Pushpa making tea there. (iv) Pushpa was strangulated using a white rope and a similar rope was got recovered by the appellant Sanjiv from his house. The motive behind the murder of Pushpa is alleged to be the desire of the appellants to marry Mukesh, husband of the deceased to some other girl, after killing Pushpa.

6. When the case of the prosecution rests solely on circumstantial evidence, the circumstance from such conclusion of the guilt of the accused is sought to be drawn must be cogently and firmly established and they should be of a conclusive nature. The circumstances, taken together must form a chain of evidence, which is so complete that it does not give any reasonable ground to draw a conclusion consistent with the innocence of the accused and must show that in all human probability the offence was committed by no one other than the accused.

Circumstance Nos.(i) & (ii)

7. According to PW-9 Rajbala, mother of the deceased, on 5th November, 1993 at about 2.30/2.45 pm, accused Sanjiv came to the house of Pushpa and took her with him on the pretext that since he was not well, she should sweep the room and prepare Khichri for him. At the time deceased Pushpa left the house, she (the witness) was standing at the door of her house and was told by her that she was going with Sanjiv. She further stated that at about 7.30 pm on that day, accused Veerbala, accompanied by accused Chander Prakash, Braham Prakash and Bobby @ Sanjiv came to her house and enquired whether Pushpa was there at her house.

In her cross-examination, she admitted that though the police had come to their house in the night of 5 th November, 1993, she, at that time, did not disclose this fact to the police. She further admitted that she did not go to police station either

on 6th November, 1993 or on 7th November, 1993 to tell the police that Pushpa had gone with Sanjiv, to his house, on 5th November, 1993. The allegations regarding Sanjiv taking Pushpa with him were made by her, for the first time, in her statement dated 8.11.1993. There is absolutely no valid explanation for the witness not disclosing this material fact to the police, despite her having come to know in the night of 5th November, 1993 itself that her daughter had been murdered and despite her having met the police in the very same night. In the normal course of human conduct, the mother of the deceased would not have withheld this vital information from the police and would have disclosed the same to the police officer, at the very first opportunity, when he met her in the night of 5th November, 1993. The delay on the part of this witness in disclosing this material fact to the police creates a serious doubt on her truthfulness and the deposition made by her in this regard.

8. PW-1 Ram Pal is a shopkeeper in the locality. He has stated that on 5th November, 1993, at about 2.00 or 2.30 pm Pushpa had come to his shop to buy some articles. At that time, she told him that she should be given articles first since she had been called by her in-laws to clean the house. She was alone at that time. This witness was cross-examined by the learned APP. He denied the suggestion that Pushpa, when she came to his shop, was accompanied by accused Sanjiv and that she had told him that she was going to Sanjiv's house and was preparing khichri for him.

According to PW-1 Ram Pal, when deceased Pushpa came to his shop at about 2.30 pm on 5th November, 1993 she was alone and was not accompanied by the appellant Sanjiv. Thus, the testimony of PW-9 Rajbala in this regard has been contradicted by prosecution's own witness. If Ram Pal was speaking truth, this witness obviously was telling a lie in saying that Pushpa had accompanied the appellant Sanjiv in the afternoon of 5th November, 1993.

This witness claims that the accused Veerbala, Chander Bhan, Braham Prakash and Sanjiv came to her house to find out whether Pushpa was there at her house. In the normal course, at least the appellant Sanjiv would not have made such an enquiry from the witness, if he had taken deceased Pushpa with him in that very

afternoon. If this witness saw Pushpa accompanying the appellant Sanjiv in the afternoon, he also would have seen Pushpa talking to her and, therefore, knowing full well that if he makes such an enquiry from this witness, she was likely to confront him with the accusation that it was none other than he who had taken Pushpa with him in the afternoon, he would not like to make such an enquiry in case he had taken Pushpa with him. Moreover, had the appellant Sanjiv taken Pushpa with him in the afternoon, as claimed by this witness, she, when accused Sanjiv, Chander Prakash, Braham Prakash and Veerbala came to her house to enquire about Pushpa, would there and then have told them that it was the appellant Sanjiv who had taken Pushpa with him in the afternoon and it is for him to tell where Pushpa was. The witness does not claim to have confronted the appellant Sanjiv with such an accusation when he along with some other accused came to her house in the night of 5th November, 1993.

