

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

% *Judgment reserved on : 12.12.2013*
Judgment delivered on: 17.12.2013

+ CRL. A.No.824/2010

INAL YADAV @ SHYAM SUNDER Appellant
Through: Mr.Krishan Kumar and Mr.Deepak
Vohra, Advocates.

Versus

STATE Respondent
Through: Mr.Sunil Sharma, APP along with
Inspector Pramod Kumar and SI
Rakesh Kumar.

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J.

1 On 25.11.2006 at 7.30 p.m. DD No.24 was registered at Police
Post Dev Nagar giving information that a young boy aged 22 years was
lying dead in E-Block Jhuggi, Dev Nagar, Delhi. This information had

been conveyed by constable Girdhari Lal (PW-6).

2 Sub-inspector Lekh Raj (PW-8) along with H.C.Balram (PW-7) reached the spot; a dead body of a young boy aged 20-22 years was lying in a jhuggi of E-Block, Dev Nagar; blood was oozing out from the mouth and there were injury marks on the neck. PW-6 was present at the spot. The senior officers also reached the spot.

3 Investigation was handed over to SI Sanjay Kumar (PW-17). Crime team was summoned. SI Ashok Kumar (PW-15) In-charge of the crime team could not trace any chance prints. Report Ex.PW-15/1 was prepared. Photographs were taken by constable Ramesh Kumar (PW-2); negatives were proved as Ex.PW-2/10 and positives as Ex. PW-2/11 to Ex. PW-2/20.

4 From the spot blood samples were seized vide memo Ex.PW-6/A; a mobile phone lying at the spot and also a belt were seized vide separate memos Ex.PW-6/B and Ex.PW-6/D respectively. Blood stained bed sheet was also seized vide memo Ex.PW-6/C. Rough site plan was prepared; thereafter scaled site plan (Ex.PW-9/A) was prepared by SI Mahesh Kumar (PW-9).

5 Statement of the eye-witness Mohd.Gulsher (PW-1) was recorded

and proved as Ex. PW-1/1. This statement revealed that PW-1 had seen the incident. As per his version Inal Yadav on his return from work had entered his jhuggi; this was between 7.15 to 7.30 p.m.; PW-1 saw the appellant sitting on the chest of the deceased Anil and was pressing his throat; on questioning PW-1 was pushed and the appellant fled away. The deceased was lying dead. PW-1 informed PW-6 who was a beat constable and standing near a dhaba pursuant to which DD No.24 (as noted supra) had been registered.

6 The post mortem on the dead body was conducted on the following day i.e. on 26.11.2006 by Dr.Sunil (PW-14). On external appearance subconjunctival hemorrhage was present in both eyes, blood tinged froth present in both nostrils, and tongue was clenched in between teeth. Face was congested. Bluish discoloration of nails was present with swelling of lips. Hypostasis was present over the back except the pressure areas. Rigor mortis was present all over the body. There were no decomposition changes. Probable time since death was reported to be 2-3 days.

7 On external examination the following injuries were noted:

“1 Multiple contused abrasion with scratches at places in an area of 9.5 x 6.2 cms, reddish were present over right side of neck.

2 Multiple contused abrasion with scratches at places in an area of 6.3 x 5.1 cms, reddish were present on left side of neck;

3 Contused lacerated wound measuring 2.2 x 1.3 x 0.5 cms was present over inner aspect of lower lip;

4 Abrasion 3 x 2 cms, reddish was present over inner from the lower left thigh, 8 cms above left knee;

5 Abrasion 4 x 2.5 cms, reddish was present over inner front of lower right thigh, 16 cms above right knee.

Internal examination revealed as follows:

“Neck: There was effusion of blood present in the soft tissues and muscles of neck underneath injury Nos. 1 and 2. Pharynx, larynx and trachea was congested. There was fracture of right greater cornu of hyoid bone with effusion of blood at fracture site. All internal organs were congested.

Opinion: Death was due to asphyxia consequent upon combined effect of manual strangulation and smothering via injuries No. 1, 2 and 3. All injuries were ante mortem in nature and fresh in duration. Injuries No. 4 & 5 could be caused by blunt force/surface impact. Injuries No. 1, 2 & 3 could be caused by hands and were sufficient to cause death in an ordinary course of nature individually as well as collectively.

