

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

% Judgment delivered on 15.09.2011

+ **CRL.A. 301/2010**

JASBIR @ RAJU ... Appellant

- versus -

STATE OF NCT OF DELHI ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Sahila Lamba, Amicus Curiae
For the Respondent : Mr Pawan Narang

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE VEENA BIRBAL

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

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal is directed against the judgment dated 24.10.2009 passed by the learned Additional District and Sessions Judge, New Delhi in Sessions Case No. 03/2009 arising out of FIR No.734/2005 registered at Police Station Okhla Industrial Area under Section 302 IPC. By virtue of the impugned judgment, the appellant Jasbir Singh @ Raju was held guilty for the offence punishable under section 302 IPC. By a separate order on

sentence dated 30.10.2009 passed by the learned Additional District & Sessions Judge, New Delhi, the appellant was sentenced to imprisonment for life for the said offence punishable under Section 302 IPC and was also required to pay a fine of ₹ 5,000/-, in default of which, the appellant was liable to undergo simple imprisonment for eight months. The benefit of Section 428 Cr.P.C. was given to the appellant.

2. The Charge framed against the appellant on 02.03.2006 was that in the intervening night of 13-14.8.2005 in the 3rd Floor of the Factory at S-28, Okhla Industrial Area, Phase-II, New Delhi, the appellant had committed the murder of Man Singh and thereby committed an offence punishable under Section 302 IPC.

3. The case of the prosecution was that on 14.08.2005, information had been received about a murder having taken place in the said factory premises on the 3rd Floor Terrace. Inspector Aas Mohd., alongwith other police officials, went to the scene of the crime. There, they found the dead body of Man Singh lying on a *charpai* (cot) on the terrace. Next to the said cot, they also found an empty bottle of 'whisky' and two glass tumblers on a plastic table and a water bottle on the floor. An iron rod was also lying next to the coat.

4. It is further the case of the prosecution that Inspector Aas Mohd. met PW-6 (Trilok Singh), who was the owner of the factory and who stated that the deceased Man Singh was his security guard and he was found dead

in the morning. On the basis of PW-6 Trilok Singh's statement, the said FIR was registered and investigation was carried out.

5. As per the prosecution, PW-22 (Pratap Singh) and PW-1 (Ravi Kumar), who were relatives of the deceased, expressed their suspicion against the present appellant Jasbir Singh, who was the day security guard in the said factory. As per the prosecution, the address of the appellant Jasbir Singh was traced through PW-15 (Shekhar Sharma), who was the owner of the security agency, and thereafter he was apprehended from his residence on 15.08.2005. It is also the allegation of the prosecution that a wallet containing ₹ 5510/- and a photograph of the wife of the deceased was recovered at the instance of the appellant. A pair of shoes, two wrist watches (HMT make and Hanko make) and a set a of three keys (2 brass keys and one iron key) were said to have been recovered from the kitchen of house No.119, Gali No. 6, Village Garhi, East of Kailash, New Delhi at the instance of the appellant. The said kitchen was the place where the appellant was allegedly using for sleeping at night. It is alleged that the wallet as well as the money, the shoes and the two wrist watches belonged to the deceased Man Singh and that the set of three keys were of the gate of the said factory.

6. It is further the case of the prosecution that the crime team visited the scene of crime and lifted chance prints from the wine bottle (Green Label), the two glass tumblers and the water bottle lying next to the deceased. As per the crime team report (Exhibit PW-14/A), the chance

print lifted from the wine bottle was Q1 and the three chance prints lifted from the two glass tumblers were Q2, Q3 and Q4. The chance print lifted from the water bottle was Q5. It is the prosecution case that as per the Forensic Science Laboratory Report (Exhibit PW-18/C), the chance prints Q2, Q3, and Q5 matched the specimen prints taken of Jasbir Singh being S-1, S-2, and S-3. The said specimen finger prints were taken pursuant to an order of the court. Insofar as the chance prints Q1 and Q4 are concerned, the Forensic Science Laboratory could not give any opinion with regard to the same inasmuch as the same were smudged. From this, the prosecution has alleged that the presence of the appellant Jasbir Singh at the scene of crime stands established.

