

Satish Kumar

v.

State of Punjab

(Supreme Court Of India)

HON'BLE MR. JUSTICE K. JAYACHANDRA REDDY HON'BLE DR. JUSTICE
A.S. ANAND

Criminal Appeal No. 570 Of 1981 | 12-10-1993

K. Jayachandra Reddy, J.

1. The sole appellant Satish Kumar has been found guilty by the trial court for the offence of committing the murder of one Kamlesh Kumari and convicted under Section 302 IPC and sentenced to imprisonment for life. The appeal preferred by him was dismissed by the High Court. Hence the present appeal.

2. The case of the prosecution is as follows :

The deceased Smt. Kamlesh Kumari, a married woman had litigation with her husband Vijay Kumar and she was living away from him. Vijay Kumar wanted divorce but Kamlesh Kumari refused. In that litigation she was being helped by one Rajinder Kumar, the brother of the accused who was annoyed at the way his brother Rajinder Kumar was spending lavishly for the cause of Kamlesh Kumari. He had also previously quarrelled with Kamlesh Kumari and abused her. It was also suspected that Rajinder Kumar was having illicit connections with her. Kamlesh Kumari was living in a one-room tenement alongwith her both minor sons. P.W. 4 Vikas was one of them and he was aged about five years. P.W. 2, Puro, the mother of Kamlesh Kumari was living in a different house in the same City. On 17.1.79 at about 8.30 or 9 pm the deceased Kamlesh Kumari was present in the room and she was going to light the stove for the purpose of cooking and P.W.2, her mother on that day was with her. P.W. 4, Vikas was doing some home work. While so, the accused entered the room and declared that he would kill the deceased and whipped out a knife and gave three successive blows with the knife on the chest and flank of the deceased. Kamlesh Kumari and P.Ws 2 and 4 raised a hue and cry. The accused ran away. P.W.2 put her in a rickshaw and took her to the hospital but the doctor pronounced her dead. The information was sent to the police and the A.S.I. came to the hospital and recorded the report of P.W. 2, which is the F.I.R. in the case. The Doctor, who conducted the post-

mortem, found five incised wounds, some of them on the left side of the chest piercing the left lung and spleen. The Doctor opined that the injuries were sufficient in the ordinary course of nature to cause death. The accused pleaded not guilty.

3. The prosecution examined 8 witnesses. P.Ws 2 and 4 figured as eye- witnesses. P.W.3, Sham Lal, the brother of the deceased, who came to the scene of occurrence almost immediately, saw the accused leaving the house after causing the injuries. The learned trial Judge placed reliance on the evidence of P.W.4 but was not prepared to place reliance on the evidence of P.W.2, the mother of the deceased, on the ground that P.W.4's evidence created a doubt about the presence of P.W.2 at the time of occurrence. The trial court relying on the evidence of P.Ws 4 and 3 convicted the accused. In the appeal, the High Court having considered the evidence of P.Ws 2 and 4 disagreed with the view of the trial court in respect of the evidence of P.W.2 and relying on her evidence, the High Court confirmed the conviction. The High Court, however, was not prepared to place reliance on the evidence of P.W. 4.

4. Learned counsel appearing for the appellant submitted that in the view taken by the trial court, P.W.2's evidence cannot be relied upon and if the view taken by the High Court is to be accepted as correct, then the evidence of P.W.4, the son, cannot be relied upon and the net result is that the evidence of both P.Ws 2 and 4 should not be accepted and since there is no other evidence, the conviction can not be sustained.

5. That the deceased Kamlesh Kumari was stabbed to death in her house, is not in dispute. According to P.W.4, he was doing his home-work in the house at about 8.30 or 9pm. The accused entered the house and stabbed his mother. His evidence has been recorded in the form of questions and answers. The learned trial Judge having regard to the age of P.W.4, put some formal questions and recorded his observation that the child was quite intelligent from the answers given. Having been thus satisfied, the trial Judge proceeded to examine by way of putting questions and recording his answers. P.W.4 told the Court that his Mummy and Daddy quarrelled and that they were living with their mother, the deceased and not the father. Regarding the manner how his mother was killed, the witness stated that she was stabbed by Satish Kumar, accused with a knife and the witness identified him by touching and thus pointing at him in the court. The witness also answered that at that time he was doing his home work. Question No. 18 was that besides him, his younger brother and mother who else was there. The witness stated that nobody was there. Then again in Question No. 27 the witness was asked when did his maternal grand-mother come, for which he replied that first his uncle Shama, P.W.3 came and then grandmother, P.W.2 came. In Question No. 28 he was asked where his grand-mother was when the accused gave knife blows to his mother. P.W.4 answered saying that his grandmother was at her

other house. Mainly relying on these answers, the trial court concluded that the presence of P.W.2 at the scene of the occurrence was doubtful.

6. P.W.2 deposed that on the day of occurrence, she went to the house of the deceased and she was staying there and both the sons of the deceased, namely P.W.4 and the other younger son were also there. She further deposed that at about 8.30 or 9pm the accused came and shouted at the deceased and stabbed her with a knife. Some time afterwards her son P.W.3 also came there. She wrapped the injured deceased in a quilt and then she and P.W.3 took her to the hospital in a rickshaw where she was declared to be dead. Thereafter when the police came to the hospital, she gave the report. She was cross-examined with reference to the F.I.R. and her statement under Section 161 CrPC. One of the omissions pointed out was that she has not stated the number of blows given by the accused. She denied the suggestion that the children of the deceased were living with her and stated that they were actually living with the deceased. In the further cross-examination, P.W.2 stated that she was not aware of the fact that P.W.4 remained inside the room or he went outside the room.

