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

Judgment Reserved on: July 30, 2014
% *Judgment Delivered on: August 05, 2014*

\+ **CRL.A. 1242/2013**

PREM SINGH ..... Appellant
Represented by: Mr.S.S.Dahiya, Mr.L.K.Dahiya, Ms.Sangeeta, Ms.Padmini, Advocates.

versus

STATE OF DELHI ..... Respondent
Represented by: Mr.Varun Goswami, APP for State.

AND

\+ **CRL.A. 936/2013**

MANOJ KUMAR ..... Appellant
Represented by: Mr.R.N. Sharma, Advocate.

versus

STATE ..... Respondent
Represented by: Mr.Varun Goswami, APP for State.

AND

\+ **CRL.A. 1136/2013**

KAMAL ..... Appellant
Represented by: Mr.Ramesh Gupta, Sr.Advocate instructed by Mr.D.K.Pandey, Advocate.

versus

STATE ..... Respondent

Represented by: Mr.Varun Goswami, APP for State.

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

MUKTA GUPTA, J.

1. The appellants impugn the common judgment dated May 17, 2013 convicting them for the offence punishable under Sections 302/34 IPC on the strength of circumstantial evidence for the murder of Hoshiyar Singh, father of Prem Singh and the order on sentence dated May 29, 2013 directing appellants Kamal Kishore and Manoj Kumar to rigorous imprisonment for life and fine of ₹50,000/- and in default of payment of fine to undergo simple imprisonment for three months each and appellant Prem Singh to rigorous imprisonment for life with directions that he shall not be considered for grant of remission till he undergoes an actual sentence of 20 years and a fine of ₹50,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months.

2. Learned counsel for the appellants assail the judgment on the ground that PW-21 Naresh Kumar @ Bandhu the witness of last seen has turned hostile and has not supported the prosecution case. The alleged recovery of lathi and screwdriver was from the room itself where the deceased was lying and thus could not be termed as recovery pursuant to disclosure under Section 27 of the Evidence Act and cannot be held to be incriminating against the appellants. No opinion has been rendered by the post-mortem doctor as to the cause of death. In the absence of the last seen evidence, cause of death and recovery at the instance of the appellants the prosecution

has not been able to prove the chain of circumstances proving the guilt of the appellants. Further corroborating evidence in the form of call details is also very shaky and does not support the version that the appellants were together at the place of occurrence. The learned Trial Court erroneously held that Prem Singh absconded from the spot. Statement of material witness Jai Singh, brother of the deceased was recorded after two days hence there was sufficient time for manipulation. PW-1 Surat Singh is also not an eye witness. Witnesses have admitted that they had seen the appellants in the Police Station and thus the test identification parade was meaningless.

3. Prem Singh in his explanation sought under Section 313 Cr.P.C. has denied the prosecution case. However, he has appeared as DW-1 and stated that on March 30, 1992 he had purchased a property bearing No.B-43, Kewal Park, Azadpur from Shri Prithi Singh and exhibited the General Power of Attorney, Agreement to Sell, copy of the possession letter etc. in this regard and has thus stated that he had no dispute with anybody including Prithi Singh, his uncle. He further stated that on that day and children were residing in the same house. He further stated that he had no dispute with his father at any point of time and had never filed any civil suit relating to property dispute against his father. In answer to the question "*Do you wish to say anything else?*" he stated that:

> "*There was a property dispute going on in the family as my brothers and uncles (chachas) were having an ill eye on the property of my father. My brothers and uncles (chachas) have in connivance of each other have falsely implicated me in this case in order to grab my property. I am innocent. I have not committed any offence. The allegations against me are false and denied.*"

4. The defence of Kamal Kishore and Manoj Kumar is of total denial and have stated that they are innocent and have been falsely implicated. Neither defence evidence has been led nor any specific plea has been taken by them.