7. As per the prosecution case, the murder weapon was the iron rod lying next to the cot on the said terrace and the same was blood stained and the Forensic Science Laboratory detected the same to be of human origin. Of course, no finger prints could be lifted from the said iron rod. The *post mortem* examination of the deceased Man Singh was conducted on 16.08.2005 by PW-3 (Dr. B.L. Chaudhary). His report is Exhibit PW-3/A. As per the said report, the deceased Man Singh died due to coma, which, in turn, was the result of intracranial hemorrhage as a consequence of head injury caused by a hard and blunt force. PW-3 (Dr B.L. Chaudhary) had also given a supplementary opinion, when shown the iron pipe, to the effect that the said injury could be possible with the said iron pipe. Another important factor to be kept in mind, while we are discussing the *post mortem* examination, is that the contents of the stomach of the

deceased Man Singh included ethyl alcohol which goes to show that the deceased Man Singh had consumed liquor shortly before his demise.

8. On the basis of the investigation, the charge sheet under Section 302 IPC was filed against the appellant in the court of the learned Metropolitan Magistrate on 11.11.2005 and after committal of the case to the Court of Sessions, vide order dated 28.11.2005, the above mentioned charge under Section 302 IPC was framed against the appellant on 02.03.2006. The appellant pleaded not guilty to the said charge and thereafter the trial proceeded. The prosecution examined as many as 23 witnesses. The statement of the appellant under Section 313 Cr.P.C was recorded and the defence did not examine any witness. Consequent thereupon, the impugned judgment and the impugned order on sentence were passed.

9. The learned counsel for the appellant submitted that this case was based entirely on circumstantial evidence and that there was a great deal of doubt in the evidence that is sought to be relied upon by the prosecution. First of all, she submitted that in cases of circumstantial evidence, motive forms a very important and crucial factor. In the present case, even as per the finding of the trial court, the motive has not been established. The prosecution has tried to establish the motive that the appellant had given a loan of ₹ 350/- to the deceased, which the deceased was avoiding to repay and it is for this reason that the appellant committed the murder of the deceased. According to the learned counsel for the appellant, this allegation has not been proved and the trial court had correctly come to the

conclusion that the motive had not been established by the prosecution. However, the trial court felt that even though the motive had not been established, a finding of guilt could still be arrived at if there were other compelling reasons for the same.

10. The second point urged on behalf of the learned counsel for the appellant was that the entire case against the appellant was based on the presumption that the person who allegedly drank liquor with the deceased was the person who killed him. She submitted that there is no basis for that presumption, particularly because the owner [PW-6 (Trilok Singh)] had categorically stated in his testimony that when he left the premises between 9 and 9.30 p.m. on 13.08.2005, Man Singh was alone in the factory.

11. The learned counsel for the appellant also submitted that the fact that the chance prints lifted from the glass tumblers and the water bottle matched the specimen finger prints of the appellant Jasbir Singh would, by itself, not be conclusive evidence of the appellant Jasbir Singh's complicity in the crime. She submitted that, like Man Singh, Jasbir Singh was also a security guard in the very same factory. Man Singh was the night security guard from 9 p.m. to 9 a.m. and Jasbir Singh was the day security guard from 9 a.m. to 9 p.m. He, therefore, had access to the entire factory premises, including the glass tumblers and the water bottles and, therefore, merely because his finger prints were found on the glass tumblers and the water bottle would not be conclusive evidence that it was

Jasbir Singh and Jasbir Singh alone who had committed the murder of Man Singh.

12. The learned counsel for the appellant also submitted that the recoveries alleged to have been made at the instance of the appellant Jasbir Singh are also shrouded in doubt. She submitted that it was highly unlikely that Jasbir Singh, after having committed the murder of Man Singh, if he did murder Man Singh, would have carried Man Singh's wallet which also contained Man Singh's wife's photograph in it and kept the same in the kitchen where he used to sleep, particularly when the kitchen was not in his exclusive possession and was commonly used by the owner of the said premises, namely, PW-2 (Sudhir Ranjan). She also submitted that the recoveries of the two wrist watches, which are said to belong to the deceased Man Singh and one pair of shoes also said to belong to Man Singh, are also very doubtful. She submitted that the entire sequence of arrest and recovery, which is said to have been done on 15.08.2005, is not free from doubt inasmuch as PW-2 (Sudhir Ranjan) had stated that the appellant Jasbir Singh had been arrested on 14.08.2005 itself.

