

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

% *Judgment Reserved on: December 08, 2014*
Judgment Delivered on: December 12, 2014

+ **CRL.A. 979/2012**

HEERA LAL @ HEERA Appellant

Represented by: Mr.Pramod Kumar Dubey,
Mr.Shiv Chopra and
Ms.Megha, Advocates.

versus

STATE GOVT. OF NCT

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with Inspector Rajeev
Vimal, PS Kalyan Puri.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Heera Lal is convicted of the offence of robbery and murder of Jagan Singh Chauhan and awarded imprisonment for life.
2. The case of prosecution rest on circumstantial evidence in the form of statements of Umesh Chauhan PW-1 and Tushar Chauhan PW-2 having last seen Heera Lal with the deceased on the night of June 07, 2010, recovery of shirt of Heera Lal which was found to be blood stained with human blood of 'B' group origin which tallied with that of deceased and the recovery of weapon of offence an iron rod coupled with opinion of the post-mortem doctor opining that the injuries were possible by the weapon recovered. At the first blush this circumstantial evidence shows that the prosecution has

been able to prove its case beyond reasonable doubt as has been held by the learned Trial Court but an inquisitive analysis of the same as would hereafter demonstrate would show that the prosecution has not been able to prove the circumstances clinchingly.

3. The contention on behalf of Heera Lal is that there is no evidence of Tushar Chauhan being the adopted son of deceased, which he admitted in his cross-examination. The documents prepared were after the death of deceased. Appellant has been falsely implicated by Tushar Chauhan to grab the property of the deceased. Heera Lal has led evidence to show that he was not in Delhi at the relevant time and was on leave at his native village. Even the prosecution witnesses admitted in the cross-examination that Hira Lal was on leave though they are blurred in their testimony regarding the time. No independent witness was associated with the recovery of the articles and hence the same cannot be used against Hira Lal. The prosecution has not proved the circumstantial evidence beyond reasonable doubt against the appellant. Thus relying upon 2014 CrILJ 4738 Oliver Vs. State of Delhi it is contended that the appellant is entitled to the benefit of doubt.

4. Heera Lal in his statement under Section 313 Cr.P.C. admitted that he was working as a domestic servant with deceased Jagan Singh but his case was that he left Delhi for his village on June 04, 2010 and was thus not in Delhi when the incident took place. The explanation of Heera Lal in his statement under Section 313 Cr.P.C. is as under:

“I went to my village Jalalpur District Badayun on 04.06.10 after taking leave from Jagan Singh. Jagan Singh was very nice and good person and he was planning to marry me. 7-8 days before I left my village, Tushar asked me that why I am not

going on leave to my village. He asked me to go leave and he will take care of everything in the house of Jagan Singh. Since Jagan Singh was not having any child, to grab his property Tushar and his brother Umesh had killed him. Both brother used to visit Jagan Singh after 20-22 days. I am innocent and was falsely implicated in this case.”

5. Heera Lal led defence evidence by examining Sudan Singh DW-1 who stated that he was Pradhan of Village Kandawala, District Badayun, U.P. from 2005 to 2010 and knew Heera Lal well as he was the brother-in-law of Dharampal who also belonged to the same village. He stated that on June 05, 2010 Heera Lal had come to him requesting him to issue a job card for working with NAREGA. Due to school holidays he asked him to come on June 07, 2010 as the Secretary of Village Panchayat who could issue the job cards was to come on that day. Heera Lal came to him continuously from June 07, 2010 but since the Secretary of the Village Panchayat did not come, job card could not be issued to him. On June 09, 2010 one boy from the house of Dharampal came to him and informed that Police had come and was asking for Heera Lal. Police told him that Heera Lal was required for some enquiries. The version of defence witness, that the appellant was doing the job of peon, merits consideration because even as per the prosecution one school was being run on the premises where the deceased was residing and thus Heera Lal was multi-tasking help to deceased.