5. The investigation was set into motion on receipt of DD No.26A at about 4.40 PM at PS Adarsh Nagar Ex.PW-30/J informing that "*BAP BETE KE JHAGDE ME BAP NE BETE KO JAN SE MAR DIYA HAI*". On reaching the spot the PCR officials found that Hoshiyar Singh was lying dead. There was injury on his hand and he was bleeding from his private parts. His younger brother Surat Singh informed that there was dispute between Hoshiyar Singh with his son over property and Prem Singh son of Hoshiyar Singh along with his friends has murdered Hoshiyar Singh. On reaching the spot SI Kishan Lal PW-29 and Constable Sanjeev PW-50 found a male lying on the cot in the outer room of the house. Even Inspector Mahavir Singh Kaushik PW-30 reached the spot and they all found blood on the private parts of the body. Crime team was called and the spot was inspected. Surat Singh the real brother of the deceased informed that at about 4.15 PM when he came to his house he found his niece i.e. daughter of his brother Kavita PW-12 weeping and his brother Hoshiyar Singh lying dead on the cot. According to Surat Singh in the meanwhile his elder brother Jai Singh was also came on the spot and they both took Hoshiyar Singh to Khera Clinic where he was declared dead by the doctors whereafter they brought back the dead body and dialled 100 number. Surat Singh also informed that the son of the deceased i.e. Prem Singh was having a property dispute with his father and he gave beatings to Hoshiyar Singh on many occasions and had threatened him to kill. He also stated that after he made

the PCR call, Prem Singh ran away from the spot and thus he raised his suspicion on Prem Singh. On the statement of Surat Singh FIR No.206/2009 under Section 302 IPC was registered at PS Adarsh Nagar. This witness deposed before the Court on the same lines.

6. The post-mortem of the deceased was got conducted by PW-10 Dr.K.Goyal. He opined that the cause of death was combined effect of shock and haemorrhage due to chest, liver and pelvic injuries and vasovagal shock due to testicular injuries and were collectively sufficient to cause death in ordinary course of nature. He exhibited his report Ex.10/A noting the following injuries:

> *"1. Contused-abrasion 5 x 4 cm at Rt lateral canthus, few scratch abrasion over Rt molar region, abrasion 2 x 1 cm between lower lip & chin, 2 x 1 cm abrasion just Lt & below of chin. 1.5 x 0.75 cm just below of middle of Rt mandibular area. 3 linear parallel grazing each 2 x 0.75 cm obliquely placed about 0.75 cm apart each other over antero-medial aspect of upper side of Rt arm just below axilla, scratch abrasion 1 x 0.2 cm over Lt. Front of base of neck about 2.5 cm Lt. to midline. Few abrasion scattered over both knee joints and legs at places.*
>
> *2. Massive different bruising reddish in colour all over both groins, inguinal regions, both iliac fossa guardrants & Hypogestrium in total area 40 x 25 cm transversally.*
>
> *3. Multiple grazed abrasion with centrurious scattered all over front and medial argusts of upper ¾ of both thighs.*
>
> *4. Laceration–abrasion 3 x 1.25 cm over dorsum of Rt. Hand.*
>
> *5. Both lips with surrounding area are bruised externally as well as internally against the teeth.*

6. *Incised wound 3 x 1 cm full skin deep over ventral aspect of penile stem.*

7. *Cut penetrating wound two in number over Rt. Sacretum. One of them is at upper side of size 2 x 0.5 cm just Rt. To midline & another one is at lower side 1.5 x 0.5 cm. On exploration both wounds are communicated to each other. Clots present in scrotal sac. Rt testis is bruised with grazing over medial side at both wounds are about 4.5 cm apart each other.*

7. Dr.K.Goyal further deposed that injury Nos.1 to 4 were caused by blunt force impact. Injury was caused by pressure over mouth consistently by grip to ward off cries. Injury No.6 was caused by sharp edged weapon. Injury No.7 was caused by sharp cutting penetrating weapon. Chest, liver and pelvic injuries were caused by blunt force impact. He also opined that injury Nos.6 and 7 mentioned in the report was possible with the iron rod in the form of long chisel Ex.P8. In cross-examination he stated that injury Nos.6 and 7 were possible from the sharp flat edge of Ex.P-8. He also stated that the time since death was 23-24 hours and thus the deceased died at somewhere around 3.00 PM on September 10, 2009.

8. Efforts were made to trace Prem Singh who was apprehended on September 12, 2009 from Village Bhadola near Shiv Mandir at the instance of Surat Singh. On his disclosure, statement was recorded pursuant whereto at his instance both Kamal Kishore and Manoj were arrested. On September 13, 2009 Prem Singh got recovered a lathi from the room where the dead body was lying. On September 16, 2009 Kamal Kishore got one rusted iron rod with a look of a Chheni recovered from the garbage in the corner of the

room where the dead body was lying and at the instance of Manoj one sweater was recovered from the garbage lying outside the room with which they had tried to strangulate the deceased.

