

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.04.2011

+ **CRL.A. No.1335/2010**

PREM SINGH

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:-

For the Appellant : Mr. Sameer Chandra, Advocate.

For the Respondent : Ms. Richa Kapoor, Addl. Standing Counsel.

CORAM:-

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. 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 the Digest? yes

BADAR DURREZ AHMED, J (ORAL)

1. This appeal is directed against the judgment dated 13.09.2010 passed in Sessions Case No.136/2009 arising out of FIR No.45/2007 under Section 302/201 IPC registered at Police Station Okhla Industrial Area, whereby the appellant, Prem Singh, has been found to be guilty of commission of the offences punishable under the said sections. The appellant is also aggrieved by the order on the point of sentence dated 16.09.2010, whereby the

appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.5000/- in respect of the offence under Section 302 IPC and in default of payment of fine to further undergo simple imprisonment for three months. The appellant Prem Singh was also directed to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- for the offence under Section 201 IPC and in default of payment of fine to undergo simple imprisonment for one month. The benefit of Section 428 Cr.P.C. was given to the convict and both the sentences were to run concurrently.

2. The appellant was charged for having allegedly caused the death of Harish Kumar and thereby having committed an offence punishable under Section 302 IPC by the side of the Domestic Container Depot, Okhla Industrial Area, Phase-II, within the jurisdiction of P.S. Okhla Industrial Area. An additional charge was framed under Section 201 IPC for the appellant having allegedly destroyed the evidence of the aforesaid offence in order to conceal the crime.

3. The case of the prosecution is that the appellant was a conductor/cleaner and was employed with one Mr Sajjan Kumar Goel (PW-17). The deceased Harish Kumar was a driver and the appellant and Harish Kumar were in truck bearing No.UP 15F 3702 which was owned by the said PW-17 Sajjan Kumar Goel. Mr Goel owned two other trucks, one of them being HR 38F 5011. It is the case of the prosecution that both these trucks were loaded with *chuna* (lime) at Rishikesh and proceeded to Delhi on 06.01.2007. The truck bearing no. HR 38F 5011 was driven by PW-15

Charan Singh and the conductor/cleaner of that truck was PW-16 Mithun. The further case of the prosecution is that both these trucks, loaded with *chuna*, arrived at Delhi on 08.01.2007. They unloaded the said *chuna* on 08.01.2007 itself next to the Container Depot at Okhla Industrial Area and were waiting for their payment /other articles to be loaded on the truck for their return journey. It is the case of the prosecution that at about 9.00 pm on 08.01.2007 a quarrel had ensued between the appellant Prem Singh and Harish Kumar and the same was pacified by PW-15 Charan Singh and, thereafter, Charan Singh as well as Mithun went to sleep in their truck i.e., HR 38F 5011 and the appellant Prem Singh and Harish Kumar went to sleep in their truck i.e., UP 15F 3702. It is the further case of the prosecution that when PW-15 Charan Singh woke up at around 2.30 am in the morning of 09.01.2007, he found that the truck (UP 15F 3702) in which the appellant Prem Singh was a conductor and Harish Kumar a driver, was missing. It is further the case of the prosecution that in the morning PW-15 Charan Singh contacted the owner of the truck i.e., Mr Sajjan Kumar Goel (PW-17) and enquired as to whether he had required the other truck for some other job. When he was told that no other instructions had been given, he informed the owner that the said truck was missing. The case of the prosecution is that while the truck was parked at Delhi, the appellant used an iron rod in the truck and committed the murder of the driver i.e., Harish Kumar. Further, the case of the prosecution is that thereafter the appellant Prem Singh drove the truck out of Delhi and dumped the body of the deceased next to a road

falling within the jurisdiction of P.S. Gabana, District Aligarh, U.P. and then took the truck near Apsara cinema in Agra and abandoned it there.

4. The most material witnesses from the side of the prosecution are PW-15 Charan Singh and PW-16 Mithun who are supposed to be the witnesses who last saw the deceased alive in the company of the appellant at around 10 p.m. on 08.01.2007. Apart from these witnesses, the prosecution has also placed reliance on the testimonies of PW-4 Yad Ram, PW-5 Babu Lal and PW-10 Nathu Giri who are witnesses of the fact of recovery of the dead body, which was found lying next to the road within the jurisdiction of P.S. Gabana, Aligarh. The prosecution has also placed stray reliance on the testimonies of PW-17 Sajjan Kumar Goel and PW-18 Ankur Goel as well as PW-19 Girish Saini who is the brother of the deceased Harish Kumar. The prosecution had also built up a case of extra-judicial confessions based on the testimonies of PW-21 (Rinku Yadav) and PW-26 (Srinivas Gupta) who, however, turned hostile in court.

