Ashok Kumar Pandey vs State Of Delhi on 15 March, 2002

Equivalent citations: AIR 2002 SUPREME COURT 1468, 2002 (4) SCC 76, 2002 AIR SCW 1332, 2002 (4) SRJ 313, 2002 CRILR(SC&MP) 338, (2002) 3 JT 103 (SC), 2002 CRILR(SC MAH GUJ) 338, 2002 (2) SCALE 647, 2002 ALL MR(CRI) 2580, 2002 SCC(CRI) 728, 2002 (2) SLT 542, (2002) 2 CRIMES 9, (2002) 2 EASTCRIC 88, (2002) 2 PAT LJR 245, (2002) 2 RAJ CRI C 443, (2002) 2 RECCRIR 233, (2002) 2 CURCRIR 1, (2002) 2 SUPREME 430, (2002) 2 ALLCRIR 1043, (2002) 2 SCALE 647, (2002) 44 ALLCRIC 946, (2002) 2 ALLCRILR 435, (2002) 96 DLT 707, (2002) 1 UC 545

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Bench: M.B. Shah, B.N. Agrawal

CASE NO.:
Appeal (crl.) 874 of 2001

PETITIONER:
ASHOK KUMAR PANDEY

Vs.

RESPONDENT:
STATE OF DELHI

DATE OF JUDGMENT: 15/03/2002

BENCH:
M.B. Shah & B.N. Agrawal

JUDGMENT:

B.N.AGRAWAL, J.

Condemned prisoner has impugned the judgment rendered by the High Court of Delhi whereby his conviction under Section 302 of the Penal Code, recorded by the trial court, has been upheld and sentence of death confirmed, the reference having been accepted.

Prosecution case, as unfolded by one Daya Kant Pandey (PW.2) in his fard beyan, was that the

appellant used to consume liquor habitually and was in the habit of getting angry, became wild, incoherent and at times assaulted his wife deceased Neelam. He was employed in American Embassy in Chanakaya Puri and was residing with his wife and one and a half years old daughter on the first floor of house No. B-49, Dabri Extension, Delhi, which had been taken on rent by him from one Hira Nand (PW 1). On 11th September, 1996, which was the fateful day, at 4 P.M., PW.2 had gone to the house of the appellant to know about the welfare of his daughter. At that time, Sita Ram Pandey, father of the appellant (DW.1), was also present. The appellant returned home at about 7.00 p.m. At dinner the appellant consumed liquor. After dinner PW.2 and DW1 went to the terrace for sleeping. After some time at about 9.30 p.m., PW.2 heard some noise from downstair. He thought that the noise was coming from the portion occupied by the landlord, i.e., the ground floor. After some time, he heard cries of his daughter whereupon he immediately rushed down and found that the accused was inflicting stab wounds on his daughter, Neelam, with a knife while she was bleeding profusely. He also saw his granddaughter Annu lying injured on the ground bleeding. The appellant came towards PW.2 in a state of anger with knife in his hand and PW.2 retraced his steps. At this stage, appellant ran downstairs. PW.2 then raised alarm and the landlord and others gathered there. PW.2 and DW.1 took the injured Neelam and Annu to Din Dayal Upadhaya Hospital, (hereinafter referred to as 'the hospital'), but they were declared dead when the doctor examined them in the hospital. Sub Inspector Ganga Ram (PW.7) and Constable Jai Ram (PW 6) were on patrol duty and they met Head Constable Suresh Kumar and Constable Hari Om and constable Ashloof Khan (PW 10). At that time it was noticed by them that the appellant was coming from Dabri side holding a knife and on seeing the police, he tried to flee but the police officials apprehended him and the knife was snatched away from him. Later on, it revealed that the accused had used that knife to cause death of his wife and child. The Sub Inspector, PW.7, went to the house and found a crowd there where on query he was told that the injured Neelam and her child Annu had been taken to the hospital by PW.2 and DW.1. PW.7 gave a telephonic message with regard to the crime to the police station. After leaving head constable Suresh Kumar and other police officials for taking care of the scene of crime and of the accused, he went to hospital. There he found that the doctor had declared Neelam and Annu to have been brought dead. Stating the aforesaid facts, fard beyan of Daya Kant Pandey, PW.2, was recorded in the same night at 0045 hours and the same was immediately despatched to the police station through constable Jai Ram, PW.6, on the basis of which case under Section 302 of the Penal Code was registered at 0120 hours. Police after registering the case, took up investigation and on completion thereof submitted charge sheet whereupon cognizance was taken and the appellant was committed to the court of Session to face trial.