9. There being no eye witness the case rests entirely on the circumstantial evidence of last seen, motive and recovery. Surat Singh as noted above made the PCR call with regard to the death of his brother wherein he had named Prem Singh. The call to the PCR had been received from Mobile No.9210000881. Surat Singh stated that the said mobile was in the name of his brother Rattan Singh and was used by his nephew Rajiv, he took the mobile from Rajiv and made the call. He further stated that one court case was pending between the deceased and Prem Singh. Prem Singh quarrelled and gave beatings to the deceased on many occasions and threatened to kill the deceased. When he made the call to police at 100 number Prem Singh was present however, thereafter he ran away from the spot. He also deposed about the recoveries conducted on the spot and his having signed the memos in this regard.

10. A Qualis vehicle bearing No.DL 4C R 6693 was also seized from outside the house which belonged to the son of the sister-in-law of Prem Singh and which was being used by Prem Singh. The reason of the seizure was the statement of Jai Singh, elder brother of the deceased who appeared as PW-20 and deposed that there was a quarrel between Prem Singh and the deceased over the property due to which Prem Singh had given beatings to his father number of times. He further stated that on September 10, 2009 at about 2.30 PM he was present in the balcony of his house when he saw his nephew talking with two boys just in front of the room of the deceased near the Qualis of Prem Singh. After some time Prem Singh boarded the Qualis

vehicle and the other two boys, who were talking with Prem Singh, entered into the room of the deceased. He thought that those boys must have come to take the room on rent. As there was rain he went inside his room. At about 4.15 PM he heard the cries of his niece Kavita. When he went in the gali he saw the deceased lying on the cot in his room. He along with Surat Singh took the deceased to Khera Nursing Home where the deceased was declared dead. Thus they returned back to the house with the body and made a PCR call. This witness identified Prem Singh, Kamal Kishore and Manoj Kumar. He identified Kamal Kishore and Manoj Kumar as the persons who were talking to Prem Singh and had entered the room of the deceased at about 2.30 PM on September 10, 2009.

11. The deposition of Naresh Kumar @ Bandhu Kumar a neighbourer of the deceased is also relevant. He has stated that he was living in the neighbourhood of the deceased and several times quarrel took place between Prem Singh and the deceased due to the property. Prem Singh used to abuse his father and demanded the property in his favour. On September 10, 2009 at about 3.15 PM while he was going to his shop situated at Gopal Nagar from his home it was raining and Prem Singh was present in the vehicle Toyota Qualis in front of the room of the deceased and Prem Singh was pressing the accelerator of his vehicle continuously and making the sound of vehicle loud (*gadi ko race de raha tha*). When asked the reason for the same, Prem Singh replied that his vehicle was not starting. Meanwhile, he saw two boys coming out of the room of the deceased. When Naresh asked about those two boys, Prem Singh replied that they were the tenants. Thereafter he went towards his shop and in the evening he came to know that Hoshiyar Singh was murdered.

12. Though all these witnesses Surat Singh, Naresh Kumar and Jai Singh were living in the neighbourhood however, none is an eye witness and the factum that the offence was committed was only revealed when Kavita, the daughter of the deceased came back to the house.

13. Kavita has deposed that the deceased was her father and Prem Singh her elder brother. Prem Singh had quarrelled with the father in the year 2008 and gave beatings to him due to which he received stitches on the head and thereafter also quarrels used to take place between the deceased and Prem Singh. On September 09, 2009 she had gone to Silai Centre at around 1.00 PM and her father was alright at that time and was cleaning the roof as rainy water collected on the roof. She returned back from the Centre at about 3.45-4.00 PM when she saw her father lying on the cot and the bed sheet was on his body. She gave a call to his father but there was no response. She took off the bed sheet from the body of her father but he was not responding. She felt suspicious and presumed that he had died and started weeping. In the meantime, persons of the locality collected there. Her uncle Jai Singh and his son took her father to Khera Nursing Home. Her uncle Surat Singh got conducted the police proceedings. She has further stated that when she returned back from the centre she found her brother Prem Singh moving in the veranda and his vehicle was parked outside the room of the father. In cross-examination by the learned APP she stated that after the arrival of police her brother Prem Singh had left the house. Thus from the evidence of these two witnesses, Jai Singh and Naresh, the presence of Prem Singh at the spot when the alleged incident took place has been established beyond reasonable doubt.

