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IN THE HIGH COURT OF DELHI

Judgment reserved on : January 30, 2009

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Judgment delivered on : February 04, 2009

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CRL.A.48/2001

GIRDHARI SINGH Appellant
Through: Mr. Gurbaksh Singh, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, Advocate

CRL.A.79/2001

MAN SINGH Appellant
Through: Mr. Gurbaksh Singh, Advocate

versus

STATE Respondent
Through: Ms. Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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

: **PRADEEP NANDRAJOG, J.**

In the matter of:-

FIR No.58/1989

PS: Nand Nagri

u/S 302/34 IPC, 364/34 IPC

In the matter of:-

FIR No.436/1989

PS: Trilok Puri
u/S 302/34 IPC, 364/34 IPC

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1. Pursuant to information received at PS Nand Nagri on 26.2.1989 at 8:26 AM that a dead body was lying near a brick kiln at village Samboli, SI Tara Dutt PW-1, accompanied by Const. Naresh went to the spot and recovered the dead body of a man whose age he opined to be between 60 years to 65 years. The body was stained with blood. He prepared the rukka Ex.PW-1/A and sent the same to the police station through Const. Naresh for registration of a FIR.

2. From a pocket of the jacket worn by the deceased a small pocket diary and a pair of glasses inside a case having a label "*Kalu Ram Bhagat, R/o 28/181, Trilok Puri*" was recovered.

3. With the aid of said address ASI Tara Dutt contacted family members of Kalu Ram Bhagat, who identified that the dead body was of Kalu Ram Bhagat.

4. The body of Kalu Ram Bhagat was sent to the mortuary, where Dr. L.T.Ramani conducted the post-mortem and noted the following injuries:-

"A. An incised wound 2.5 cm x 1.0 cm x ? Placed transversely on the left cheek 6 cm away from left angle of mouth. Both the ends were acutely cut and the outer end was trailing into linear abrasion 2 cm long.

B. Incised wound 6 cm x 2 cm x ? bone deep on the left side of lower jaw. The bone beneath showed

fractured bony fragments.

C. The incised present on the neck; four on the front upper middle part and one on the right sub-mandipular area; all the wounds were placed transversely and their size varied 3 to 5 cm into skin to muscle deep.

D. Four lacerated wounds over scalp on the right occipital region from 2 to 5 cm long into scalp deep.

E. Superficial cut 2 cm long involving part skin thickness on the tragus of left ear.”

5. It was opined on the post-mortem report that the injuries were ante mortem and that injury No.1, 2, 3 and 5 were caused by a sharp edged weapon and that injury No.4 on the skull was caused by a blunt object. He opined that death was due to shock and haemorrhage consequent to the injuries.

6. We eschew reference to the collection of evidence pertaining to the photographs of the dead body as also the preparation of the site plan and seizure of earth control sample which had blood present as also the seizures of the clothes worn by the deceased for the reason no submissions have been made at the hearing of the two appeals pertaining to said evidence; save and except to note that the report Ex.PW-6/B of the forensic examination reports that the blood on the clothes of the deceased was human blood of “O” group. The report pertaining to the blood soil was that of a human but produced no reaction when tested for blood group. We may note that the relevance thereof is that a ‘darati’ which was recovered from the fields

pursuant to the disclosure statement Ex.PW-14/L made by appellant Girdhari, was also found to be stained with human blood which on reaction showed the same to be of "O" Group.

7. The next day i.e. on 27.2.1989, the police at PS Khekhra District Meerut U.P. received an information that on the banks of river Yamuna in village Subhanpur, a dead body of a person aged nearly 70 years was lying with marks of injury on the neck. The police at PS Khekhra seized the body and registered an FIR Ex.PW-31/G. The number of the FIR is not on record.

8. The body was photographed and the thumb impression of the body was taken. On the same day, at 5:00 PM the post-mortem was conducted by Dr. Y.P.Singhal, who in his report Ex.PW-31/A, recorded the following injury:-

An incised wound 7 cm x 2 cm x trachel deep on the anterior aspect of the neck horizontal 4 cm below sterna notch. Trachel 2nd ring is cut along with soft tissue."