9. PW-2 Ram Kishan, father of the deceased, as well as PW-3 Yaad Ram, brother of the deceased, claim to be in the house on 5th November, 1993. If this is so, the accused Chander Prakash, Braham Prakash, Sanjiv and Veerbala, when they came to their house at about 7.30 pm on 5th November, 1993, must have come and enquired about Pushpa in their presence. Even Yaad Ram, brother of the deceased, does not claim to have confronted them with the accusation that in the afternoon he had seen Pushpa cooking in the house of the appellant Sanjiv and, therefore, it was for them to explain her whereabouts. On the other hand, according to PW-2, Ram Kishan, when these persons came to their house and enquired about Pushpa, he told that that his daughter had gone from his house on the day of Dussehra and must be in their house or in the house of Veerbala. This response on the part of Ram Kishan, father of the deceased, who was present in the house at the time when the appellants enquired about Pushpa, clearly indicates that none of them had seen Pushpa in the company of the appellant Sanjiv on that day. Even if it is presumed that Smt.Rajbala, mother of the deceased had not informed her husband about having seen the deceased accompanying the appellant Sanjiv in the afternoon, in the normal course of things, she would definitely have interjected at that stage and told the appellants that it was the accused Sanjiv who had taken Pushpa with him, and Yaad Ram also would have said that he himself had met Pushpa in their house in the

afternoon. Therefore, the response given by PW-2 Ram Kishan at the time when the appellants came to their house at about 7.30/7.45 pm on 5th November, 1993 and enquired about Pushpa, belies the claim made by PW-9, Rajbala and PW-3 Yaad Ram. We therefore are of the view that the prosecution has failed to prove this circumstance.

#### Circumstance No.(iii)

10. PW-3 Yaad Ram is the brother of the deceased. He has stated that on 5th November, 1993, at about 3.30 pm, he had a sudden stomach-ache, while on duty in the shop in which he was employed and, therefore, he returned home. While returning home, he saw Braham Prakash, Chander Prakash and Sanjiv standing outside the house of Sanjiv. He went inside the house and found Pushpa preparing tea there. He also found Mukesh and Veerbala present in the house. In his cross-examination, this witness stated that he did not take any medicine for the stomach-ache. If the stomach-ache is so acute that a person cannot continue performing his duty despite being at the work place and has to take leave from his employer, it is difficult to accept that he would not even consult a doctor. In fact this witness does not claim to have taken even an OTC medicine, to get relief from the stomach- ache.

According to the witness, he was employed at a shop of one Ram Swaroop at Dariba Kalan. The Investigating Officer did not examine the employer of this witness to confirm that he had taken leave at about 1.30 pm on 5th November, 1993 as claimed by him. The Investigating Officer ought to have verified the claim made by this witness by examining his employer.

11. Ex.PW-17/G is the first statement of Yaad Ram, which was recorded in the police station on 5th November, 1993 after the dead body of Pushpa had been recovered and the FIR had been registered. In this statement he did not say a word about his having seen his sister in the house of the appellant Sanjiv or his having seen the appellants Braham Prakash, Chander Prakash and Sanjiv standing outside the house of Sanjiv in the afternoon of 5th November, 1993. There is no explanation for this witness not disclosing these material facts to the Investigating Officer at the very first opportunity. Non-disclosure, at the time his

first statement was recorded, leads to the inference that his second statement claiming to have seen the appellants outside the house of Sanjiv and his having seen deceased Pushpa in the house of Sanjiv was an afterthought.

12. Taking into consideration the facts (i) that the employer of Yaad Ram was not examined to verify his claim of having taken leave at 1.30 pm on that day, (ii) no medicine was taken and no doctor was consulted by Yaad Ram for his stomach-ache, (iii) he did not make any such claim when he was examined for the first time vide statement Ex.PW-17/G and (iv) when the appellants came to their house at about 7.30/7.45 pm on 5th November, 1993 to enquire about Pushpa he did not confront them with the accusation that he himself had seen Pushpa in their house, it would be highly unsafe to rely upon the testimony of this witness.