14. This version of the witnesses is further corroborated by the call

records of Prem Singh whose phone No.9818908444 which was in the name of Suraj Singh but used by Prem Singh was found to be at the location Commercial Complex, Azadpur on September 10, 2009. Suraj Singh PW-27 the co-brother of Prem Singh has deposed that Mobile No.9818908444 was used by Prem Singh though he denied the same having been seized. This witness has also deposed that Toyota Qualis No.DL 4C R 6693 in the name of his son Vijender was used by his co-brother Prem Singh. This witness has also stated that on receiving the information about the death of Hoshiyar Singh when he reached the spot he found crowd at the house of Prem Singh but Prem Singh was not present there. The call detail records of Mobile No.9818908444 in the name of Suraj Singh but being used by Prem Singh were duly proved by PW-8 along with certificate under Section 65B of the Evidence Act. As per the Cell ID Location, Mobile No.9818908444 was in the range of Commercial Complex Azadpur from 11.08 AM on September 10, 2009 to 4.11 PM on the said date. However, thereafter at about 4.19, 4.20 PM and then again from 4.44 PM onwards the same has changed the location. This corroborates the version of Surat Singh, Kavita and Jai Singh that Prem Singh was present at the spot but when the PCR call at around 4.37 PM was made , Prem Singh left the place and went away. Thus the prosecution has been able to prove beyond reasonable doubt by cogent and convincing evidence that Prem Singh was present at the spot when the incident took place and after the PCR call was made he ran away from the spot.

15. Learned counsel for Prem Singh contended that his presence at the spot cannot be used as incriminating as the same was his house and he would thus be naturally present there. It is not Prem Singh's mere presence

but his presence outside the room of his father along with two other persons on the Qualis Vehicle and his absconsion on calling the police is being used as incriminating against him. From the statements of Surat Singh, Kavita, Jai Singh and Naresh, the prosecution has proved that there was dispute between Prem Singh and the deceased over distribution of the property and Prem Singh used to beat the deceased often and quarrel with him. Prem Singh has himself appeared as defence witness and deposed that he had purchased B-43, Kewal Park, Azadpur and had no dispute. Merely because he had purchased another property would not show that he had no dispute with the deceased over the property. Moreover in cross-examination of Prem Singh it has been brought out that the documents were not registered, even the stamp of notary neither shows the number of the notary nor his signatures. Thus the authenticity of the documents regarding purchase of property is seriously in doubt. Thus on the basis of evidence produced by the prosecution and nothing having been elicited by Prem Singh in the cross-examination of these material witnesses who have spoken about the constant dispute between Prem Singh and the deceased, in our opinion the prosecution has also proved the motive against the appellant Prem Singh.

16. Further Raj Pal PW-26 deposed that he called Prem Singh at about 4.00-4.15 PM on September 10, 2009 on Mobile No.9818908444 and told that he needed the taxi. On this Prem Singh hurriedly stated to him that taxi was not spare and he disconnected the call. The words used by Raj Pal were "*harbarahat mein phone kaat diya*". The testimony of Rajpal also proves that mobile No.9818908444 was being used by Prem Singh and also that the conduct of Prem Singh was not normal when he spoke to him at around 4.00-4.15 PM on September 10, 2009.

17. There is yet another important aspect regarding the post event conduct of Prem Singh. The case of the prosecution is that when Kavita came back at home she found her father lying on the cot and since there was no movement in his body she started crying on which the relatives and people collected. The brothers of the deceased i.e. Surat Singh and Jai Singh came at the spot and took him to the hospital and also informed the police however, despite the fact that Prem Singh was very much in the same house, even on hearing the cries of his sister he made no efforts to take his father to the hospital or to call the police.