5. The learned counsel for the appellant submitted that this was a case based entirely on circumstantial evidence and therefore each circumstance, before it could be considered to be forming a chain for convicting the appellant, has to be proved beyond doubt. The first and foremost circumstance as to whether the death of Harish Kumar was homicidal, itself has not been established. He drew our attention to the testimony of PW-20 Dr A.K. Rajvanshi who conducted the post mortem examination on the body of the deceased Harish Kumar. The post mortem report is Ex.PW 20/B. He

noticed two injuries, namely, a lacerated wound on the left side of the back of the scalp and one abrasion on the back. In his opinion, the death was due to shock and haemorrhage as a result of ante-mortem injuries. However, neither in his post-mortem report Ex.PW20/B, nor in his testimony in court, has the said witness stated that the death was homicidal. On the contrary, the learned counsel for the appellant drew our attention to the cross-examination where, upon a suggestion given by the defence counsel, this witness has stated that the death was possible from a fall from the roof. What is more material according to the learned counsel for the appellant is that the iron rod which was supposed to be the weapon of offence was not even shown to the doctor nor was any opinion elicited from him as to whether the injuries found on the body of the deceased could have been caused by the said iron rod. Therefore, according to the learned counsel for the appellant even if the recovery of the iron rod at the instance of the appellant is to be believed, since the iron rod has not been connected with the injuries, the said recovery would be of no consequence. The learned counsel for the appellant also drew our attention to the fact that as per the CFSL report which is Ex. PX-2, no blood could be detected on the iron rod. Similarly, he pointed out that the jacket, shirt and pants which were allegedly the clothes worn by the appellant at the time of the offence, were also sent to the CFSL for testing and by virtue of the same report i.e. Ex.PX-2 it was indicated that no blood could be detected on the said clothing articles either. Therefore, it was contended by the learned counsel for the

appellant that neither the iron rod nor the clothes were connected in any manner with the murder/death of Harish Kumar.

6. The learned counsel for the appellant further submitted that the testimonies of PW-15 and PW-16 are also at variance. He submitted that as per PW-15 Charan Singh, a quarrel had taken place between the appellant and Harish Kumar on 08.01.2007 and that they had gone to sleep at around 10.00 p.m. PW-15 Charan Singh and PW-16 Mithun had gone to sleep in their truck HR 38F 5011, whereas the appellant Prem Singh and the deceased Harish Kumar had gone to sleep in their truck, namely, UP 15F 3702. It was pointed out by the learned counsel for the appellant that PW-16 Mithun has stated in his cross-examination that they had left Delhi on 08.01.2007 in the evening and, therefore, this is a clear contradiction between the two witnesses. The appellant further submitted that when the body of the deceased Harish Kumar was found lying next to the road within the jurisdiction of P.S. Gabana, Aligarh, all the *panch* witnesses were of the view that it was an accidental death, however, they suggested that in any event the post-mortem be conducted. PW-4 Yad Ram, who was a *panch* witness, stated that he found the dead body on the side of the road on 09.01.2007 and he also noted that there was an injury on the head as well as a tyre mark on the body. This tyre mark has gone completely unexplained. PW-5 Babu Lal who is also a witness of the recovery of the dead body, in his testimony, stated that it appeared to him that the death was caused due to an accident. PW-10 Nathu Giri made a similar statement that the dead body

was found lying on the side of the road with an injury on the head. One cover of a milk container was also found near the dead body. This article has also gone unexplained. In any event, the learned counsel for the appellant submitted that as per the *panch* witnesses as also the local police at P.S. Gabana, the case appeared to be one of an accident and it was treated as such because the FIR recorded on the recovery of the dead body, being FIR No.12/2007 at P.S. Gabana at about 1330 hours on 09.01.2007 (Ex.20/A4), was under Section 279/304A/338 IPC. It is in this context that the learned counsel for the appellant reiterated that PW-20 Dr A.K. Rajvanshi who conducted the post-mortem examination did not give any opinion as to whether the death was homicidal or accidental and the testimonies of the other witnesses as also the initial reaction of the police at Gabana was that the death was accidental and not homicidal.