8 All injuries were noted to be ante mortem in nature. Post mortem report was proved as Ex. PW-14/1.

9 The clothes of the deceased as also his blood sample was handed over to the investigating officer by the post mortem doctor. Dead body was identified by Prakash (PW-4) and Ballikaran (PW-3) the associates

of the deceased. It was in their statement that the motive alleged by the prosecution was sought to be proved. Their versions being to the effect that a relative of the deceased (Anil) had got married to Bitti who was the niece of PW-4 and was also related to the accused (Inal Yadav); Inal Yadav belonged to the 'Yadav' caste and the deceased family belonged to the 'Rehdas' community; the accused was constantly questioning the deceased to disclose the whereabouts of Bitti as he heard that Bitti was in difficulty; the deceased had refused to disclose the address and earlier a quarrel had taken place between them; PW-4 had pacified them.

10 This was the gist of the version of the prosecution.

11 In the statement of the accused recorded under Section 313 of the Cr.P.C., he pleaded innocence; submission was that he was falsely implicated in the present case. He even denied the fact that he was living in the same jhuggi along with the deceased.

12 No evidence was led in defence.

13 On behalf of the appellant arguments have been addressed at length; written submissions have also been filed. The first submission of the learned counsel for the appellant is that no motive has been established by the prosecution and there was no reason whatsoever on

the part of the accused to have killed the deceased. He has been falsely implicated to solve a blind case. The motive as alleged and appearing in the version of PW-3 and PW-4 is demolished from the fact that Bitti was the niece of PW-4 and if at all there was any grievance it would be by PW-4 and not by the accused. Submission being that in the absence of motive entire version of the prosecution stands demolished. Reliance has been placed upon 1993 AIR 1823 Surinder Pal Jain Vs. Delhi Administration , 2012(4) JCC 2450 Mohd. Abu Jarsa @ Afzal Sah Vs. State and 2009(64) ACC State of U.P. Vs. Arun Kumar. Submission being that innocence of the appellant stands established. The second submission of the learned counsel for the appellant is pitched on the eye-witness account. It is pointed out that the testimony of PW-1 who is the only eye-witness is shaky and incredible; attention has been drawn to various parts of his deposition wherein in one part he has stated that the door of his jhuggi was closed from inside and he had peeped into the house above the door which is contrary to an earlier part of his deposition wherein he had stated that he had entered the jhuggi and seen the incident. Submission being that this version is highly untrustworthy and the conviction of the appellant based on such a contrary stand

CrI.A.No.824/2010 Page 6 of 16

adopted by PW-1 suffers from an infirmity and the impugned judgment is liable to be set aside. Attention has also been drawn to the site plan to substantiate this submission. It is also improbable that within a span of 15 minutes i.e. between 7.15 p.m. to 7.30 p.m. the entire incident had been witnessed and reported to PW-6 who had also got the DD recorded at 7.30 p.m. Submission being that PW-1 was not present at the spot. His evidence is liable to be discarded. To support this submission reliance has been placed upon 2010 (3) SCC 538 Javed Masood & Anr. Vs. State of Rajasthan. The DD also did not contain the names of the accused and the deceased when they were known to PW-6. Attention has also been drawn to the versions of PW-3 and PW-4; submission being that they were not consistent on the version as to who was present at the spot when the police arrived and in what direction the dead body was lying. Their versions are also shaky. Further submission of the learned counsel for the appellant being that the age of the deceased at the time of his death was 22 years and that of the appellant was approximately 45 years but no evidence of any scuffle has been noted in the medical evidence. It is highly improbable that a young boy of 22 years i.e. the deceased did not try to defend himself. The arrest is also

doubtful. PW-8 and PW-11 have given contrary versions on it. On all counts the appellant is entitled to a benefit of doubt and a consequent acquittal.

14 Arguments have been countered by learned public prosecutor. It is stated that the eye-witness's account has been assailed. PW-1 has remained firm on his stand; there was no ulterior reason to have deposed against the deceased. Testimony of PW-3 and PW-4 is valuable as it has established the motive for the crime and they also had no reason to falsely implicate the appellant. The cause of death which is asphyxia (as noted by the post mortem doctor) also matched the version of eye-witness account.