9. Two paper slips, Ex.PW-31/L and Ex.PW-31/M containing two addresses and a phone number were recovered from the pockets of the clothes of the deceased. Surprisingly enough, the police at PS Khekhra made no attempt to contact any person at the two addresses recorded in the slips.

10. Relatives of one Bodhan, lodged a report with the police at PS Trilok Puri, entry whereof was made vide DD No.8-A

Ex.PW-25/A, to the effect that Bodhan was missing.

11. On 1.3.1989, the police from PS Khekhra contacted the relatives of the deceased (on basis of the address recorded in Ex.PW-31/L and Ex.PW-31/M) whose dead body was recovered from the river bank in village Subhanpur. Mehar Chand PW-4, and Ranjit PW-26, the son and the brother respectively, of Bodhan, from the photographs of the dead body which were taken by the police at PS Khekhra identified that the body was that of Bodhan.

12. With reference to the missing person's complaint Ex.PW-25/A, since the missing person was found to have been murdered, FIR No.436/1989 PS Trilok Puri was registered.

13. Since the FIR registered at PS Khekhra and the FIR which was registered at PS Trilok Puri related to the same offence, the FIR registered at PS Khekhra was transferred to PS Trilok Puri.

14. The common threads of FIR No.58/1989 PS Nand Nagri and FIR No.436/1989 PS Trilok Puri, were found by the police because Kalu Ram Bhagat and Bodhan were related and their family members, namely Niranjana Singh PW-2 Son of Kalu Ram Bhagat; Sushil Kumar PW-3 Grand Son of Kalu Ram Bhagat; Mehar Chand PW-4 Son of Bodhan; Ram Avtar PW-5 Son of Kalu Ram Bhagat, informed the police that appellant Man Singh and appellant Girdhari had come to the house of Kalu Ram Bhagat at

around 10:00 AM on 25.2.1989 and discussed with him regarding divine treatment (jhadi-phook). On their asking, Kalu Ram Bhagat accompanied by Bodhan, left with them in a maruti van which was being driven by a driver.

15. Thus, it was obvious that Kalu Ram Bhagat and Bodhan had together left the house of Kalu Ram Bhagat at around 10:00 AM on 25.2.1989 and thereafter were never seen alive till the dead body of Kalu Ram Bhagat was spotted by somebody at the brick kiln in village Samboli on 26.2.1989 and the dead body of Bodhan was spotted by somebody on 27.2.1989 near the banks of village Yamuna near Subhanpur.

16. Contours of the further investigation can be found in the charge sheet filed pertaining to the death of Kalu Ram Bhagat and Bodhan, as per which Kalu Ram Bhagat used to cure people with divine powers (jhadi-phook) and that one Ram Karan came under the spell of Kalu Ram Bhagat. Kalu Ram Bhagat convinced Ram Karan that his son Ram Karan Naresh aged 11 years, and his daughter Kiran aged 8 years, had come under an evil spirit. Kalu Ram Bhagat did jhadi-phook on the two children of Ram Karan. Both children died. While conducting rituals, Kalu Ram Bhagat even attempted to rape the wife of Ram Karan. This incensed Ram Karan who decided to kill Kalu Ram Bhagat and hatched a conspiracy to kill Kalu Ram Bhagat. Ram Karan took the help of Dharam Pal (accused No.1), Ramesh

(accused No.2), appellant Man Singh (accused No.3), appellant Girdhari (accused No.4) and one Birju (accused No.5). In furtherance thereof on 25.2.1989, Dharam Pal sent his maruti van DAE 1006, driven by Ramesh, to the house of Kalu Ram Bhagat and brought him along with Bodhan, to the house of one Birju where Kalu Ram Bhagat and Bodhan were made to drink liquor and were killed thereafter, for which acts, Ramesh, Girdhari, Man Singh, Dharam Pal and Birju were paid Rs.2,00,000/- (Rupees Two Lacs). As per the charge sheet the aforesaid facts were revealed to them in the confessional statement of Ram Karan. As per the charge sheet after Girdhari was arrested he made a disclosure statement Ex.PW-14/N and disclosed that Kalu Ram Bhagat was murdered with a 'darati' and he knew the place where it was hidden and led the police to a sugarcane field and got recovered a 'darati' which was seized vide seizure memo Ex.PW-14/O and sketch thereof was prepared being Ex.PW-14/P. As per the charge sheet the control earth lifted from the spot where body of Kalu Ram Bhagat was found; the clothes worn by Kalu Ram Bhagat and the 'darati' recovered were opined by the forensic expert to contain human blood of group 'O'.

