

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

% *Date of decision: September 12, 2014*

+ **CRL.A. 1041/2014**

CHUNBUDA

..... Appellant

Represented by: Mr.Ajay Verma and Ms.Neha
Singh, Advocates.

versus

STATE

..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP for
the State.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.B.No.10207/2014 (suspension of sentence)

Since we are hearing the appeal, instant application seeking suspension of sentence is dismissed as infructuous.

CRL.A. 1041/2014

1. Chunbuda is aggrieved by the judgment and order on sentence dated February 20, 2014 convicting him for the offence of murder of his real brother Devi Dayal and directing him to undergo imprisonment for life and to pay a fine of ₹10,000/- and in default of payment of fine to undergo Simple Imprisonment for three years.

2. Learned counsel for Chunbuda assails the judgment on the ground that there is no evidence that Chunbuda committed murder of his brother. There is no eye witness to the incident nor has any witness seen Chunbuda with the deceased soon before his death. Merely on the basis of an assumed

motive the appellant cannot be convicted and sentenced as above. The explanation of Chunbuda in his statement recorded under Section 313 Cr.P.C is that he is innocent, has been falsely implicated in this case and nothing was recovered at his instance.

3. Process of law was set into motion on receipt of complaint at Control Room PCR by W/Constable Nivedita PW-6 on July 24, 2011 at about 8.54 AM from Pappu Singh phone No.7838948330 c/o Phool Singh, House No.RC-119, Rajasthani Colony, West Patel Nagar, Delhi-5 that on the roof of the House No.A-13, Bawana, Sector-1, Delhi one dead body of one boy aged 32-33 years was lying. She exhibited the copy of the PCR form as Ex.PW-6/A. This information Ex.PW-10/A was recorded vide DD No.10/A at PS Bawana.

4. Inspector Rakesh Kumar, PW-21 reached the spot and found on the roof of the bathroom on the second floor of the building one male dead body with injury marks on the abdomen, left side of the head and left eye. The mattress was blood stained. Half piece of brick was lying near the right shoulder of the deceased with two strands of hair which were also blood stained. Inspector Rakesh Kumar PW-21 recorded the statement of Ram Sajeevan, PW-11, the uncle of Devi Dayal the deceased and Chunbuda the accused.

5. Devi Dayal stated that he was working as mason for the last one year in Factory No.A-13, Sector-1, DSIDC, Bawana. 8-10 labourers were also working there as masons and they used to sleep in the factory premises in the night. On July 23, 2011 at about 9.00 PM he slept on the first floor whereas Om Prakash, Dharamraj and Devi Dayal went upstairs on the roof of bathroom of the second floor. Due to drizzling in the night Om Prakash

and Dharam Raj went downstairs but Devi Dayal kept on sleeping there. At about 6.00 AM on July 24, 2011 he sent the labourer Raju to awake Devi Dayal. When Raju went upstairs he found Devi Dayal lying in a pool of blood. The complainant expressed his apprehension that Devi Dayal was killed by his younger brother Chunbuda because Chunbuda had illicit affair with Prema, wife of Devi Dayal due to which there was a quarrel between the two of them in the village and both were bearing grudge against each other. On the basis of this statement FIR No.259/2011 under Section 302 IPC was registered at PS Bawana.

6. Inspector Rakesh Kumar sent the body for post-mortem and seized the incriminating articles. Crime Team was called at the spot and the spot was got inspected. Inspector Rakesh Sharma collected the exhibits from the spot and prepared pullanda of one dirty old mattress of white and one blue colour stained with blood, half brick piece etc. in cloth pullanda. He also seized blood stained piece of earth and earth control. Since the complainant expressed his apprehension on Chunbuda he was interrogated when he confessed his involvement in the present case. Pursuant to the disclosure statement he got recovered wooden balli by which he attacked Devi Dayal and towel with which he had wiped out his hands and pointed out the spot where the piece of brick was lying. The same were recovered from the second floor of the roof. The balli with an iron nail on one edge was also found blood stained.

7. The post-mortem of Devi Dayal was conducted and as per the post mortem report Ex.PW-13/A Dr.Vijay Dhankhar Ex.PW-13 noticed the following injuries

“EXTERNAL EXAMINATION

Injuries:

- 1. Laceration "Y" shaped 3.5 x 3 c.m x bone deep present on right frontal region of head with underlying fracture of skull.*
- 2. Laceration, cruciate, 4 x 3 c.m x bone deep present on left frontal region of head with underlying fracture of skull.*
- 3. Laceration, 4 x 1.5 c.m x bone deep present on right side of top of head with underlying fracture of skull.*
- 4. Laceration, 5 x 1.5 c.m x bone deep present on left side of top of head with underlying fracture of skull.*
- 5. Contusion, bluish in colour 22 x 10 c.m present on the upper third of front of left side of chest.*
- 6. Contusion 25 x 18 c.m. Present on the front of abdomen extending from the inner aspect of right side of abdomen across the midline upto the outer aspect of left side of abdomen.*

INTERNAL EXAMINATION:

i. Head

On reflection of scalp extravasation of blood was present over the bilateral fronto parieto temporal region. Multiple fracture of skull were present. Multiple lacerations of the brain were present. Patchy subdural and subarachnoid haemorrhage were present all over the brain.

iii. Chest

Extravasation of blood was present on the left side on reflection of chest wall."

8. Dr.Vijay Dhankhar vide his report Ex.PW-13/A opined the cause of death to be due to cranio-cerebral damage consequent to blunt force impact to the head. All the injuries were ante mortem in nature, fresh in duration and caused by a blunt object. Injury to the head was sufficient to cause death in the ordinary course of nature.