15 We have heard learned counsel for the parties and have perused the record.

16 The prosecution has established that the appellant Inal Yadav, the deceased Anil, PW-3, PW-4 and the eye-witness PW-1 were all sharing the same jhuggi at the E-Block, Anand Parbhat, Delhi; the accused was also the brother-in-law of PW-4. This version stands established in the depositions of PW-1, PW-3 and PW-4. In fact in the written submissions given by the learned counsel for the appellant, the

CrI.A.No.824/2010 Page 8 of 16

relationship of the public witnesses has been depicted in a chart wherein also it has been shown that the aforementioned five persons were admittedly living in the same jhuggi.

17 The present case is based on an eye-witness account. Eye-witness was PW-1. He was a resident of the same jhuggi where the deceased and the appellant were also living. On the fateful day he had returned from his duty and when he reached his jhuggi; at about 7.15 p.m.-7.30 p.m.; he found the accused was sitting on the chest of Anil and pressing his throat. On query, the appellant pushed him aside and ran away outside. PW-1 saw that Anil was already dead. He was perplexed and came out of the jhuggi; he informed PW-6; this information was conveyed to the local police post pursuant to which DD No.24 was registered. Police reached the spot. Apart from the exhibits which were lifted from the spot statement of PW-1 was recorded. Further version of PW-1 being that the appellant was trying to ascertain the address of Bitti (the niece of PW-4) from the deceased but the deceased was avoiding telling him the address; appellant had however been informed that Bitti was living in a miserable condition and she was earning her livelihood by washing utensils. The deceased was of the 'Jatav' caste which is a

lower than the caste of the appellant.

18 In his cross-examination, he stated that the door of his jhuggi was closed from inside; he peeped inside and saw the accused sitting on the chest of the deceased; there was a raxin on the door which was removed; he had peeped from that space; height of the door was about 4-5 feet; to remove the raxin there was no need to stand on any stool.

19 It is this part of the version of PW-1 which has been heavily assailed by learned defence counsel. It is stated that size of the door has not been depicted in the site plan (Ex.PW9/A); there is no window shown in the jhuggi; the version of PW-1 is conflicting; in one part of his deposition he has stated that he had entered into the room and witnessed the incident whereas in another part of his deposition he stated that he had peeped into the room from outside the door to witness the incident. These contrary versions are irreconcilable.

20 This submission of the learned counsel for the appellant is wholly unacceptable. Testimony of a witness has to be read as a whole and no one sentence can be extracted from his version to otherwise dislodge what is apparent and evident from the rest of his statement. PW-1 has been categorical in his version. His categorical version being that he

had reached the jhuggi and seen the accused sitting on the chest of the deceased throttling him. The door of the jhuggi was 4-5 feet in height; there was a raxin put over it which had been removed for which even the help of a stool was not required. Admittedly, the height of PW-1 was more than 4-5 feet and thus enough for him to witness the incident even if he was standing outside the jhuggi. The site plan has depicted the jhuggi but the height of the door has not been shown. However, no cross-examination of PW-1 was effected on this score that the height of the entrance door of the jhuggi was not 4-5 feet. It must also be remembered that the witness (PW-1) was a rustic witness; he was an uneducated person working as a labourer. There is also no reason to suggest that he was an interested witness; there was no ulterior purpose or motive which has either been spelt out in the cross-examination of PW-1 or has otherwise as emanated from evidence that he would be deposing for any interest of his own or for any other ulterior purpose. In fact PW-1 was a friend of both the appellant and the deceased. He is also not a chance witness; his presence in his jhuggi after returning from a day's hard labour was natural. Photographs have also depicted the scene of crime; two of the photographs (A-1 and A-2) show entrance of

the jhuggi. The door appears to be just about 4-5 feet height and over the door there is a raxin cover. PW-1 had removed this raxin to witness the incident. These photographs establish that any person of more than 4 feet height on removing the raxin cover could easily see the scene in the jhuggi. Thus on no count does the version of PW-1 become shaky. It is wholly credible and trustworthy. The post mortem report which had proved asphyxia as the cause of death is also fully corroborative of the version of the eye-witness who had stated that he had seen the accused throttling the deceased. This is another vital piece of evidence. Post mortem had been conducted on 28.11.2006 reporting that the death had occurred on 2 to 3 days ago.