13. For all these reasons, the learned counsel for the appellant submitted that the case against the appellant Jasbir Singh is not free from doubt and, therefore, the benefit of the same should be given to him and he should be acquitted of the charge against him.

14. Mr Pawan Narang, appearing on behalf of the State, placed strong reliance on the fact that the chance prints connected the appellant to the scene of crime. He further submitted that it is also a material circumstance that the appellant Jasbir Singh did not report for duty on 14.08.2005. Furthermore, he placed strong reliance on the recoveries of the wallet, money, two wrist watches, a pair of shoes as well as the three keys which allegedly were of the gate of the factory premises, at the instance of the appellant Jasbir Singh. It was also pointed out by Mr Pawan Narang that PW-15 (Shekhar Sharma), who was the owner of the security agency which had provided the two security guards, namely, the appellant Jasbir Singh and the deceased Man Singh, had clearly stated that it was on 15.08.2005 that Jasbir Singh was arrested from outside House No.119 and that the defence had not cross examined PW-15 (Shekhar Sharma) at all. Therefore, according to Mr Narang, the fact that the appellant was arrested on 15.08.2005 cannot be questioned by the defence. Mr Narang also submitted that as per the seizure memo (Exhibit PW2/A), three keys were also seized and they were stated to be keys of the gate by the appellant Jasbir Singh. Therefore, Mr Narang submitted that it was a clear case that Jasbir Singh had committed the murder of Man Singh and thereafter he had taken away the said articles which were allegedly recovered from him and placed the lock on the channel gate of the factory. Thus, according to the learned counsel for the State the appeal ought to be dismissed.

15. After having heard the arguments advanced by the learned counsel for the parties and having examined the evidence on record, we find that

insofar as the motive is concerned, the trial court has come to the correct conclusion that the same does not stand established. However, the trial court did not give much importance to the absence of motive and was of the view that even in the case of circumstantial evidence, while motive is relevant, but it alone is not the only circumstance and there could still be a conviction if there were other cogent reasons on record. We find that while the trial court has correctly held that motive has not been established, it has fallen into error in coming to the conclusion that there was other cogent evidence on record. An illustration of the same would be apparent from paragraph 42 of the judgment which reads as under:-

“42. It is clearly established by the prosecution that it was the accused only who after finishing his duty at about 9 P.M had left the factory premises as is deposed by PW6 Sh. Trilok Singh that Man Singh, deceased was alone at about 9-9.30 PM when he had left the factory on 14.08.05. It is further shown that accused who alone used to visit the deceased and also had food had come back and was let in by the deceased to his own room where they both consumed liquor.”

16. Insofar as the first sentence of the paragraph is concerned, there is no error in the same. However, the conclusion by the trial court that it was the accused who, “alone”, used to visit the deceased and also had food, and who had come back and was let in by the deceased in his own room where they both consumed liquor, is not borne out by any evidence. The only indication that the appellant Jasbir Singh and the deceased Man Singh used to dine together, is in the testimony of PW-4 (Mohd. Waqeel). He has merely made a general statement that Man Singh and accused Jasbir Singh were close to each other and that Jasbir Singh also used to have

meals with the deceased Man Singh. He has made a further general statement that Jasbir Singh used to stay with Man Singh after closure of the factory in the evening. These are just general statements and cannot be relied upon to conclude that it was Jasbir Singh alone who used to visit the deceased or that on 13.08.2005 he had dinner with the deceased Man Singh after he had been let in by Man Singh in his room where they allegedly consume liquor. There is no connection between the general statements made by PW-4 (Mohd. Waqel) and the conclusion that has been arrived at by the trial court and, therefore, we feel that the trial court has fallen into serious error in returning this finding.

17. We must, of course, also deal with the testimony of PW-1 (Ravi Kumar), who is a relative of the deceased Man Singh where he has stated that Jasbir Singh used to meet him in the factory at Okhla where the deceased Man Singh was working. The said witness has further stated in his cross-examination that the deceased Man Singh as well as the accused Jasbir Singh used to 'reside' in the factory itself. From the testimony of other witnesses, we know that this statement of PW-1 (Ravi Kumar) is incorrect because the appellant Jasbir Singh did not reside in the factory. It was only the deceased Man Singh who used to reside in the factory. Therefore, the testimony of PW-1 (Ravi Kumar) does not inspire much confidence. In any event, all that PW-1 (Ravi Kumar) has stated is that whenever he used to visit the deceased Man Singh, the appellant Jasbir Singh used to open the gate. There is nothing incriminating in this inasmuch as, in all probability and likelihood, PW-1 (Ravi Kumar) used to

visit the deceased Man Singh during the day hours and it is an admitted position that the appellant Jasbir Singh was the day security guard. Thus, there was nothing unusual about the presence of the appellant Jasbir Singh at the factory premises whenever the said witness visited his uncle Man Singh.