Defence of the appellant was that he was innocent, had no complicity with the crime and had been falsely implicated in the case on hand by the informant who did not like him. According to him, his wife and daughter were sleeping in the room whereas he was sleeping with his father on the terrace and during night upon hearing alarm, they rushed to the room, where his wife told him in an incoherent voice that they, presumably referring to some assailants, were running away. Thereupon, the appellant asked his father to take care of his wife and daughter and he went to downstairs and raised alarm by which time the culprits took to their heels. When returned after 15-20 minutes, he learnt that his wife and daughter had been taken to the hospital by his father and he gave information to the employer of his father-in-law on telephone asking him to convey the message to the latter who was residing in Ghaziabad. Thereafter, the appellant rushed to the police station to

lodge the first information report where he was arrested by the police and whereafter the informant arrived the hospital after two to three hours from Ghaziabad blaming the appellant for the murder.

During trial, the prosecution examined ten witnesses, out of whom, Hira Nand, PW.1, is the landlord, Daya Kant Pandey, PW.2, is the informant, father- in-law of the appellant. Dr. Rakesh Bhardwaj, PW.5, and Dr. Kamal Singh, PW.8, are the doctors out of whom PW.8 held postmortem examination on the dead bodies of the two victims. Vijay Kumar, PW.9, is a formal witness who has taken photographs of the place of occurrence and others are police witnesses. The accused, however, examined his father Sita Ram Pandey as DW.1. Upon conclusion of trial, the appellant was convicted, as stated above, and the same having been confirmed by the High Court, the present appeal by Special Leave.

Mr. Ashok Arora, learned counsel appearing on behalf of the appellant in support of the appeal submitted that the High Court was not justified in upholding conviction of the appellant as there was inordinate delay in lodging the first information report as well as its despatch to and receipt by the Court. Learned counsel further submitted that no steps were taken by the informant to inform the police and instead of informing the police, he rushed to the hospital. Learned counsel also submitted that no reliance should have been placed upon the solitary testimony of the informant, Daya Kant Pandey, PW.2, who was solitary eye witness and being father of the victim, was a highly interested witness. Lastly, learned counsel submitted that in any view of the matter, it was not a case where the extreme penalty of death was called for as the same did not fall within the category of rarest of rare cases. On the other hand, Mr. B.A.Mohanty, learned senior counsel appearing on behalf of the State, submitted that the first information report was lodged immediately, its copy was sent to the court with utmost expedition and the evidence of PW.2 was rightly relied upon as the same was quite consistent as well as corroborated by other evidence, including medical evidence and objective finding of the police, as such the High Court was quite justified in upholding the imposition of death penalty.

First, we proceed to consider medical evidence. Dr. Kamal Singh, PW.8, who was posted as Medical Officer at Din Dayal Upadhyay Hospital, conducted postmortem examination on 11th September, 1996 on the dead body of Neelam, wife of the appellant, at 2300 hours and on that of Annu, daughter of the appellant, at 2305 hours. The postmortem examination was conducted within one and half hours of the time of the alleged occurrence and doctor found injuries on the vital parts like heart, liver, lungs and abdominal cavity, which were caused by dagger and both the injured succumbed to their injuries inasmuch as death could not have been averted. When the dagger, which was recovered from the accused, was produced in court and shown to the doctor for ascertaining as to whether the injuries could be inflicted by the same to deceased persons, he specifically stated, after seeing the same, that the injuries sustained by both the deceased could be possible by the said weapon. Thus, the postmortem report supports the prosecution case that both the deceased received injuries by dagger on vital parts of their bodies and succumbed to the same.