7. The learned counsel for the appellant further submitted that although as per the prosecution the truck had gone missing in the early hours on 09.01.2007, the FIR with regard to the missing truck, being FIR No.45/2007, was registered at P.S. Okhla Industrial Area under Section 407/34 IPC only on 17.01.2007 at 09.35 pm. In other words, the said FIR was registered on the 9th day after the truck had gone missing. According to him, this is also quite unnatural on the part of the truck owner as he would normally be expected to report the missing truck on the very day itself and also have the FIR registered on the same day itself. This, according to learned counsel for the appellant, also casts serious doubts on the last seen testimonies of PW-15

and PW-16.

8. Ms. Richa Kapoor, the learned counsel appearing on behalf of the State supported the trial court decision and submitted that the appellant has been rightly convicted based on the circumstances which had been clearly established. According to her, the prosecution has been able to establish the fact that the two trucks left from Rishikesh on 06.01.2007 and arrived in Delhi on 08.01.2007, where the *chuna* was unloaded. She also stated that it has been established by the prosecution that a quarrel had taken place between the appellant Prem Singh and the driver Harish Kumar at about 9.00 p.m., which was pacified by PW-15 Charan Singh and, thereafter, all the four persons had gone to sleep in their respective trucks. It is further stated that the prosecution has been able to establish that at around 2.30 am, PW-15 Charan Singh awoke from his sleep and found that the truck in which the appellant was the conductor was missing along with Harish Kumar. She also submitted that this fact was reported to the owner of the truck on 09.01.2007 itself and that the owner tried to contact the deceased on his mobile number which gave the answer that the same had been switched off. She further pointed out that PW-19 Girish Saini who is the brother of the deceased Harish Kumar received a phone call from the owner enquiring about the whereabouts of the truck and informing him that the driver (his brother) and the conductor were missing. She further submitted that the owner tried to search for the truck at various places but was unsuccessful. She further stated that the police at Delhi were unaware of the recovery of

the dead body by the police at Aligarh. The appellant was arrested from his village Nagla Dayali, Agra, U.P., after which his disclosure statement was recorded and pursuant to his pointing out the place where the truck was, the truck was recovered and, thereafter, the clothes which we have already referred to above, as also the iron rod which was kept in the cabin of the truck, were recovered. Consequently, the learned counsel for the State submitted that the circumstances of PW-15 and PW-16 having last seen the deceased Harish Kumar alive in the company of the appellant stand established. The time of death also stands corroborated by virtue of the post-mortem report wherein the doctor has noted that the death was caused 1½ days back. The post-mortem examination was conducted at 12.30 p.m. on 10.01.2007, and thus according to the learned counsel for the State, 1½ days relates closely to the night intervening 8/9.01.2007 which is the time around which the deceased was last seen alive in the company of the accused by PW-15 and PW-16. She also submitted that the motive was clearly established as both PW-15 and PW-16 have stated that there was a quarrel between the appellant Prem Singh and deceased Harish Kumar. She also pointed out that the recovery of the truck is a very vital circumstance in establishing the guilt of the appellant. She submitted that this is all the more so because the truck was being searched for by the Delhi police as well as by the owner independently for a number of days and it was only on the pointing out of the appellant Prem Singh that the truck was recovered. For all these reasons, the learned counsel for the State submitted that the

impugned judgment and order on sentence ought not to be interfered with.

9. Having heard the learned counsel for the parties and gone through the evidence in detail, we find that this case rests on two or three vital circumstances. The first circumstance is that of the last seen evidence which has been led by the prosecution. PW-15 Charan Singh, as pointed out above, has stated that on 08.01.2007 at about 9.00 p.m., a quarrel had ensued between the appellant and the deceased Harish Kumar. The said two persons were pacified by PW-15 Charan Singh and, thereafter, all the four persons went to sleep in their respective trucks. On the other hand, we find that PW-16 in his cross-examination has stated that they left Delhi on 08.01.2007, in the evening. This is a clear contradiction insofar as the factum of last seen evidence is concerned inasmuch as PW-15 has stated that he saw Harish Kumar in the company of the appellant at about 9-10 pm on 08.01.2007 whereas PW-16 stated in his cross-examination that they left Delhi in the evening of 08.01.2007. This statement of PW-16 also belies the statement of PW-15 Charan Singh that when he woke up at 2.30 am on 09.01.2007, he found the other truck i.e. UP 15F 3702, missing. If PW-16, is to be believed then there is no question of PW-15 stating that he was in Delhi on 09.01.2007 at 2.30 am, when he allegedly noticed that the truck was missing.

