

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

% Date of Decision :15th January, 2010

+ **Crl. A. No. 652/2004**

SEHDEV BHUIYA @ CHOTU Appellant
Through: Mr.Parminder Singh Goindi,
Advocate

versus

STATE Respondents
Through: Ms.Richa Kapoor, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. 20.07.2002 was a most unfortunate day in the life of HC Param Hans, who while sleeping in room No.5 of PS Civil Lines was put into permanent slumber. He was killed.

2. The appellant has been accused of murdering HC Param Hans.

3. It all commenced when DD No. 24A Ex. PW-2/A was recorded at 8:34 PM at PS Civil Lines on 23.07.2002 that a person had climbed up a pillar and was threatening that he would blow up the Tis Hazari Courts Complex. Armed with a

copy of said DD entry ASI Kalawali Khan PW-2 accompanied by

Ct.Ajay Sanyal proceeded to Tis Hazari Courts and saw the appellant having climbed the Metro pillar under construction opposite Tis Hazari Courts. A PCR Van and a Fire Brigade were present. The appellant was brought down after some persuasion and was brought to the police station where ASI Kalawali Khan took him to room No.5 for making enquiries/interrogation. He left the room at 11:45 PM and as claimed by him (when he deposed as PW-2) he did this briefly as he had to go to the room of the Additional SHO.

4. HC Param Hans was sleeping in the room No.5. Cries of HC Param Hans attracted Ct.Jawahar Lal PW-1, ASI Kalawali Khan PW-2, as also Ct.Rohtash PW-3 to room No.5. Ct.Jawahar Lal PW-1 was the first to reach as deposed to by him. He saw the appellant with an iron rod in his hand and he was attacking HC Param Hans. The appellant was saying that he would not leave any policemen on that day and will kill all of them. Blood was oozing from the head and forehead of the HC Param Hans. With the assistance of ASI Kalawali Khan, Ct.Jawahar Lal PW-1 succeeded in dis-arming the appellant. Ct.Rohtash PW-3 pinned down the appellant. HC Param Hans was rushed to Sushruta Trauma Centre. He was given medical aid but could not survive. He was declared dead at 4:00 AM i.e. early hours of the morning of 24.07.2002. The dead body

of HC Param Hans was sent to the mortuary of Aruna Asaf Ali Hospital where Dr.Sarvesh Tandon PW-10 conducted the post-mortem and noted two bruised injuries, one each on the upper lid of the right eye and on the right side of the head; three injuries on the head being the result of hit by a blunt object as also a lacerated wound on the right side of the back. Internal examination revealed that the skull bones were fractured spirally and irregularly. The brain was damaged. Death was opined due to cranio cerebral damage consequent upon blunt force impact.

5. At the police station, the iron rod used as the weapon of the offence was seized.

6. The report of the serologist dated 31.10.2002 has reported that human blood of the same group as that of the deceased was detected on the iron rod recovered from the room where the crime took place.

7. At the trial ASI Kalawali Khan appeared as PW-2 and deposed that on receipt of DD 24A accompanied by Ct.Ajay Sanyal he reached Tis Hazari Courts and found that the appellant had climbed on the Metro Rail Bridge which was under construction and that he was not coming down. A PCR Van and Fire Brigade were present at the spot. They got appellant down and he brought the appellant to room No.5 at

the police station. He interrogated him and at about 11:45 left the room for 2-3 minutes to speak to the Additional SHO. He rushed back on hearing a noise. He saw Ct.Jawahar Lal yelling Mar Diya Mar Diya. He went to room No. 5 and saw that the appellant was apprehended by Ct.Jawahar Lal who told him that the appellant had attacked HC Param Hans with an iron rod which was lying in the room. HC Param Hans was removed to Trauma Centre.