13. We, therefore, are of considered view that the prosecution has failed to prove that the deceased was last seen with the appellants.

Circumstance No.(iv)

14. As regards the alleged recovery of cotton rope from the house of the appellant Sanjiv, we find that the recovery has not been believed by the trial court. The finding of the trial court in this regard was not assailed before us during the course of hearing. PW-10, Fateh Singh, who is the sole public witness of alleged recovery, has stated that on 11th November, 1993, he was present at the bus stand Mangol Puri when some police officials accompanied by accused Sanjiv @ Bobby, requested him to become a witness to the statement which Sanjiv wanted to make. The statement of Sanjiv was recorded in his presence. Thereafter, Sanjiv led the police to his house and got recovered two pieces of ropes. One brick was also got recovered by him from the same room. One rickshaw parked outside his house was also recovered by the police. During her cross-examination, PW-9 Rajbala, has admitted that Fateh Singh had attended the marriage of his daughter. She also identified him in the photograph Ex.PW- 9/DB, blessing accused Mukesh and stated that this photograph was taken about ten days before the marriage of her daughter. She also admitted that Fateh Singh had attended this function on their behalf. Despite being closely associated with the family, Shri Fateh Singh, when he was examined in the court, pretended as if he was a stranger to the

family. Even otherwise, the way he claims to have been approached by the police to become a witness does not inspire confidence. It is difficult to accept that the police officer would approach an unknown person waiting at a bus stand and ask him to become a witness to the process of recording of the statement of an accused and recovering the case property at his instance, and that person instead of going to his house outside Delhi would readily agree to become a witness. In any case, nothing really turns on the alleged recovery even if it is believed. As per the report of the CFSL, the rope alleged to have been recovered from the house of appellant Sanjiv was similar to the rope with which the deceased was strangulated. It is not the opinion of the expert that the rope used for strangulating the deceased was part of the rope alleged to have been recovered from the house of the appellant Sanjiv. As regards the alleged recovery of a brick and a rickshaw, there is no evidence to connect them with the murder of the deceased Pushpa.

#### Motive

15. As regards motive behind the murder, the case of the prosecution is that deceased Pushpa being hard of hearing and her surgery having remained unsuccessful, the appellants wanted to marry her husband Mukesh to some other girl after killing her and that is why they killed her so as to remove the obstacle in the second marriage of Mukesh. Ram Kishan, father of the deceased, has admitted in his cross-examination that marriage of Pushpa with Mukesh was a love-marriage and not only the two families were neighbours, they were also known to each other for six months prior to the marriage and were on visiting terms. If that be so, it cannot be accepted that Mukesh or his family members were not aware of the handicap from which the deceased was suffering. If despite knowing of her handicap Mukesh chose to marry deceased Pushpa, it is not likely that he would go for second marriage and that too after killing her in conspiracy with his other family members. Primarily, it was the accused Mukesh who could be aggrieved on account of handicap from which his wife was suffering. The charge against him has not been believed by the trial court and he has been acquitted. No appeal has been preferred by the State against his acquittal. If Mukesh was not involved in the murder of his wife, it is difficult to accept that his family members would take it upon themselves to kill her despite the fact that none of them could be aggrieved on account of the deceased being a little hard of hearing. Therefore,

the handicap of the deceased could not have motivated the appellants to commit her murder.

16. According to PW-2 Ram Kishan, Laxmi Devi, mother-in-law of the deceased had asked her to establish physical relations with the appellant Sanjiv and he along with his wife had gone to the house of the appellants and told them about the complaint made by his daughter. He further stated that the accused persons claimed that the accusation made against Laxmi Devi were false. However, no such allegation was made either by Ram Kishan or by the mother or brother of the deceased in their statement under Section 161 Cr.P.C. Hence, the allegations made by him are nothing but an afterthought and cannot be believed. He has also stated that about 1 and 1-1/2 months prior to this occurrence, he noticed blood coming out of the mouth of his daughter, who told him that she was beaten by her husband Mukesh and her mother- in-law Laxmi Devi. He went to their house and asked Laxmi Devi not to harass his daughter. Again, there is no such allegation in the statement made by the witness under Section 161 of Cr.P.C. In any case, there was no such allegation against the appellants before this Court and Mukesh has already been acquitted by the trial court whereas his mother Laxmi Devi has not been prosecuted. Therefore, nothing turns on this allegation made by Shri Ram Kishan.