18. This brings us to the recoveries at the instance of Prem Singh and whether they connect him with the offence committed. At the instance of Prem Singh lathi was recovered. The weapon of offence i.e. lathi and Chheni were recovered from the room of the deceased itself however, they were recovered from the corner of the room where scrap was lying. However, no opinion has been taken that the injuries on the deceased were possible by the said lathi. Thus the lathi recovered from the spot is not connected with the offence committed. Further it is also not the case of prosecution is that Prem Singh assaulted his father with the lathi. The case of the prosecution that Prem Singh was on his vehicle outside pressing its accelerator so that due to the noise of the vehicle the shrieks and cries of the deceased when Kamal and Manoj were assaulting him should not be heard. Thus, even in the absence of the weapon of offence at the instance of Prem Singh being connected with the offence there is sufficient evidence in the form of last seen evidence, motive, conduct at the time of incident and post event conduct to prove his involvement in the commission of offence.

19. As regards Kamal Kishore and Manoj Kumar the contention raised by

the learned counsel is primarily that though witnesses have stated that they were present their call IDs show that they were moving around and were in touch with each other and had they been together there was no question of calling each other. Moreover though there are calls between Manoj and Prem Singh there was no call between Kamal Kishore and Prem Singh. As regards the presence of Kamal Kishore and Manoj Kumar is concerned, Jai Singh has identified the two boys to be present along with Prem Singh at around 2.30 PM when he was standing in the balcony and when they went inside the room of the deceased. Later Naresh Kumar saw these two boys coming out of the room of the deceased at about 3.15 PM when Prem Singh was sitting on his vehicle and pressing the accelerator so that the vehicle was continuously making loud sound. On a query raised by Naresh Kumar as to who the two boys were Prem Singh stated that they were tenants and thus tried to misguide Naresh Kumar. Though the testimony of these two witnesses is sufficient to prove the presence of Kamal Kishore and Manoj Kumar at the place of incident at the relevant time however, even from the phone call details of Kamal Kishore and Manoj Kumar which have been duly proved it is evident that they were present in the range of tower under which place of incident was.

20. Learned counsel for Kamal and Manoj have also assailed the TIP proceedings. Indubitably the applications for conducting test identification proceedings were moved on September 14, 2009 and on September 15, 2009. Kamal and Manoj refused to undergo TIP on the pretext that there photographs were taken and they were shown to the witnesses. Though both Jai Singh and Naresh Kumar in their examination-in-chief have stated that after September 10, 2009 they saw Kamal and Manoj on September 16,

2009 i.e. after refusal of TIP and identified them however, Naresh Kumar in cross-examination stated that he was shown Kamal and Manoj on September 12, 2009 in the police station when Kavita and Jai Singh were also present. The refusal of Kamal and Manoj thus cannot be faulted. However, it is well settled that TIP is only an aid in investigation and ultimately it is dock identification that has to be considered. The witnesses having identified Kamal and Manoj properly in Court, it is thus held that the two have been duly identified by the witnesses.

21. Learned counsels for the appellants have also stated that if the phone call details were to be accepted then during the time when the alleged incident had taken place both of them i.e. Manoj and Kamal Kishore were talking to each other. It may be noted that as per Jai Singh he saw the two boys entering at around 2.30 PM in the room of his brother. The call between Kamal Kishore and Manoj is at about 2.38 PM. Thereafter the call is at 3.05 and 3.10 PM i.e. around 3.15 PM after Naresh Kumar saw them coming out. No witness can give exact time and it would be only a rough time which would be given as is also apparent from the fact that inter se Manoj and Kamal Kishore there is no call from 2.38 to 3.05 PM i.e. the time of around more than 25 minutes sufficient for them to have completed the act. In this duration there is no call on the phones of these two appellants. Moreover, the complexity of Kamal Kishore and Manoj is also proved from the weapon of offence recovered from them. The Chheni recovered from the scrap at the instance of Kamal Kishore was found to be blood stained as per the FSL report though no conclusive blood grouping could be given. Even the sweater recovered at the instance of Manoj Kumar was found to be blood stained though no grouping could be given. Even as per Dr.K.Goyal injury

Nos.6 and 7 on the deceased were possible by Ex.P8 the chheni recovered.

22. Thus from the circumstantial evidence on record we are of the considered opinion that the prosecution has been able to prove that Prem Singh, along with Kamal Kishore and Manoj Kumar committed the murder of his father and thus the conviction of the appellants under Sections 302/34 IPC and the order on sentence are upheld. The appeals are dismissed.

23. T.C.R. be returned.

24. 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

AUGUST 05, 2014
'vn'