7. We have gone through her evidence in chief as well as examination. We do not find anything significant which affects her veracity. She was the person who took the deceased to the hospital. At that time she would not have thought of implicating the accused falsely because she would have been more interested in getting her injured daughter treated. When the police came to the hospital, she immediately gave the report. Learned counsel no doubt, submitted that the report reached the Magistrate at 6 a.m. and therefore there was delay. It must be remembered that by the time P.W.2 gave the report at the hospital, it must have been round about midnight or a little earlier and copies of the F.I.R. were to be prepared and that at the earliest moment namely next morning by 6 a.m. or so, the F.I.R. reached the Magistrate. Therefore there is no delay at all. As a matter of fact the trial court also observed that taken by itself the testimony of P.W.2 had all the qualities of trustworthiness and reliability and that there was hardly any discrepancy whatsoever and that her evidence also sounds convincing. The trial court further observed that the presence of P.W.2 in the house of the deceased was also probable because the deceased was living alone. The trial court further observed thus :

“I would have considered it as quite natural but for the statement of Vikas, on which I feel inclined to place more reliance.”

It may be observed that the trial court was inclined to place reliance on the evidence of P.W.2 particularly on the ground that her presence in the house could not be doubted. But having made the above observations regarding the creditworthiness and reliability of P.W.2, the trial court excluded her evidence in view of the evidence of P.W.4.

8. We have carefully perused the evidence of P.W. 4. It is true that in the answer to Question No. 18, he stated that besides himself, his younger brother and mother, nobody was there and as already stated in answers to Questions No. 27 and 28 he stated that his grand mother came after Shama came and that at the time when the accused gave knife blows to the deceased, his grandmother was at her other house. From these answers alone, we find it rather difficult to exclude the presence of P.W.2 at the scene of occurrence at the relevant time. As a matter of fact, P.Ws 2 and 3 took the injured in the rickshaw to the hospital and the evidence of P.W.2 is to the effect that she was inside the room. The answers given by the child witness P.W.4 do not in any manner indicate whether he had seen the grandmother who was in the room. There is no dispute that P.W.2 was living in her own house and P.W.4 would not have noticed when she came. When he says that P.Ws 2 and 3 came, he was probably referring to the fact that P.Ws 2 and 3 came and took the injured to the hospital. As a matter of fact, P.W.4 is silent as to how the injured was taken from the scene of occurrence. P.W.4 also stated that he also went out and raised a hue and cry. These cryptic answers given by P.W.4 would not be sufficient to rule out the presence of P.W.2 whose evidence otherwise does not suffer from any blemish. We think it is not a proper approach in a case like this to eliminate the evidence of both the witnesses as contended by the learned counsel.

9. We find that the presence of both P.Ws. 2 and 4 in the house is quite natural and acceptable. P.W.2 took the injured immediately to the hospital. Unless she could have been present there, she could not have taken her and then she also gave a report which contains all the material particulars immediately.

10. Learned counsel, however, pointed out that the child witness, P.W.4 might have gone to sleep and, according to the learned counsel, there is every possibility of the occurrence having taken place late in the midnight. In support of this submission, the learned counsel relied on the medical evidence which shows that there was semi-digested food in the stomach of the deceased and since that was Karva Chauth day both P.W.2 and the deceased were said to be observing fast till the moon was sighted and therefore they must have taken the food very late and for that reason partly digested food was found in the stomach, which would go to show that the occurrence might have taken place late in the night. These submissions are not based on any established circumstances. First, it is doubtful whether the deceased was observing

fast on that day which is meant for the welfare of the husband when she was fighting against her husband in the divorce proceedings. Further it cannot definitely be said that she would not have eaten something light atleast and there is no evidence as to when the moon was sighted. The learned counsel also submitted that the medical evidence does not corroborate because the doctor opined in the cross-examination that there was a possibility of two weapons being used having regard to the nature of the injuries. This is only an opinion evidence. But in the chief-examination, the doctor has already deposed that all the injuries could have been caused by one weapon.

11. Learned counsel, however, submitted that there was every possibility of tutoring P.W.4, the child witness. Whether there was any such tutoring or not has to be considered from the point of view of the nature of evidence given by the child witness and the surrounding circumstances. The evidence of P.W.4 has been recorded in the form of questions and answers. The trial Judge who had the advantage of watching the demeanour of the witness has observed that he found the child witness to be quite intelligent and he has answered all the questions. We have also gone through the questions and answers and we are not able to find any indicating of such tutoring. His presence in the house at the time of occurrence cannot be doubted at all and he has stated as to what he was doing at the time of occurrence namely that he was doing the home-work. Learned counsel, however, relied on answers given to Question Nos. 4 to 6. We have seen the answers given by this witness to these questions. What all that can be inferred from those answers is that the police officer met and told him that he had to give the evidence regarding the murder of his mother. That by itself does not lead to the inference that he was giving a tutored version. There is no material to show that the police kept the witness in their custody and tutored him. However, having gone through the entire questions and answers, we are satisfied that there was no such tutoring. In this context another submission of the learned counsel is that there is no corroboration to the evidence of this child witness, P.W.4. This submission is made on the basis that P.W.2's evidence should be excluded and since the only remaining witness would be P.W.4, corroboration is necessary. Even assuming for argument sake that P.W.2's evidence is to be excluded, still there is evidence of P.W.3 which corroborates the evidence of P.W.4. In any event, we need not go that far since we are placing reliance on the evidence of P.W.2 also for the reasons stated above. Therefore the evidence of P.Ws. 2 and 4 coupled with the evidence of P.W.3 fully establishes the guilt of the accused.

12. Accordingly the appeal is dismissed.