21 Version of PW-1 as disclosed to PW-6 (the beat constable) standing in the vicinity was within a span of few minutes of the incident pursuant to which local police was also informed. This version of PW-1 was corroborated by PW-6. PW-6 had deposed that on the fateful day while he was on patrolling duty PW-1 met him and told him that Inal Yadav had committed the murder of Anil and ran away from the jhuggi. This information was conveyed in DD No.24. This DD is to the effect that a person was lying dead person in his jhuggi; the DD had not

mentioned the name of the assailant nor the deceased. The intimation in the DD was information about the murder; details were not necessarily required to be mentioned. This does not wash away this document as had been argued.

22 PW-3 who was also a resident of the same jhuggi had deposed that the appellant Inal Yadav had started living in his jhuggi about 8-10 days prior to the incident. PW-3 returned to the jhuggi along with PW-4 at about 8.00-8.30 p.m.. On reaching there they were informed by PW-1 that Inal Yadav had throttled Anil. Further version of PW-3 is that the deceased and the accused were not related to one another and were of different castes. In his cross-examination, he has stated that Bitti the daughter of the brother of PW-4 had been abducted by a relative of Anil and although the appellant belonged to the 'Yadav' caste; the deceased was of the 'Rehdas' community. Everyone was aware of the fact that the appellant was upset about a girl from his community having been taken away by a member of 'Rehdas' community.

23 PW-4 was also a resident of the same jhuggi along with the accused, deceased, PW-1 and PW-3. He has corroborated the version of PW-3. He has also stated that when they returned from their work

they were informed at about 8.00 p.m. by PW-1 that Inal Yadav had killed Anil. Further version of PW-4 being that Inal Yadav is his brother-in-law; he had eloped with his sister 20 years ago. Bitti was his niece. Some person belonging to a lower caste had abducted her; appellant had asked Anil to disclose the whereabouts of Bitti as it was learnt that Bitti was in a great difficulty and earning her livelihood by washing utensils. A quarrel had occurred between the accused and the deceased when the deceased had refused to disclose her address; PW-4 had pacified them; the deceased knew who had taken Bitti but he was not disclosing her address; oral discussions and a quarrel between the deceased and the appellant had taken place on this issue.

24 The trial court had rightly relied upon these versions of PW-3 and PW-4 and held them to be a relevant piece of evidence, on the ground of *res gestae* as contained in section 6 of the Indian Evidence Act. This has not been assailed by learned defence counsel and rightly so. The versions of PW-3 and PW-4 had also disclosed the motive for the crime. The motive being that the accused had earlier eloped with the sister of PW-4. Later on a relative of the deceased had abducted Bitti, the niece of PW-4; appellant and the deceased belonged to different castes;

appellant was of a higher caste whereas the deceased belonged to the 'Rehadas' community which was a lower caste; in spite of repeated discussions, the deceased was not disclosing the address of Bitti but the appellant had learnt that she was living in dire conditions. This was always a bone of contention and a cause of quarrel between the two; everyone knew of this grudge which the accused had against the deceased for not disclosing the whereabouts of Bitti to him. These versions were unassailed. Thus the motive as spelt out by the prosecution also stood established.

25 The arrest of the accused was made on the following day i.e. on 26.11.2006 by PW-17 along with constable Sanjeev Kumar (PW-11) when the appellant was found at the ticketing centre of New Delhi Railway Station. The memo of arrest was proved as Ex. PW-8/B. He was obviously at the Railway Station hoping to abscond but he was caught. There is no discrepancy in the versions of the arrest witnesses i.e. PW-11 and PW-17.

26 On no count does the judgment suffer from any infirmity. Version of the prosecution stands established. The appellant for an established motive had taken the life of Anil by throttling him to death.

Impugned judgment remains unassailable. The appeal is without any merit. Dismissed.

INDERMEET KAUR, J

KAILASH GAMBHIR, J

DECEMBER 17, 2013

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