17. Armed with the confessional statements of the accused persons; the recovery of a darati at the instance of accused Girdhari; the post-mortem reports of deceased Kalu

Ram Bhagat and Bodhan as also the report of the Forensic Science Laboratory that the control earth lifted from the spot where Kalu Ram Bhagat's dead body was seized as also his clothes and the darati recovered at the instance of Girdhari were all containing human blood of Group 'O' and listing the relatives of the two deceased persons as their witnesses, a charge sheet was filed.

18. We may note at this stage that no weapon of offence was recovered from any of the accused persons save and except, as noted above, a 'darati' was recovered from the fields pursuant to the disclosure statement of accused Girdhari.

19. Unfortunately, the investigating officer went about investigating the twin murder as if he was only to investigate the murder of Kalu Ram Bhagat. The reason thereof is that, there being a common link in the two murders, a single investigation was conducted.

20. Vide order dated 29.10.1993 learned Trial Judge opined that there was no sufficient evidence to frame any charge against accused Ram Karan and hence discharged him.

21. Dharam Pal, Ramesh, Man Singh, Girdhari and Birju were charged with the offences punishable under Section 364/34 IPC and 302/34 IPC for having abducted Kalu Ram Bhagat and Bodhan and thereafter killed both of them.

22. At the trial, recovery of the 'darati' was proved through the testimony of SI Devender Pal Singh PW-14. The persons who had registered the FIRs, the persons who had witnessed the recovery of the dead bodies, the persons associated with the post-mortem report were examined as witnesses of the prosecution. SI Devender Pal Singh PW-14 proved the recovery of the 'darati' pursuant to the disclosure statement Ex.PW-14/N made by Girdhari. The FSL Report pertaining to the blood stained control earth, the clothes of Kalu Ram Bhagat and the blood stained 'darati' was proved. We eschew reference to the same as during arguments in the appeals no submissions were made pertaining thereto.

23. Niranjana Singh Son of Kalu Ram Bhagat who appeared as PW-2 deposed that on 25.2.1989 at around 10:00 AM when his father Kalu Ram Bhagat and his uncle Bodhan were sitting outside the house along with Sushil Kumar, Mehar Chand, Ram Avtar and himself i.e. Niranjana Singh accused Birju and Man Singh came and spoke to his father and requested him to accompany them for doing 'jhada'. That his father accompanied by Bodhan left with accused Birju and Man Singh. He stated that they left in a maruti van No.DAE-1006 which was being driven by accused Ramesh. The learned public prosecutor requested the Court to ask a leading question stating that with lapse of time probably the witness was confusing the names of

the accused persons. With permission of the Court learned APP asked a leading question to which Niranjana Singh responded that he had committed a mistake when he stated that Birju and Man Singh had come. He corrected himself by saying that in fact Girdhari and Man Singh had come.

24. Sushil Kumar PW-3 the grand son of Kalu Ram Bhagat deposed that at around 10:30 AM on 25.2.1989 when he was present in the house, accused Man Singh and Girdhari came in a maruti van and requested Kalu Ram Bhagat to accompany them for jhadi-phook. Kalu Ram Bhagat left with Bodhan. He stated that Niranjana Singh, Mehar Chand and Ram Avtar were also present. He deposed that the maruti van was being driven by the accused Ramesh.

25. Mehar Chand PW-4 also deposed in harmony with the testimony of PW-2 and PW-3 save and except stating that he had not seen the driver of the maruti van as the van was parked at a distance. To put it briefly, Mehar Chand stated that the accused Man Singh and Girdhari had left with Kalu Ram Bhagat and Bodhan.

