

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

% *Date of Decision: September 1, 2009*

+ **CRL.A. 412/2001**

PHOOL SINGH Appellant
Through: Ms.Padma Priya, Advocate

Versus

STATE Respondent
Through: Ms.Richa Kapoor, A.P.P.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

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

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 2.11.2000, the appellant has been convicted for having abducted deceased Ram Kumar as also having murdered him.
2. On 9.10.1995, information was received at PS Najafgarh that a dead body was lying at the cremation ground New Roshanpura, which information was recorded in the daily diary register vide DD No.3A. SI Ram Prakash accompanied by Const.Satpal left for the cremation ground. Inspector Randhir Singh also reached there and took into possession the dead

body of a young male person aged about 25 – 26 years. A photographer was summoned. The photographs of the deceased were taken. A shoe at a distance of about 7 steps from the dead body as also the pant having a label 'Unique Tailors, Hardah, Midnapur' of the deceased were taken into possession as recorded in the memos Ex.PW-11/A and Ex.PW-11/B respectively. Noticing strangulation marks on the neck and bruise marks on the body an opinion was formed that it appears to be a case of murder and hence FIR Ex.PW-5/A was got registered for the offence of murder. Inspector Randhir Singh PW-19 got prepared the site plan Ex.PW-19/B pertaining to the place where the dead body was recovered. Dog squad and crime team were summoned but no clues or leads surfaced through their intervention. The dead body was sent for post-mortem vide inquest papers Ex.PW-19/D. Request Ex.PW-8/B for post-mortem stated that the body should be preserved for 72 hours. The post-mortem was conducted on 16.10.1995, and as per post-mortem report Ex.PW-8/A, Dr.L.T.Ramani PW-8, opined that death was due to asphyxia resulting from strangulation.

3. The only clue which the police had was the label of 'Unique Tailors, Hardah, Midnapur'. The place happened to be in West Bengal. On 27.10.1995, SI Ram Prakash and HC

Lakhsman PW-13 along with Const.Rajesh left for West Bengal and took along with them the pant Ex.P-5 of the deceased as also the photograph of the deceased. They could get no clues and hence returned. Under circumstances, not very clear, but apparently in furtherance of the search to fix the identity of the dead body, on 11.10.1995 the police came into contact with Sita Ram PW-4 who, on seeing the photograph of the dead body and the pant of the deceased, immediately recognized the same to be that of the deceased Ram Kumar. He informed the investigating officer that on 8.10.1995, four persons; namely, appellant Phool Singh along with Narpat, Jabbar Singh and Bhagwandas had come to Teliwara, the place where he i.e. Sita Ram was staying along with the deceased Ram Kumar, and that all the four gave beating to Ram Kumar and forcibly took him away in a TSR saying that they were taking Ram Kumar to the police station. Since Ram Kumar did not come back, he i.e. Sita Ram went to PS Bara Hindu Rao to lodge a report but the police officials refused to note any report lodged by him. He came back and went to his village Budayun the next day and sent complaints to senior police officers under registered post.

4. We note that the motive for the crime alleged by the prosecution is that the deceased had developed illicit

relations with one Yashwanti wife of Shyam Sunder. Phool Singh i.e. the appellant is stated to be the brother of Yashwanti. It is apparent that the motive was to kill Ram Kumar who had defiled the family honour of the appellant Phool Singh.

5. The Regd.A.D. receipts, being four in number Ex.P-1 to Ex.P-4, handed over by Sita Ram to the investigating officer Randhir Singh are mentioned in the seizure memo Ex.PW-4/E. It bears the date 15.11.1995 and records as under:-

“Seizure Memo of Postal Receipts

In the presence of the witnesses herein below mentioned Sita Ram S/o Kesho Ram resident of village Hironi, District Budayun, U.P. has handed over postal receipts pertaining to the complaint sent by registered post to various authorities pertaining to the abduction of his brother Ram Kumar from Teliwara, Sadar Bazar, Delhi on 8.10.1995 as per which complaints Phool Singh, Narpat, Jabbar Singh and Bhagwandas had abducted his brother. The VP registered receipts bear Serial No.729 to 732 bearing the postal stamp Gannor Budayun dated 9.1.1995 in respect whereof Sita Ram says that the registries were got sent on 19.10.1995. The postal receipts have been produced by Sita Ram and have been seized vide said memo.

Produced by
Sd/-

Sd/-
Najafgarh
Sita Ram
15.11.1995”

Randhir Singh
Addl. SHO
PS

6. We may note at the outset that though recorded in the seizure memo Ex.PW-4/E that the seizure is being effected in the presence of the witnesses whose names have been recorded in the memo but no person's name has been recorded as a witness and none has signed as a witness in the seizure memo.

