

R-5&6

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision : 20th May, 2009*

+ **CRL.A.525/2001**

SATENDER Appellant
Through: Mr.M.L.Yadav, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, APP.

CRL.A.687/2001

PUSHPA Appellant
Through: Mr.M.L.Yadav, Advocate.

versus

STATE Respondent
Through: Ms.Richa Kapoor, APP.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Vide impugned judgment and order dated 21.3.2001, the appellants have been convicted under Section 302/34 IPC; for having murdered Vijay @Chotu, aged between 3 – 4 years.

2. The conviction of the appellants has been based with reference to the testimony of Nathu Ram PW-1, his wife Chandrawati PW-2, Ramesh PW-7, Dr.N.K.Aggarwal, PW-11, Narayan Singh PW-12 and Nirmal Sen PW-13.

3. The machinery of criminal law went into operation when DD No.7A dated 18.6.1998 was recorded at PS Bhajanpura at around 11:50 AM to the effect that police control room had relayed the telephonic information received at the police control room that foul smell was emanating from a room of House No.E-37, Gali No.9, Sudamapuri Extension Village.

4. SI Amar Singh PW-18 accompanied by Const.Ashok Kumar left for the place along with a copy of DD entry and proceeded to the room from where the foul smell was emanating. The room was locked. After breaking the lock they recovered the dead body of a male child aged 3 – 4 years which was wrapped in a cloth mattress. The body was highly decomposed. SI Amar Singh made an endorsement Ex.PW-18/A on the copy of the DD entry and sent the same for FIR to be registered.

5. The FIR Ex.PW-10/A was registered at the police station.

6. The dead body was seized and sent to the mortuary for post-mortem. On 23.6.1998, Dr.N.K.Aggarwal PW-11

conducted the post-mortem of the unknown male child aged 3-4 years and noted that the body was highly decomposed. Such was the stage of decomposition of the body that no opinion can be given as to how the unfortunate child died. Report Ex.PW-11/A was penned by Dr.N.K.Aggarwal.

7. The only thing of relevance pertaining to the report is the opinion that the time of death appeared to be a month prior to the date of the autopsy.

8. Nathu Ram PW-1 is the owner of the house in question wherefrom the dead body of a male child was seized by the police on 18.6.1998. He deposed that on 24.4.1998 he had rented a room in his building to a family consisting of a husband, wife and a child and that he went to the room of the tenant on 23.5.1998 to receive the rent. He was told by the tenant that they would be vacating the room in 3 – 4 days' time and the rent up to date should be adjusted against the advance money. He identified the appellants as the couple who had taken on rent the room in his building on 24.4.1998. He went on to depose that the last time he saw the couple was when he had gone to the tenanted room in the night of 23.5.1998 and thereafter did not see them. That on 24.5.1998 he saw the tenanted room locked from outside. He further deposed that his wife was ill and on 1.6.1998 both i.e. he and his wife left for Haridwar and returned on 5.6.1998. He noted

some foul smell inside the house. He checked his house, found nothing offensive. As time passed by the bad smell got increased and his senses indicated him that the smell is emanating from the tenanted room and that is why he informed the police control room of the said fact. That the local police came and broke the lock of the room. From a taand within the room, the skeleton of a child, wrapped in quilt, which was completely decomposed, was recovered. That the statement Ex.PW-1/A bearing his signatures at point 'A' was recorded by the police and that after a few days the police came to his house and showed him a photograph of appellant Pushpa in which photograph an adult male and a child were also shown. That the child in the photograph was the same child who was residing with the appellants and in respect of whom he was given to understand that he was the child of the appellants.

9. We note that the witness i.e. PW-1 did not fully support the case of the prosecution, as was thought of by the learned APP. The witness was cross-examined and on being cross-examined denied that he ever told the police that he saw the appellants locking the rented room on 4.6.1998.

10. Chandrawati PW-2, the wife of PW-1, was examined on 14.9.1999. She deposed that a year back, her husband had let out a room in their house to a couple who stayed in the

room for a month with a child. That after a month the couple left for some place and that after 15 – 20 days thereafter they felt bad smell emanating from the room. The police was summoned and from a taand in the room a skeleton, wrapped in a clot or blanket was recovered. Chandrawati was also declared hostile and cross-examined by the learned APP. In her cross-examination she denied that she ever told the police that she had seen the accused on 3.6.1998 or on 23.6.1998.

11. Ramesh PW-7 deposed that appellant Pushpa @Suman was his wife and they were married about 14 years back. Two girls and a boy were born to them. 3 – 4 years back his wife left with the three children for her parental house and did not returned to him thereafter.