18. Insofar as the recoveries are concerned, we agree with the submission made by the learned counsel for the appellant that the same are not free from doubt. First of all, it would be highly unnatural on the part of the appellant Jasbir Singh, to retain the wallet of the deceased Man Singh which also contained a photograph of the wife of the deceased. If he was interested in the sum of ₹ 5510/-, which was allegedly inside the wallet, he could have easily taken that sum of money out of the wallet and left the wallet in the room in which Man Singh was residing at the terrace of the factory. It defies logic as to why Jasbir Singh would have taken the wallet along with him. Insofar as the two wrist watches and a pair of shoes are concerned, although the same have allegedly been identified by PW-1 (Ravi Kumar) and PW-22 (Pratap Singh) as belonging to the deceased Man Singh, we find it difficult to believe as to how they would have been in a position to identify the shoes that Man Singh was wearing or the two wrist watches which he allegedly owned, particularly when the said witnesses were not the immediate family members of the deceased Man Singh. Although PW-1 (Ravi Kumar) has stated that he had gifted one of the wrist watches and that he also gifted the pair of shoes, however,

there is no evidence of the fact that he had purchased the same and that he had made the gift.

19. This leaves us with the so-called recovery of the three keys. The said keys were said to be of the gate of the factory in which the appellant Jasbir Singh was employed. However, we find that the said keys cannot be linked with the factory gate inasmuch as the broken lock has not been seized by the Investigating Officer and, therefore, the keys have not been tested on the broken lock. Even if the broken lock has not been seized, the prosecution ought to have had the keys identified by some other person who had seen the keys being used for opening of the lock. That has also not been done. Therefore, it cannot be said that the three keys were of the lock placed on the gate of the factory. It is also strange that the owner of the factory PW-6 (Trilok Singh) did not have any duplicate keys of the factory gate.

20. Even if we examine the question of recoveries from a general perspective, we find that the testimony of PW-2 (Sudhir Ranjan) presents a completely different picture to that propounded by the prosecution. According to PW-2 (Sudhir Ranjan), who is the person with whom / in whose premises the appellant Jasbir Singh was residing, he had received a phone call at about 2.30-3.00 p.m. on 14.8.2005 from the police in his office. They were enquiring about the whereabouts of the appellant Jasbir Singh. PW-2 (Sudhir Ranjan) has stated that thereafter he had called the appellant Jasbir Singh to his office and the police personnel had also

arrived there. Thereafter, they went to P.S. Okhla and thereupon enquiries were made from PW-2 (Sudhir Ranjan) and the appellant Jasbir Singh was interrogated. PW-2 (Sudhir Ranjan) was permitted to return to his residence. However, the appellant Jasbir Singh was detained in the police station. PW-2 (Sudhir Ranjan) also stated that on that very day, the appellant Jasbir Singh had produced a wallet from the kitchen in which he used to sleep, but he was not aware of the contents of the wallet and he would not be in a position to identify the same either.

21. From the testimony of PW-2 (Sudhir Ranjan), it appears that the appellant Jasbir Singh was arrested on 14.08.2005 and that the alleged recovery was also made on 14.08.2005. It is further revealed by PW-2 (Sudhir Ranjan) that although all this happened on 14.08.2005, his signatures on certain papers were taken on 15.08.2005. We also note that there has been no effective cross examination on the part of the learned Additional Public Prosecutor on these aspects of the matter.