7. Sita Ram PW-4 deposed that Yashwanti was married to his cousin Shyam Sunder and the deceased Ram Kumar, his brother i.e. the brother of Sita Ram, had developed illicit relationship with Yashwanti and since July – August 1995 started residing with him. Village Panchayat tried to persuade Yashwanti to live with Shyam Sunder but she declined. Brothers of Yashwanti felt bad. His brother Ram Kumar and Yashwanti left the village. Shyam Sunder and his brother lodged report against his brother. Phool Singh and one Tejpal Singh are real brothers. Narpat, Jabbar Singh and Bhagwandas are cousin brothers of Yashwanti. That accused Phool Singh, Narpat, Bhagwandas were rickshaw pullers. Jabbar Singh was employed with a doctor to clean his clinic. Bhagwandas, Narpat, Phool Singh and Jabbar came to the place where he was living and started beating Ram Kumar. They took him in an auto rickshaw saying that they were taking him i.e. Ram Kumar to PS Bara Hindu Rao. When his brother did not return

after two hours he went to PS Bara Hindu Rao where the police personnel told that his brother Ram Kumar had not been brought to the police station. He tried to search for his brother but could not do so and next day went to his village Hironi. He narrated the incident to his family members. Complaints were made to higher authorities by registered post.

8. On being cross-examined, he admitted that the postal receipts Ex.P-1 to Ex.P-4 are all dated 9.1.1995.

9. This then is the solitary evidence against the appellant. We note that Bhagwandas, Jabbar Singh and Narpat have been declared as proclaimed offenders.

10. Holding that there was no reason to disbelieve Sita Ram PW-4, the learned Trial Judge has held that from his testimony it was apparent that the deceased was abducted by the appellant (and the three persons declared proclaimed offenders) on 8.10.1995 and the deceased was not seen thereafter. The next day his dead body was found. The motive for the crime held established by the learned Trial Judge is vindication of the family honour.

11. The learned Trial Judge has held that the fact that PW-4 had sent complaints to the police evidenced by the postal receipts Ex.P-1 to Ex.P-4 show the truthfulness of his version.

12. With reference to the date 9.1.1995 affixed on the four receipts, the learned Trial Judge has held that it appears to be a case of misprint in the stamp of the post office.

13. What was sent to the authorities under registered post pertaining to the postal receipts Ex.P-1 to Ex.P-4 has not seen the light of the day for the reason said four complaints have not been produced at the trial. The four postal receipts show that the docket pertaining to each receipt has been sent to the D.I.G. Delhi Police, the Home Minister, S.P. (Police) Delhi and SHO PS Bara Hindu Rao. The receipts bear the stamp of the post office Gannor, Budayun and the date 9.1.1995 is clearly embossed on the seal of the post office.

14. The seal of the post office is the metallic seal used at post office and we take judicial notice of the fact that each day the post office changes the date of the seal.

15. The issue has obviously been trivialized by the learned Trial Judge to the disadvantage of the appellant.

16. By no stretch of imagination and under no circumstances it can be held that 9.1.1995 appears to be a chance of misprint in the stamp by the post office.

17. In this connection we note that during cross-examination PW-4 clearly admitted that the receipts correctly bear the date 9.1.1995.

18. Under the circumstances, it is apparent that the communications sent to the police authorities and the Home Ministry were sent from Budayun on 9.1.1995.

19. As per PW-4, the complaints related to the deceased going missing. If this be so, it is apparent that the deceased went missing on 9.1.1995.

20. From the post-mortem report of the deceased it is apparent that the deceased had died a few days prior to the post-mortem which we note was conducted after 5 days of the dead body being found. Under no circumstances can said dead body relate to a person who died in the month of January 1995.

21. Last seen evidence becomes lethal and incriminating evidence, depending upon the circumstances of a case with a proximate nexus between the time of last seen and the time of death of the deceased as also the proximity of the place where the deceased and the accused were last seen alive and the place wherefrom the dead body was recovered, coupled with the circumstance of last seen.

22. We are satisfied that the evidence on record has been misinterpreted and misread to draw incorrect conclusions by the learned Trial Judge, entitling the appellant to the benefit of doubt and hence an acquittal. The postal receipts show that

complaints pertaining to the deceased being missing were sent on 9.1.1995. The deceased was alive till October 1995 for the post-mortem report shows that he died somewhere around 8.10.1995.

23. Qua motive, suffice would it be to state that inference of guilt on motive is based on presumptive logic and by its very nature, presumptive logic is always treated as weak logic.

24. The appeal is allowed.

25. Impugned judgment and order dated 2.11.2000 convicting the appellant is set aside.

26. The appellant is acquitted from the charge of having abducted the deceased and having murdered the deceased.

27. The bail bond and surety bond furnished by the appellant are discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

September 1, 2009
Dharmender