17. We find that two sets of statements of witnesses Ram Kishan, Rajbala and Yaad Ram were produced during trial of this case. Ex. PW-3/DB is the statement of Yaad Ram purporting to have been recorded on 08th November, 1993, whereas Ex. PW-3/DA is the copy of his statement purporting to have been recorded on 05th November, 1993. In the statement Ex. PW-3/DA, Yaad Ram claimed that when he went inside the house of Sanjiv, he found Pushpa cooking khichri and he also had a conversation with her. However, there is no such averment in the statement Ex. PW-3/DB. The IO ACP Ram Gopal Sharma admitted in his cross-examination that the statement Ex. PW-3/DB, purporting to have been recorded on 08th November, 1993, bears his signatures. He also did not disown the statement of Yaad Ram, purporting to have been recorded on 05th November, 1993 and stated that he had recorded the statement of Ram Kishan and Yaad Ram under Section 161 Cr.P.C. in the Police Station in the same night at about 11.30 pm.

One statement of Ram Kishan, purporting to have been recorded on 05th November, 1993 is mark 'Y' whereas his other statement is mark 'X'. In the statement mark 'Y' Ram Kishan alleged that his son Yaad Ram had seen Devar, Nandoi and brother of Nandoi of his daughter Pushpa at the house of the accused Sanjiv and that Pushpa had accompanied her brother-in-law Sanjiv to his house to make khichri for him and to sweep his house. However, the statement mark 'X' does not contain any allegations against the accused persons, as admitted by the IO PW-19 ACP Ram Gopal Sharma. Ex.PW-9/DA is the statement of PW-9 Smt. Rajbala, purporting to have been recorded on 08th November, 1993. During her cross-examination, Rajbala has admitted her signatures on this document. Mark 'A' is the copy of another statement of Rajbala, purporting to have been recorded on that very date, i.e., 08th November, 1993. In the statement, mark 'A' Smt.Rajbala claimed that her daughter Pushpa had accompanied the accused Sanjiv on 05th November, 1993 for making khichri for him and sweeping his room. She also claimed that her son had told her that at about 03.30 pm, he saw Pushpa, making khichri in the house of the accused Sanjiv. At that time, the accused Chander Prakash and Braham Prakash were talking to Sanjiv outside his house. The statement Ex.PW-9/DA, however, is not identical to the statement mark 'A'. In the statement Ex. PW-9/DA, it is not recorded that the appellant Sanjiv had taken the daughter of the witness with him on 05th November, 1993. The Investigating Officer has admitted that the statements Ex.PW-3/DB, PW-9/DA and mark 'X' have been recorded by one and the same person.

18. There is absolutely no explanation from the prosecution for two sets of statements of these three material witnesses having been recorded in this case. One possibility is that the Investigating Agency was trying to help either the accused persons or the complainants by fabricating one set of statements. The other possibility is that the witnesses themselves made conflicting statements to the investigating agency. The benefit must necessarily go to the accused when the material available with the Court does not show that it were the statements favourable to the accused persons which were fabricated by the Investigating Agency. Had the Court found that the Investigating Agency had fabricated the statements favourable to the accused persons with a view to help them, it could have been possible for the Court to discard those statements from consideration.

But, when the Court is not in a position to draw such a conclusion, the benefit of contradictory statements will have to be given to the accused persons.

19. For the reasons given in the preceding paragraphs, we are of the view that the charges against the appellants do not stand established beyond reasonable doubt. The appellants are given benefit of doubt and are hereby acquitted. The appeal stands disposed of.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**