

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

% *Judgment Reserved on: September 10 , 2014*
Judgment Delivered on: September 16, 2014

+ **CRL.A. 609/2014**

Sonu @ Gagan Singh Appellant
Represented by: Ms. Inderjeet Sidhu, Advocate.

Versus

State (G.N.C.T. of Delhi) Respondent
Represented by: Mr. Varun Goswami, APP for the
State with Insp.Rakesh Kumar, PS
Aman Vihar and Insp.Vijay Kumar
Kataria, SHO PS Welcome

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Sonu @ Gagan Singh is aggrieved by the judgment dated July 12, 2013 convicting him for the offence punishable under Section 302 IPC for murder of Gautam and order on sentence dated July 25, 2013 directing him to undergo rigorous imprisonment for life and to pay a fine of ₹10,000/- for offence under Section 302 IPC and in default of payment to undergo simple imprisonment for a period of one month.

2. Learned counsel for the Sonu assails the impugned judgment on the ground that the witnesses have deposed against Sonu under police pressure. The opinion of the doctor that external injuries could be caused by belt or

any other substance is not conclusive and does not rule out the possibility of self-strangulation. No investigation was carried out to completely rule out the possibility of deceased committing suicide as he had seen his girl friend with a third person. Call details of the deceased show that he was constantly in touch with Pintu PW-13. However, still Pintu did not depose as to how the death of Gautam took place. The post-mortem report does not give the time since death. Hence there is no material to show that Sonu committed murder of Gautam. There is no enmity between Sonu and Gautam. The prosecution has failed to prove the presence of Sonu and Gautam in the same area before the death. Though it is alleged that the mobile handset of Gautam was recovered from Sonu however the father of the deceased did not state anything about the missing of phone either in the FIR or in the statement recorded under Section 161 Cr.PC. No TIP of the mobile phone handset was conducted and the same was identified for the first time in Court.

3. The defence of Sonu is of false implication and that he did not know deceased Gautam and had never met him. He further stated in his explanation under Section 313 Cr.PC that Sonia was his friend and he was a married man with a little child and had no grudge against the deceased. The investigating officer in connivance with the complainant had falsely implicated him in the case.

4. The case of the prosecution is that Rahul PW-12 on November 06, 2011 at 7.00 AM went to DDA park of Pratap Vihar for easing and while coming back he found one Gautam lying on the ground in the said park. He went to the house of Gautam and informed his father about the same. In cross-examination, this witness stated that he did not see any belt around the

neck of Gautam when he was lying in the said state

5. Shubh Narayan Prasad PW-3, the father of Gautam rushed to the spot and found his son Gautam lying dead with his belt tied around his neck. He opened the belt and left the same there in the field and brought the dead body of his son on his shoulder to his house. From his house, he made a PCR call which was recorded vide DD 13/A informing that at 7.26 AM on November 06, 2011 a boy has been murdered by strangulating the neck.

6. Statement of Shubh Narayan Prasad was recorded wherein he stated that he was working in a factory and had two sons and three daughters. His elder son Gautam aged 18 years studying in 12th Class had gone out at 9.00 pm on November 05, 2011 after he received a call on his mobile phone. Gautam had informed him that his friend had called him and he would come back soon. Since his son did not come for some time, he enquired from his friends, however he got no clue. In the morning at about 7.00 am a neighbour named Rahul informed him that his son was lying on the DDA park ground near bushes. He went there and found his son dead with a belt around his neck. He immediately removed the belt and brought his son home and made a call at 100 number. On this statement FIR No.341/2011 Ex.PW-1/A under Section 302 IPC was registered at PS Aman Vihar.

7. Inspector Vijay Kumar Kataria PW-28 deposed that on November 06, 2011 on receipt of DD No. 13A he along with HC Anil, SHO Inspector Anil Kumar reached at Pratap Vihar where SI Shubh Ram, Ct. Mughlai and Ct. Balbir were already present. They found a male dead body lying on a cot with the ligature mark on his neck. Blood was also found on his ear. Crime team was called and photographs of the dead body and place of occurrence were taken. At the spot, a belt of black colour was found lying which father

of the deceased identified to be belonging to his deceased son. The said belt was seized and post-mortem of the body was got conducted. On November 09, 2011 they came to know that Sonu and deceased Gautam were in love with a girl namely Pinky @ Sonia. Statement of Sonia was recorded and she led them to the house of Sonu. There they found Sonu had got his hair shaved. During the course of investigation, the phone call records were received and it was found that the mobile handset of the deceased was sold by Sonu to Shashi Kant.

8. The post-mortem of the dead body was done by Dr. Manoj Dhingra PW-17 who found the following external injuries:-

- “(1) *Legature mark 31 cm long, round horizontally present all along neck. Legature Mark is placed 6 cm below right mastoid process, 7 cm below left mastoid process and 6 cm below tip of chin, 5 cm above sterna notch and 0.3 cm below posterior hairline. Its width is approx. 5 cm.*
- (2) *abrasion 1 x 0.5 cm soft red over front of nose.*
- (3) *Liner abrasion/0.5 cm below left eye.*
- (4) *Liner abrasion 0.5 cm below right eye, two in number.”*

9. Dr. Manoj Dhingra exhibited the post-mortem report vide Ex.PW-17/A and opined that death was due to asphyxia consequent to strangulation however preserved the viscera to rule out poisoning. He also exhibited his subsequent opinion vide Ex.PW-17/C and on seeing the belt recovered, he opined that external injury No.1 mentioned by him in the post-mortem report could be caused by the said belt or any other such substance.