12. Narayan Singh PW-12 deposed that the appellants had stayed at his building as tenants for a month in the year 1998.

13. Nirmal Sen PW-13 deposed that in the year 1998 he was working as a Manager with Gagandeep Lodge near Ratan Talkies at Haridwar. On 17.6.1998, the appellants (duly identified in the Court by the witness) came and resided in the lodge for 3 days from 17th to 19th June 1998 and that an entr to this effect was made in the relevant register maintained at the lodge. That Ex.PW-13/A i.e. the extract of the register was evidencing the entry at point 'A'.

14. When the incriminating circumstances were put to the appellant Satender Chauhan he denied that he ever stayed as a tenant much less with the co-accused and the child at the house of Nathu Ram with effect from 24.4.1998. He denied having left the tenanted premises on 23.5.1998. But, admitted that he had stayed as a tenant under Narayan Singh for a month in the year 1998. However, he stated that he did so with his wife Kiran.

15. The learned Trial Judge has held that the evidence aforesaid establishes that Pushpa @Suman had left her matrimonial house along with her two daughters and a son, a fact established by the testimony of PW-7. That the two had resided as a tenant firstly under PW-12 and thereafter under PW-1 and when they resided as husband and wife at the tenanted premises under PW-1 they had with them a young male child and that both of them scooted off from the tenanted premises on 24.5.1998 after locking the same from outside. None accessed the room till it was broken into by the police on 18.6.1998 and the dead body of the child was recovered. Said facts established by the testimony of PW-1 and PW-2.

16. To put it in a nutshell, the learned Trial Judge has sustained the conviction on circumstantial evidence, being the appellants residing with the child in the room where the dead

body of the child was recovered and that after 23.5.1998 the room was not accessed by any outsider and that the child had died about a month prior to the date of the post-mortem which was conducted on 23.6.1998.

17. Learned counsel for the appellants urges that the cross-examination by the learned APP of PW-1 and PW-2 shows that the case of the prosecution was that the appellants had left the tenanted premises on 3rd or 4th June 1998. Counsel urges that the post-mortem report conclusively shows that the child had died a month prior. Meaning thereby, that there is a possibility of the appellants not being the offenders.

18. Faulty investigation or the fault of a prosecutor cannot be a ground to throw out the case of the prosecution, if otherwise, the same is established.

19. The post-mortem report itself is good evidence to infer that the child had died about a month prior to the date when the post-mortem was conducted. The post-mortem was conducted on 23.6.1998. A month prior would approximate 23.5.1998. This is the date spoken of by Nathu Ram PW-1 in his examination-in-chief as the date on which he last interacted with the appellants.

20. The testimony of Nathu Ram and his wife shows that the appellants had checked into the room tenanted to them by Nathu Ram along with a male child. The testimony of

Nathu Ram establishes that the male child was the one who was shown to him in the photograph.

21. Unfortunately, the photograph which was shown to the witness has not been exhibited; yet another lapse by the prosecution. But from the record we find that there is only one photograph which shows the accused with a small male child. The unexhibited photograph has been tagged between page No.179 and 181 of the Trial Court Record.

22. The testimony of PW-13 corroborates the fact that the appellants have been masquerading as husband and wife and from 17th to 19th June 1998 had resided at Gagandeep Lounge near Ratan Talkies, Haridwar. Though appellant Satender has only admitted the fact that he stayed as a tenant for a period of one month in the year 1998 under Narayan Singh and has claimed that the lady with whom he stayed as a tenant was his wife Kiran, we note that Narayan Singh PW-12, who deposed that Satender and Pushpa @Suman, present in Court, had remained his tenant for a month in the year 1998, was not subjected to any cross-examination. Thus, the testimony of Narayan Singh that the appellants had stayed under him as tenants has gone unchallenged.

23. It is obvious that Satender has partly accepted the truth and the part of the truth denied by him is a patent lie spoken by him.

24. The cumulative effect of the evidence of afore-noted witnesses would be that Pushpa @Suman had left her matrimonial house along with her two daughters and her son. She and appellant Satender started living together and started holding themselves out to be husband and wife. When they took on rent the room from where the dead body of the male child was recovered under the tenancy of Nathu Ram, the young child was with them. They resided in the room till the morning of 24.5.1998 and left. When they left, the room was locked from outside. None disturbed the lock. None entered the room. Thus, the appellants must explain the circumstances under which the young child died. The conduct of the appellants in leaving the dead body inside the room and running away is also indicative of their guilt. Their further conduct of not surrendering the tenancy and just not returning to the tenanted premises is another nail in their coffin.

25. We concur with the conclusion arrived at by the learned Trial Judge.

26. We find no merit in the appeals. The same are dismissed.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

MAY 20, 2009
Dharmender