6. To establish the plea of alibi Heera Lal cross-examined Umesh Chauhan PW-1 and Tushar Chauhan PW-2 the two brothers.

7. Umesh Chauhan in examination-in-chief deposed that he was running a school and on June 07, 2010 at 6.30 PM he along with his brother Tushar Chauhan had gone to Sanjay Memorial Public School to meet their uncle

Jagan Singh Chauhan from where they left at about 8.30 PM after taking dinner. He stated that his uncle Jagan Singh used to reside alone in that house as his wife had died and he had no children. He deposed that Heera Lal was working as a domestic servant to his uncle and had cooked and served food to them. However what transpired on the next day at the house of his uncle is hear-say evidence as told by his brother Tushar Chauhan and to that extent his evidence is inadmissible. Heera Lal cross-examined this witness and we note the portion of cross-examination of Umesh Chauhan which is relevant:

“We had gone to Vinod Nagar on motorcycle on 07.06.2010. We had left our house at Sector-66 Noida at about 5.30 PM. I don’t remember the number of the said motorcycle. It was Bajaj Pulsar. In general, we had taken one DAAL and one SABJI with CHAPATIs. I don’t remember the name of the SABJI now. Police had not recorded my statement. I had gone to Police station with my brother. It is wrong to suggest that on 07.06.2010 I had not gone to my uncle’s house at East Vinod Nagar. It is correct that schools remains closed in the month of June. It is correct that all the staff of the school run by my uncle at R-58, East Vinod Nagar was on leave in the month of June. (Vol. accused Heera Lal was on duty). It is wrong to suggest that Heera Lal had gone to his village on 04.06.2010 after taking leave from my uncle. It is wrong to suggest that I am deposing falsely.”

8. Tushar Chauhan PW-2 stated that he was the adopted son of his uncle Jagan Singh since his birth. His uncle had taken retirement from DDA in the last one or two years and was running two schools, one in Noida and the other in East Vinod Nagar. He also used to reside in the same house in East Vinod Nagar where Sanjay Memorial Public School was running. On June 07, 2010 at about 6.30 PM he had come to the house of his adopted father

with brother Umesh for a casual meet. He and his brother stayed there till 8.30 PM when they had dinner and talked to Jagan Singh. Thereafter they returned to Village Mamura. The deceased was living alone as he was not having any family with two domestic servants, one Heera Lal and the other was Puran Singh Bisht from Nepal. At that time Puran Singh Bisht was on leave as he had gone to his village. Tushar Chauhan deposed that Heera Lal was present in the house when they left the deceased's house at 8.30 PM. On June 08, 2010 at about 10.30 PM he reached at the house of the deceased at Vinod Nagar and found the main gate bolted from inside. He opened the gate and reached at the first floor. In the room he neither found his adopted father nor Heera. He called out "*papaji papaji*" but received no response. He could not even find Heera on searching. He went up to fifth floor in the house and searched for the father but could not find him. He enquired about his father from the neighbourhood but got no information. He called on the mobile phone of the deceased which was switched off. Then he went to the house of a neighbour who was the friend of his father. Thereafter they called one Mahesh Giri another friend who asked him to go inside the house and search for his father in each and every room carefully. When he again went to the room at first floor the main door was bolted from inside. He opened the window and put the curtains on the side and saw his father lying on the bed with his face towards the wall and blood spots were found on the wall. He called out "*papaji papaji*" but there was no response. He went downstairs and called the neighbours. He found that the adjoining room was locked from outside. They break open the lock and went inside and found blood scattered all over on the floor. Thus call was made to the Police. In the adjoining room he saw the steel almirah was broken and jewellery

comprising of three gold chains, three gold rings, one gold bracelet and cash was missing. Police recorded his statement. The mobile phone of his father was found by the Police in the backside of the house on the same day. Later after the arrest of Heera Lal he led the Police to the top floor of R-58 East Vinod Nagar and from his room got recovered one pant and T-shirt which he had worn at the time of incident. He got recovered an iron rod stated to be the weapon of offence from the back side of the school.