8. Ct.Jawahar Lal PW-1 deposed that he was on duty at the lock up of the police station from 9:00 PM to 12:00 PM midnight and at about 10:30 PM, ASI Kalawali Khan brought the accused to his room No.5 in the police station and was making enquiries from him. HC Param Hans was sleeping in the room. At around 11:45 PM he heard noise from room No.5. He heard the appellant yelling that he will not leave the policemen on that day and will kill them. The appellant was having an iron rod in his hand and was assaulting HC Param Hans. He ran and over-powered the appellant and snatched the iron rod. Blood was oozing from the fore-head of the HC Param Hans. ASI Kalawali Khan and Ct.Rohtash came running and took HC Param Hans to the hospital. SI Hans Raj PW-15 recorded his statement Ex. PW-1/A at the spot itself.

9. SI Hans Raj PW-15 deposed that he was at the

police station and on hearing noise in room No.5 went there and saw HC Param Hans lying in a serious condition. He recorded the statement Ex.PW-1/A of Ct.Jawahar Lal and after making an endorsement Ex.PW-15/A got registered the FIR. Thereafter he prepared the site plan Ex.PW-15/B and took into possession the blood sample, blood stained concrete and other blood stained articles as recorded in seizure memo Ex.PW-1/B to Ex.PW-1/E. He deposed that he arrested the appellant vide arrest memo Ex. PW-15/C.

10. On being cross-examined he deposed that no finger print was lifted from iron pipe Ex.P1.

11. This, then, is the entirety of the evidence against appellant.

12. We have perused the testimony of Ct.Jawahar Lal PW-1, ASI Kalawali Khan PW-2, Ct.Rohtash PW-3 as also of SI Hans Raj PW-15. Nothing has been brought out to dis-credit their testimony. The crime took place in the police station itself and Ct.Jawahar Lal PW-1 is a witness to what has happened. Three police officers reached the place of crime when Ct.Jawahar Lal PW-1 dis-armed the appellant and had pinned him down. They saw HC Param Hans in a seriously injured condition in the room in the police station.

13. It is urged by learned counsel for the appellant that

there is no arrest memo prepared by ASI Kalawali Khan when he apprehended the appellant from outside Tis Hazari Courts. Counsel urges that it is apparent that appellant was kept in illegal detention in the police station and if he has acted in a fit of anger, it has to be treated akin to a case of accused acting upon sudden and grave provocation. Counsel highlighted that pertaining to the appellant climbing the Metro pillar outside Tis Hazari Courts complex and threatening to blow up Tis Hazari Courts complex no FIR was registered.

14. The submission urges merit hardly any consideration save to except to note that the act of the appellant in climbing the Metro pillar outside Tis Hazari Courts complex and threatening to blow up Tis Hazari Courts complex, without there being any ammunition with the appellant would constitute an offence no more than that of creating a public nuisance. The offence being non-cognizable, we find nothing wrong in the police not recording an FIR when the appellant was brought down from the Metro pillar opposite Tis Hazari Courts. It is unfortunate that when they brought the appellant to the police station the corresponding DD entry which requires to be recorded whenever somebody is brought to the police station has not been proved at the trial. But, this would not mean that the appellant was kept under illegal

detention.

15. Be that as it may, this cannot be a basis for the appellant to assault HC Param Hans.

16. From the testimony of the Ct.Jawahar Lal it is apparent that the appellant attacked HC Param Hans in the police station and the act of the appellant resulted in the death of HC Param Hans. That apart, the right of private defence in the only legally recognized ground for a person to injure and kill another. Even this right is very limited i.e. to use reasonable force to protect one self and the property.

17. To the reader of this judgment a query may arise in the mind: Whether at all the appellant was mentally fit ? To put it differently is the defence of insanity available to the appellant.

18. It is settled law that a mere mental disturbance which falls short of a person being so insane that he does not realize the consequences of his acts, alone is sufficient to attain the status of the defence of insanity. We note that no such defence has been raised at the trial. We further note that the appellant has clearly understood the charge against him and with respect to the cross-examination of the various witnesses we note that the same reveals that the appellant was clearly understanding what was going on at the trial.

19. The nature of injuries suffered by the deceased as noted and recorded in the post-mortem report Ex. PW-10/A lead no manner of doubt that from the acts of the appellant the only offence which is made out is that of murder.

20. We find no merit in the appeal which is dismissed.

21. Since the appellant is in jail a copy of this order be sent to the Superintendent Central Jail Tihar to be made available to the appellant.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

JANUARY 15, 2010
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