Positive findings of the investigating officer also support the prosecution case. The investigating officer found one quarter bottle of Aristocrat liquor lying empty near the Almirah in the room in which the incident is said to have taken place. He seized blood stained earth from the place of

occurrence and a blood stained dhoti belonging to the appellant. The blood stained earth, dhoti and dagger seized from the appellant apart from the blood stained clothes which the deceased persons were wearing were sent to the chemical examiner who reported that the same contained human blood and its group was 'A' which was blood group of the two deceased persons. Thus, objective finding of the investigating officer and the report of the chemical examiner go to show complicity of the appellant with the crime.

It has been submitted on behalf of the appellant that there was inordinate delay in lodging the first information report, as the occurrence is said to have taken place at 2130 hours on 11th of September, 1996, the formal first information report was registered on 12th September, 1996 at 0120 hours, inasmuch as no steps were taken by the informant for lodging the first information report before the police arrived the hospital. In our view, at the time PW.2 and DW.1, on hulla, came to the room of the victim and after the appellant fled away with blood stained dagger in his hand, seeing condition of the injured, they immediately rushed them to the hospital hoping against hope that they may survive where the doctor declared them brought dead. It is natural conduct of a normal human being to rush with injured persons to the hospital more so when they are so near and dear ones like daughter and granddaughter instead of leaving them at the place of occurrence to die and go to the police station to give information about the occurrence. Therefore, no adverse inference can be drawn against the prosecution as the informant did not go to the police station to lodge the first information report rather rushed to the hospital with the deceased persons to save their lives. Further, it cannot be said that there was any delay at all in lodging the first information report much less inordinate one, as the incident is said to have taken place on 11th September, 1996 at 2130 hours, fard beyan was recorded in the hospital at 0045 hours in the same night and despatched to the police station through special messenger where formal first information report was drawn at 0120 hours in the fateful night itself.

Learned counsel further submitted that there was inordinate delay in despatch of the first information report to Court and its receipt there which makes the prosecution case highly suspicious and doubtful. It may be stated that the fard beyan of the informant was recorded in the midnight of 11th/12th September, 1996 at 0045 hours, despatched to the police station immediately on the basis whereof, first information report was drawn up at 0120 hours and the same was despatched to the court through special messenger which was received by the learned Magistrate in the morning at 0730 hours on 12th September, 1996. In our view, in the present case, there was no delay at all either in its despatch to or receipt by the Court. In our view, even in cases where there is some delay in despatch of the first information report to court and its receipt by it, that alone can in no case be taken to be a ground for throwing out the prosecution case if otherwise the same is proved by unimpeachable evidence. However, in cases where court otherwise doubts veracity of the prosecution case, this may be taken to be one of the grounds to discard the same.

Now, we consider ocular version of the occurrence as disclosed by solitary eye witness, Daya Kant Pandey, PW.2, who is nobody else than father of one of the victims and father-in-law of the appellant. In his evidence in Court, he has supported the case, disclosed in the first information report, that when he along with father of the appellant had gone to terrace of the house for sleeping, on hearing the cries of his daughter, went outside the room, found the same locked from inside,