26. Ram Avtar PW-5 also deposed that around 10:00 AM on 25.2.1989 when he was present in the house along with Niranjana Singh, Sushil Kumar and Mehar Chand, Kalu Ram Bhagat and Bodhan left in a maruti van with accused Giridhar and Man Singh. It is relevant to note that Ram Avtar did not

speak about the van being driven by any driver.

27. It would become evident to a reader that no incriminating evidence surface against accused Dharam Pal and accused Birju. In fact, no witness of the prosecution named Birju.

28. The result is that vide impugned judgment and order dated 14.12.2000 Birju has been acquitted of the charges framed against him.

29. The only evidence against accused Dharam Pal, a fact admitted by him, was being the owner of the maruti van. There being no evidence of his having sent the van to summon the deceased persons, even Dharam Pal has been acquitted of the charges framed against him.

30. Pertaining to accused Ramesh, learned Trial Judge has given him the benefit of doubt noting that Mehar Chand PW-4 had stated that the maruti van was parked at a distance and that though it was being driven by a driver who was sitting at the driving seat, the face of the driver was not visible.

31. This deposition of Mehar Chand has found to be creditworthy and therefore the learned Trial Judge has doubted whether Niranjana Singh, Sushil Kumar and Ram Avtar could have seen the face of the driver of the maruti van. The result is that benefit of doubt has been given to accused Ramesh; the result is that even Ramesh has been acquitted of the charges framed

against him.

32. The State has not filed any petition seeking leave to appeal against the acquittals of the co-accused and hence we are concerned only with the evidence inculcating accused Man Singh and Girdhari.

33. We have noted hereinabove that the investigation was conducted by the investigating officer as if he had to gather evidence only pertaining to deceased Kalu Ram Bhagat.

34. The alleged weapon of offence used to kill Kalu Ram Bhagat has been recovered, as noted hereinabove, on the disclosure statement of accused Girdhari. We have evidence on record that the clothes worn by deceased Kalu Ram Bhagat when he was murdered were seized and sent for forensic examination. We have evidence that the blood group found on the clothes was group 'O'. We have evidence that the blood control earth picked up from the spot where deceased Kalu Ram Bhagat's dead body was found tested positive human blood and showed the same to be group 'O'. We have evidence that the darati recovered at the instance of accused Girdhari was also having blood of group 'O'.

35. We have no evidence pertaining to the clothes of deceased Bodhan. We have no evidence pertaining to the weapon of offence used to inflict injuries on Bodhan.

36. Accused Girdhari has been found guilty by the
Crl.A.Nos.48/01 & 79/01

learned Trial Judge with the aid of two pieces of evidence. The first is the testimony of PW-2 to PW-5, that Kalu Ram Bhagat and Bodhan had left in the company of accused Man Singh and accused Girdhari at around 10:00 AM on 25.2.1989 and this was the last time when the two were seen alive. The dead body of Kalu Ram Bhagat being found on 26.2.1989 and that of Bodhan being found on 27.2.1989; the time of last seen and the two being found dead being not too long; there being no explanation by the appellants as to when did they part company with Kalu Ram Bhagat and Bodhan justified a presumption to be drawn that Girdhari had a role in the two being murdered. Further, the recovery of the darati i.e. the weapon of offence to kill Kalu Ram Bhagat and the same being opined to be the weapon of offence evidenced by human blood of group 'O' detected on the darati; being the same blood group as that of Kalu Ram Bhagat.

37. Appellant Girdhari has been held guilty of murdering Bodhan on the strength of last seen evidence.

38. Appellant Man Singh has been convicted on the basis of last seen evidence.

39. Both the appellants have been held guilty of committing double murder i.e. murdering Kalu Ram Bhagat and Bodhan after abducting the two. The sentence imposed on the two reads as under:-

“Hence, for the offence under Section 364/34 IPC

under both the FIRs namely 58/89 of police station Nand Nagri and 436/89 of PS Trilok Puri registered as Sessions case of 53/90 and 164/90 respectively, I impose a sentence of imprisonment for life and for a fine of Rs.5000/- and in default of payment of fine to simple imprisonment of 5 months. For the offence u/section 302/34 IPC registered in FIR No.58/89 of PS Nand Nagri, Sessions case No.53/90 I impose sentence of imprisonment for life and fine of Rs.5000/- and in default of payment of fine to simple imprisonment for 5 months. For offence u/section 302/34 IPC registered under FIR No.436/89 in PS Trilok Puri in Sessions Case No.164/90 I impose a similar punishment of imprisonment for life and fine of Rs.5000/- and in default of payment of fine further simple imprisonment for 5 months. Both the convicts are sentenced accordingly. File be consigned to the record room.”