9. Since the balli was recovered at the instance of Chunbuda the same was sent for subsequent opinion and vide report Ex.PW-12/B Dr.J.V.Kiran opined that the injuries mentioned in the post-mortem report were possible by the said weapon of offence.

10. To prove the motive behind the incident the prosecution has examined Raja Ram, PW-5 father of the deceased and Chunbuda who stated that the deceased was suffering from TB around 7-8 years prior to the incident. During the period of illness of his son Devi Dayal his daughter-in-law Prema developed affection and affair with Chunbuda. Gradually, this fact came to the knowledge of all of them. On this issue quarrel started taking place between Devi Dayal and Chunbuda. Raja Ram, his wife and other villagers tried to make Prema and Chunbuda understand that their behaviour was improper however, their illicit relations continued. Chunbuda used to reside and work in Delhi and he often used to visit the house in the village. Initially Devi Dayal used to reside in the village but after his treatment he came to Delhi and started working in Bawana factory and used to reside with Chunbuda at the same factory. Chunbuda had come to the village a year ago and gave one mobile phone to Prema. On the said mobile phone Prema and Chunbuda used to talk to each other. Raja Ram stated that he knew that Prema had got murdered his son Devi Dayal from Chunbuda as Devi Dayal was a hindrance in the affair and relation of Prema and

Chunbuda.

11. To prove the fact that Chunbuda and Prema were talking on the phone regularly the prosecution has examined Gaya Prasad, PW-15, who stated that Chunbuda was his nephew and was using the mobile phone which was registered in his name. However, he did not recollect the number. This witness identified his signatures on the customer application form the photocopy of his election card and the declaration made vide Ex.PW-7/A1 to PW-7/A3.

12. Israr Babu, PW-7 brought the mobile call record of mobile No.9654753683 issued in the name of Gaya Prasad from July 01, 2011 to July 24, 2011 which was being used by Chunbuda. Though the prosecution case was that Prema was using mobile phone No.9161166235 the call records of which were exhibited by PW-14 Sh.Kaushik Ghoshal from the period July 01, 2011 to July 24, 2011 vide Ex.PW-14/A however, no witness has deposed that Prema was using mobile No.9161166235.

13. In our opinion the learned Trial Court committed a serious error in presuming that the phone No.9161166235 was being used by Prema on the basis of number of calls and duration of calls made by Chunbuda from mobile No.9654753683 to this number. Chunbuda is his statement has not admitted that this number belonged to Prema and has stated that he did not know to whom the number belonged. Besides the statement of Raja Ram, PW-5 that Chunbuda was having illicit relations with Prema there is no evidence on record to prove the said motive.

14. The finding of the learned Trial Court with regard to the last seen evidence is also not plausible. All the witnesses, that is, PW-1 Raju, PW-2 Dharam Raj and PW-11 Ram Sanjeevan have deposed that they along with

the deceased and accused used to work and sleep in the factory premises.

15. Learned Trial Court noticed that on July 23, 2011 PW-5 Raja Ram and others along with the accused slept on the first floor at 9.00 PM and Devi Dayal, PW-2 Dharamraj and PW-3 Om Prakash went upstairs to sleep on the roof of bathroom of second floor. PW-2 Dharamraj and PW-3 Om Prakash came down as it was drizzling but Devi Dayal remained there and in the morning when Raju went upstairs he found Devi Dayal lying in a pool of blood. In fact, Raja Ram PW-5 does not even say that he was present in Delhi. He rather states that he came to Delhi after receipt of information about the death of his son Devi Dayal.

16. Admittedly as per the version of the prosecution witnesses Chunbuda and Devi Dayal were not the only persons residing in the factory premises. Further none of the witnesses say that Devi Dayal and Chunbuda were sleeping on the roof of the bathroom of the second floor. Raju PW-1, Dharamraj PW-2, Om Prakash PW-3 and Ram Sanjeevan PW-11 have not stated where the accused was sleeping on that night. The consistent case of all the witnesses is that Dharamraj PW-2, Om Prakash PW-3 and Devi Dayal were sleeping on the roof of the second floor and when it started to drizzling Om Prakash and Dharamraj came downstairs however, Devi Dayal continued sleeping. There is no evidence on record to show that Chunbuda was last seen with the deceased nor is there any evidence that Chunbuda was the only person with Devi Dayal at the night at the relevant time so as to shift the onus to Chunbuda. The blood stained brick was found lying near the dead body. It is stated that at the instance of Chunbuda wooden rod (balli) was recovered however, the said balli was recovered from the roof of the second floor of the premises where Devi Dayal, Dharam Raj and Om

Prakash were sleeping and the dead body was found lying. Thus it cannot be stated that the said incriminating object was only in the knowledge of the appellant Chunbuda.

17. Merely because Raja Ram expressed his suspicion that Chunbuda murdered Devi Dayal as he was coming in the way of Chunbuda's relationship with Prema, Chunbuda cannot be fastened with the criminal liability for offence punishable under Section 302 IPC. The circumstances as proved by the prosecution do not form a chain so as to rule out the hypothesis of innocence of Chunbuda. Consequently, the judgment of conviction and order on sentence are set aside. Chunbuda is acquitted of the charge under Section 302 IPC. Chunbuda is in custody. The Superintendent, Tihar Jail is directed to release the appellant forthwith if not required in any other case.

18. T.C.R. be returned.

19. 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 12, 2014/‘vn’