10. Sonia, who appeared in the witness box as PW-5 deposed that she was

studying in 9th standard and a month prior to the incident Sonu started coming to her gali and started talking her. Thus she became friend of Sonu. On November 05, 2011 at about 7.00 pm she was standing behind a tree with Sonu and talking intimately when Gautam saw them in that position due to which she got scared. She expressed her apprehension to Sonu that the deceased may not disclose the said state of affairs to her family members on which Sonu assured her not to worry and the deceased would not be able to speak to anyone. Next day, she came to know that Gautam had been murdered. She stated that she was also on friendly term with Gautam.

11. Ali PW-6 a barber by profession deposed that on November 05, 2011 one boy came for hair cut at about 9 or 9.15 pm. He identified Sonu as the boy who had come to him to get his head shaved off. He stated that when he was shaving the head of Sonu he found small thorns of bushes in his hair and when he asked about the thorns in his hair, he asked him to mind his own business. His charges for shaving the hair were ₹20/-. However, Sonu gave him ₹10/- only and when he stated that he does not work on credit Sonu asked him to accompany to a mobile shop where he sold the mobile phone and gave ₹10/- to Ali. According to him, the mobile handset was Black and white in colour.

12. The version of Ali is corroborated by Shashi Kant PW-7 who deposed that on November 05, 2011 at about 8.45/9.00/9.15 pm Sonu came to his shop to sell the mobile phone (brand G-5 of black colour) and received a sum of ₹300/- for the same. The said mobile phone, which was later found to be belonging to the deceased, was seized by the police on November 09, 2011 vide memo Ex.PW-3/F.

13. Pintu PW-13 friend of Gautam deposed that on November 05, 2011

he had given a call from his mobile phone No.9599592370 to the deceased on his mobile phone No.9599592118 inviting him to join him for soup. They had soup, smoked cigarette and thereafter departed to their houses. He thus deposed that mobile number of Gautam was 9599592118. The version is corroborated by the mobile call record details of mobile No.9599592118 Ex.PW-20/C exhibited by Subodh Narayan Jha PW-20 as per which a call was made from the mobile No.9599592370 at 20:09:24 hours (i.e. 8.09 pm) which lasted for about 18 seconds to mobile no.9599592118. Further Govind Prasad PW-11 who was doing the business of selling the chicken soup on his handcart deposed that on November 05, 2011 at about 8.00 pm Pintu and Gautam came to his handcart and had taken the soup. Thus the version of Pintu also stands corroborated by Govind Prasad.

14. The court examined three witnesses Mool Chand Sharma CW-1, Amit Gupta CW-2 and Vinod CW-3, who was the salesmen of Bharti Airtel Ltd. Vinod deposed that one of the documents handed over to him i.e. customer application form Ex.PW19/A bearing photograph of Mool Chand CW-1 relating to mobile number 9999889839 and ID proof Ex.PW19/B were collected. However, the SIM of mobile number 8527532252 was never handed over to CW-1. He clarified that by mistake the documents given to Sagar Dutta PW-8 got exchanged with Mool Chand Sharma.

15. From the deposition of Pintu, it is evident that mobile number of deceased was 9599592118 which was working on the handset with IMEI No. 353298048909010. This handset was seized by the police from Shashi Kant having been sold by Sonu to Shashi Kant on November 05, 2011 and from ₹300/- received, ₹10/- were given to Ali. In order to check the mobile handset sold by Sonu was in working condition, Shashi Kant inserted a new

SIM bearing No.8527532252 in the said mobile handset and then made a call on his own mobile phone 9599345134 and after he found the same in working condition, he purchased it for ₹300/-. PW-8 Sagar Dutta also deposed that he had purchased a SIM card from Shashi Kant on November 06, 2011. Since he gave his mobile handset to Shashi Kant for repairing and obtained one mobile handset for time being from him to use the said SIM. Despite an error by Vinod in inadvertently exchanging the documents relating to Mool Chand Sharma with that of Sagar Dutta, all these facts stand corroborated by the mobile phone call details.

16. From the evidence on record, the prosecution has been able to prove the motive and the fact that Sonu was in possession of the mobile phone of the deceased soon after his death. Moreover, the place where the dead body of Gautam was recovered was a bushy area and soon after the incident Ali shaved off the hair of Sonu which had small thorny bushes.

17. Learned counsel for Sonu has assailed the prosecution case on the ground that Rahul stated that he did not note the belt of the deceased when he saw the deceased in the morning prior to informing the father of the deceased. However, Subh Narayan Prasad categorically stated that when he went to the spot he found the belt tied around the neck of his son. He removed the same and brought the body of his son with him. On his pointing out, the belt was recovered from the place of occurrence and as per the opinion of post-mortem doctor the injury on the neck was possible by the belt. Merely because Rahul failed to notice the belt around the neck of Gautam would not belie the version of the father of the deceased.

18. In view of the evidence proved by the prosecution, the impugned judgment of conviction and order on sentence are upheld.

19. The appeal is dismissed.
20. TCR be sent back.
21. Two copies of the judgment be sent to the Superintendent Central Jail Tihar one for his record and the other to be handed over to the appellant.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

SEPTEMBER 16, 2014
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