40. At the hearing held on 30.1.2009 Sh. Gurbaksh Singh learned counsel for the appellants vehemently contended that since the learned Trial Judge has disbelieved PW-2 to PW-5 with respect to Ramesh being the driver of the van, the testimony of the witnesses had become suspect and that the witnesses have to be disbelieved qua the remaining testimony where they have deposed of the appellants visiting the house of Kalu Ram Bhagat and leaving the house taking along with them Kalu Ram Bhagat and Bodhan at 10:00 AM on 25.2.1989. Learned counsel further urges that the dead bodies were found on 26.2.1989 and 27.2.1989. Anything could have happened in the meanwhile. Counsel suggested that the possibility of the deceased being left at the house of Ram Karan who thereafter murdered the two cannot be ruled out.

41. It is unfortunate that the investigation has not proceeded to gather full evidence pertaining to the murder of deceased Bodhan and to that extent even learned counsel for the State expressed a handicap with respect to the charge of having abducted and committed murder of Bodhan.

42. Indeed, as per the prosecution the brain behind the episode was Ram Karan who as per the charge sheet had a grouse against Kalu Ram Bhagat who had claimed to have divine powers but could not free Ram Karan's children from the spell of evil spirits. The two children had unfortunately died. Ram Karan had a grouse against Kalu Ram Bhagat because he had attempted to rape his wife.

43. Indeed, the evidence on record does not rule out the possibility of the appellants being sent by Ram Karan to fetch Kalu Ram Bhagat to his house and that Bodhan innocently accompanied Kalu Ram Bhagat.

44. But, if this was the only evidence on record we may have returned a finding of acquittal against both the appellants. The reason is that the requirement of law is not only that the incriminating evidence should unerringly point to the figure of guilt towards the accused but should also rule out the possibility of their innocence.

45. But, the recovery of the weapon of offence with which Kalu Ram Bhagat was murdered and the recovery being

at the instance of accused Girdhari brings in further evidence against accused Girdhari which has to be taken note of.

46. That the blood group of Kalu Ram Bhagat was group 'O' has not been disputed by learned counsel for the appellants. The same is evidenced by the forensic report as per which the blood on the clothes worn by Kalu Ram Bhagat when he was murdered is human blood of group 'O'. The blood on the darati recovered from the fields pursuant to the disclosure statement of accused Girdhari and on his pointing out is also human blood of group 'O'.

47. The twin evidence of last seen and recovery of the weapon of offence at the instance of accused Girdhari forms a complete link to connect accused Girdhari with the murder of Kalu Ram Bhagat.

48. There is no other linking evidence to connect both appellants with the murder of deceased Bodhan. There is no linking evidence to connect accused Man Singh with the murder of Kalu Ram Bhagat. Keeping in view that the case of the prosecution as laid for trial was that Ram Karan was the principal architect of the episode, the possibility of Man Singh being an innocent person who accompanied accused Girdhari to fetch Kalu Ram Bhagat from his house cannot be ruled out.

49. Appeal No.79/2001 filed by Man Singh is allowed. He is acquitted of the charges framed against him. Impugned

judgment and order dated 13.12.2000 holding Man Singh guilty is set aside. Order imposing sentence upon him is quashed.

50. Since Man Singh is on bail his bail bond and surety bond are discharged.

51. Appeal No.48/2001 filed by accused Girdhari is partially allowed in that he is acquitted of the offence of having abducted or murdered Bodhan is set aside. However, the charge of his having abducted and murdered Kalu Ram Bhagat is affirmed. The sentence imposed upon him for the abduction and murder of Kalu Ram Bhagat is upheld.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

**February 04, 2009
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