10. Apart from this, we find that although the prosecution has set up a case that the trucks had brought *chuna* from Rishikesh to Delhi and the *chuna* was unloaded in Delhi, the prosecution has not produced any receipt

or delivery challan to indicate that the material was in fact brought from Rishikesh to Delhi and had been unloaded at Delhi. The prosecution had also not brought out any evidence to show as to whom the *chuna* was delivered to. Apart from PW-15 and PW-16 and the owner PW-17 Sajjan Kumar Goel, there is no other witness to testify independently that the trucks had moved from Rishikesh to Delhi, that they unloaded *chuna* at Delhi and that they were to return to Rishikesh. Coupled with this is the fact that the FIR with regard to the missing truck was recorded only on 17.01.2007 i.e., on the 9th day after the alleged incident. We find this to be highly unnatural on the part of the owner. Under normal circumstances, the owner of the truck would immediately report the factum of his truck being missing but, here, we find that the FIR was being registered only on 17.01.2007. Though Ms. Richa Kapoor referred to a missing report of 13.01.2007, that document has not been proved in court. Even if 13.01.2007 were taken to be the date on which the owner had informed the police about the missing truck, we find that that, too, would be abnormal inasmuch as it would still be 5 days after the alleged incident. These circumstances also cast a doubt as to whether the trucks arrived from Rishikesh to Delhi at all or not and, therefore, as to whether PW-15 and PW-16 could at all be regarded as the last seen witnesses.

11. We now come to the next aspect of the case, that is, whether the prosecution had been able to establish that the death of Harish Kumar was homicidal. It is clear that no evidence has been produced by the prosecution

to clearly establish this fact. On the contrary, we agree with the submissions of the learned counsel for the appellant that no question was put to PW-20 Dr A.K. Rajvanshi with regard to the nature of the death. In fact, even the alleged murder weapon i.e., the iron rod was not shown to the doctor to elicit an opinion from him as to whether the injury found on the body of the deceased could have been caused by the said iron rod or not. This also leaves a great deal of doubt as to whether the death of the deceased Harish Kumar was homicidal or accidental and consequently, as to whether the death could at all have been caused by the iron rod or not.

12. Coming now to the aspect of motive, it is a settled position in law that while absence of a motive is not conclusive either way, in cases of circumstantial evidence, motive does form an important circumstance. In the present case, however, we find that the only suggestion of motive was that there was a quarrel between the appellant Prem Singh and the deceased Harish Kumar. What was the nature of the quarrel and what was the quarrel about and even whether the incident of quarrel actually occurred, is unclear. One thing is clear that even if we believe the testimonies of PW-15 and PW-16 that the quarrel took place, it seems to have been not of a serious nature inasmuch as it was easily quelled by PW-15 Charan Singh and immediately thereafter everyone went off to sleep in their respective trucks. Therefore, we are not in agreement with the submissions made by learned counsel for the State that the motive stands established. There are serious doubts with regard to the motive and we cannot at all, with any degree of certainty, say

that there was sufficient motive, if any, for the appellant Prem Singh to have committed the murder of Harish Kumar.

13. Insofar as the recovery of the truck is concerned, we find that the truck was parked in an area which had public access and, therefore, was not in the exclusive knowledge or possession of the appellant Prem Singh. In fact, even the key of the truck has not been recovered from Prem Singh or at his instance. We also note that the prosecution case is that the driver Harish Kumar was killed by the appellant Prem Singh who was the conductor/cleaner. If that were the case then nobody else was allegedly, involved. Thus, it is obvious, it is the appellant Prem Singh who would have driven the truck away from Delhi to Aligarh and then to Agra. The prosecution has not produced any evidence, oral or documentary, to show that the appellant Prem Singh knew how to drive. This also casts a serious doubt on the prosecution case.

14. We also agree with the learned counsel for the appellant that the alleged murder weapon, that is, the iron rod, has not been connected with the death of Harish Kumar nor have the clothes of the appellant been connected with the same as no blood has been detected on the articles. This fact, we have already observed above, was mentioned in the CFSL report Ex.PX-2.

15. As a result of the foregoing discussion, we find that the case against the appellant is not free from doubt. Consequently, giving the appellant the benefit of doubt, we allow his appeal. The impugned judgment and order on sentence are set aside. The appellant is in custody. Consequently, he is

directed to be released forthwith unless he is required in any other case.

16. The appeal stands allowed.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

APRIL 20, 2011

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