opened it by giving a kick and found that the appellant was inflicting knife blows upon his daughter Neelam and Annu, his daughter's daughter, was lying in the room on the ground in a pool of blood. When this witness shouted in horror, the appellant came towards him with a knife and this witness moved aside and started crying loudly whereupon the accused took to his heels. In the meantime, Sita Ram Pandey, DW.1, father of the appellant, also came there from the terrace and landlord Hira Nand, PW.1, arrived first floor of the house. The witness stated that with the help of father of the appellant, DW.1 and the landlord, PW.1, the injured persons were brought to the ground floor and a three wheeler was hired in which this witness and DW.1 took the injured persons to the hospital where the doctor declared them brought dead. He further stated that the police went to the hospital and recorded his fard beyan there. Thereafter he went to the police station and from there to the place of occurrence. This witness has consistently supported the prosecution case. It has been pointed out on behalf of the appellant that when the witness had seen that the appellant was inflicting injury upon his daughter, he did not take any steps to rescue her which is not natural conduct of a human being, especially when he is father of the deceased and the same shows that this witness was never present at the place of occurrence, had never seen any occurrence and arrived the hospital after having received the information at Ghaziabad where he was residing. It appears that before the witness arrived the appellant had inflicted injuries on different parts of the body of his daughter who was lying on ground in a pool of blood and when he arrived on hearing the cries of his daughter, the appellant was found giving indiscriminate dagger blows to Neelam, daughter of this witness, on different parts of her body and when this witness protested, he ran towards him. In these circumstances, it cannot be said to be unnatural if he could not take any steps to save life of his daughter as he being unarmed, as an ordinary normal human being, could not have taken risk to his life at the hands of the appellant which was so imminent. It was pointed out that no reliance should have been placed upon the evidence of PW.2, the solitary interested eye witness, as he being father of the deceased lady and grandfather of the deceased child, chances of false implication of the appellant, who was not liked by this witness, could not be ruled out. It is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or both, if otherwise the same is found to be credible. Reference in this connection may be made to the decisions of this Court in the cases of Rameshwar vs. State of Rajasthan, AIR 1952 SC 54, Dalip Singh and ors. v. The State of Punjab, AIR 1953 SC 364, Vadivelu Thevar v. The State of Madras, AIR 1957 SC 614, Masalti v. The State of Uttar Pradesh, AIR 1965 SC 202, State of Punjab v. Jagir Singh, Baljit Singh and Karam Singh, AIR 1973 SC 2407, and Guli Chand and ors. v. State of Rajasthan, AIR 1974 SC 276,. The evidence of this witness is corroborated by the statement of the landlord who had been examined in this case as PW .1 and was residing in the ground floor of the house. By the time PW.1 arrived the room, upon hearing the hulla, he found that PW.2 was carrying his daughter and DW.1 was carrying his granddaughter, who were besmeared with blood, and brought them to the ground floor from where they took both of them to the hospital on a three wheeler. The statement of PW.1 is consistent and there is nothing to doubt his testimony. Thus, we find that the evidence of Daya Kant Pandey, PW.2, who is solitary eye witness, is consistent and his presence at the place of occurrence on the fateful night cannot be doubted inasmuch as his evidence is corroborated by the statement of PW.1, besides the medical evidence, the positive finding of investigating officer and finding of blood group belonging to the deceased persons upon the blood stained earth taken from the place of occurrence, the blood stained dhoti belonging to the appellant, blood stained clothes of the victims and the blood stained dagger from which injuries were inflicted.

Further, the circumstances that the victims were removed to the hospital immediately where they were declared brought dead, postmortem examination was conducted within one and half hours of the occurrence and first information report was recorded with utmost expedition also go to show that PW.2 was a quite reliable witness. This being the position, merely because PW.2 was an interested witness, it is not possible to reject his evidence. From these facts, it becomes clear that the prosecution has succeeded in proving its case beyond reasonable doubts and the High Court was quite justified in upholding conviction of the appellant.

Now, we come to the question as to whether it is a fit case in which extreme penalty of death was called for. Reference in this connection may be made to the Constitution Bench decision of this Court in the case of Bachan Singh v. State of Punjab, AIR 1980 SC 898, as well as, following the same, 3- Judge Bench decision of this Court in Machhi Singh & Ors. v. State of Punjab, 1983 (3) SCC 470, wherein various circumstances have been enumerated and it was laid down that if the case squarely falls within its ambit, only in that eventuality, death penalty can be awarded. It was observed that in rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise retaining death penalty, such a penalty can be inflicted. In the facts and circumstances of the present case, it is not possible to come to the conclusion that the present case would fall within the category of rarest of rare one. Therefore, we are clearly of the opinion that in the fitness of things, extreme penalty of death was not called for and the same is fit to be commuted to life imprisonment.

In the result, the appeal is allowed in part and while upholding conviction of the appellant, the sentence of death awarded against him is commuted to rigorous imprisonment for life.

.J. [M.B.SHAH] J. [B.N.AGRAWAL] March 15, 2002.