22. From the testimony of PW-2 (Sudhir Ranjan), it is clear that his version of the alleged recovery is entirely at variance with the version of the prosecution based upon the testimonies of PW-5 (Sub Inspector Om Prakash), PW-16 (Head Constable Manoj Kumar) and PW-23 (Inspector Aas Mohd) as also PW-15 (Shekhar Sharma). Thus, in whichever way we look at the question of the recoveries, that is, whether we look at the specific items of recoveries or the recoveries in general, we find that the same are not free from doubt. Therefore, we cannot conclude that the

alleged recoveries had, in fact, been made at the instance of the appellant Jasbir Singh. This is so because the said recoveries do not inspire any confidence. The result of this discussion, insofar as the recoveries are concerned, would be that the said articles, allegedly belonging to the deceased Man Singh, cannot be connected with the appellant nor can the keys be said to be connected with the gate of the said factory. Thus, the recoveries do not, in any manner, connect the appellant with the crime.

23. This leaves us with the discussion with regard to the chance prints. It has already been pointed out by us that five chance prints were lifted by the crime team. One chance print (Q1) was lifted from the wine bottle, Q2, Q3 and Q4 were lifted from the two glass tumblers and one chance print (Q5) from the water bottle. As per the Forensic Science Laboratory Report (Exhibit PW-18/C), the chance prints Q2, Q3 and Q5 matched the specimen finger prints S-1, S-2 and S-3 of the appellant Jasbir Singh. The chance prints Q1 and Q4 were smudged and, therefore, no opinion could be given in respect of them. From this evidence, it is clear that the appellant Jasbir Singh's finger prints were found to be present on the water bottle and at least one of the two glass tumblers. It is unfortunate that the crime team, while lifting the chance prints, did not indicate as to which of the chance prints Q2, Q3 and Q4 were lifted from which of the two glass tumblers and, therefore, it cannot be determined as to whether the chance prints Q2 and Q3 were from the same glass tumbler or were from two different glass tumblers. Furthermore, since no opinion could be given with regard to the chance print Q1 from the wine bottle, it cannot be said

that the appellant Jasbir Singh had handled the wine bottle. It is apparent from the above that the appellant Jasbir Singh had certainly handled at least one of the two glass tumblers and the water bottle at some stage. It is, however, not clear as to whether his finger prints came onto the glass tumblers and the water bottle at a stage prior to his leaving the premises when he went off duty at about 9.00 p.m. or afterwards. It is quite possible that, since the appellant Jasbir Singh himself was also a Security Guard at the factory premises, he may have had water from the said water bottle which he poured into one or two of the tumblers and consumed the same. This could have been done at any point of the day inasmuch as he was a Security Guard and he was also friendly with the deceased Man Singh. He was also on duty on 13.08.2005 and, even as per the prosecution case, went off duty at 9.00 p.m. on 13.08.2005. Therefore, it is quite possible that the finger prints of the appellant Jasbir Singh found on the glass tumbler(s) and the water bottle could be completely unrelated to the crime. It is not unnatural for the presence of the said chance prints on the glass tumbler(s) and the wine bottle on account of the fact that the premises in question was frequented by the appellant Jasbir Singh.

24. It also appears strange to us that the only chance prints that were recovered from the two glass tumblers and the water bottle were that of the appellant Jasbir Singh. When both Man Singh and the appellant Jasbir Singh are said to have handled the said articles, there ought to have been other chance prints of the other persons also, including that of Man Singh. But the only chance prints that have been lifted were that of the appellant

Jasbir Singh. In any event, the presence of the chance prints by themselves cannot establish the prosecution case. We must remember, at this point, that the prosecution has not been able to establish the motive nor has it been able to establish the recoveries and the case rests solely upon the chance prints. This by itself cannot lead to the conclusion that it was the appellant Jasbir Singh and Jasbir Singh alone who could have committed the crime. We must also remember that the factory owner [PW-6 (Trilok Singh)] had categorically stated that when he left the factory premises between 9 to 9.30 p.m. on 13.08.2005, there was nobody present there other than the deceased Man Singh. There is no evidence that the appellant Jasbir Singh, after having gone off duty at 9.00 p.m. on 13.08.2005, and after having left the factory premises, returned to the same. It cannot be presumed that he must have returned to the said premises and that he must have committed the crime. Such a presumption is not tenable in law.

25. Consequently, giving the benefit of doubt to the appellant, we allow this appeal and acquit him of the charge against him. The impugned judgment and order on sentence are set aside. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

The appeal is allowed.

BADAR DURREZ AHMED

VEENA BIRBAL, J

SEPTEMBER 15, 2011

kb/dutt