9. This witness was cross-examined on the point of his being the adopted son of the deceased, on the last seen evidence and the defence plea of alibi. In cross-examination Tushar Chauhan admitted that he had no legal documents i.e. adoption deed to show that he was adopted by the deceased since birth. Document in the form of driving license produced by him was issued on September 17, 2010 where the name of Tushar Chauhan's father was mentioned as that of the deceased. This witness has been suggested that since the deceased was refusing to transfer the name of the property in his name, he killed the deceased which suggestion Tushar denied. In cross-examination he admitted that he did not know what jewellery exactly his father was having. Further he could not produce any document to show that the phone recovered from the back side of the house belonged to the deceased. With regard to the plea of alibi the relevant portion of the cross-examination is as under:

“I do not remember if Heera Lal had gone on one weeks leave on 4.6.10. Vol. He had gone on one weeks leave, I do not remember the exact date, probably had went on one weeks leave in the end of May 10 upto beginning of June'10. It is wrong to suggest that Heera Lal did not return back from the leave to the house of deceased and he was not present in the house of deceased on 7.6.10.”

10. The post-mortem of the deceased was conducted by Dr.Vinay Kumar Singh PW-5 who authored the report Ex.PW-5/A. After the receipt of the viscera report which revealed that the deceased had consumed ethyl alcohol, he opined the cause of death to be due to Cranio-cerebral damage consequent upon blunt force impact to the head. All injuries were ante-mortem in nature and injury No.1, 3, 4 and 5 were individually and collectively sufficient to cause death in ordinary course of nature. In cross-examination he stated that quantity of ethyl alcohol was very low and not dangerous to the life. He also stated that the complete digestion of food takes 7 – 8 hours and food remains in the stomach for 1 – 2 hours. He opined the time since death to be 34 – 42 hours. He noticed the following external and internal injuries on the body of the deceased:

“1. Abraded bruise 4 cm x 1 cm obliquely placed present over left side of cheek, maxilla underneath is fractured, present 2.5 cm below left eye.

2. Abrasion, 1 x .8 cm, just above right clavicle 4 cm from the mid line.

3. Abrasion 1 x .8 cm, 1 cm away from ear over left cheek.

4. Abraded bruise 4 cm x 2.5 cms back of left ear on the head.

5. Abraded bruise 3 x 1 cms present over back of head left side occipital region.

On internal examination, following injuries were found:

1. In head sub scalp haematoma present over left side in the area of 20 x 11 cms right side, depressed fracture of skull 12 x 5 cms involving left maxilla, left frontal left temporal, left parietal and left occipital bone.

2. Meninges intact.

3. Brain matter lacerated left side, diffuse subdural

haematoma over both side with diffuse sub arachnoidal hemorrhage.

4. Stomach was empty. Walls were congested. Small intestine, liver gall bladder, spleen, both kidney were congested.”

11. A perusal of the testimony of both Umesh and Tushar Chauhan shows that they are silent on the deceased having consumed liquor. According to them they were with the deceased from 6.30 to 8.30 PM when the three ate dinner and consumed daal and chappati. The post-mortem of the deceased was conducted on June 09, 2010 at 12.00 Noon and thus the estimated time of death is from 6.00 PM on June 07, 2010 to 2.00 AM on June 08, 2010. As per Umesh Chauhan and Tushar Chauhan till 8.30 they were with the deceased and the deceased consumed dinner with them at that time. Besides being silent on the consummation of alcohol what is strange is that besides the stomach being empty even if assuming that at the time of death the entire food had been digested, in that case there would be faecal matter in the large intestine. As per the post-mortem report not only the stomach was empty but the small and large intestine were also congested. Thus the version of Umesh and Tushar Chauhan that between 6.30 to 8.30 they had dinner with the deceased is belied by the post-mortem report.

12. In the decision reported as (2010) 10 SCC 259 Abdul Sayeed Vs. State of M.P. the Supreme Court reiterated the legal position that in cases where there is a contradiction between medical evidence and ocular evidence it can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value viz-a-viz medical evidence, when medical evidence makes the ocular testimony improbable that becomes a relevant

factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of ocular evidence being proved the ocular evidence may be disbelieved. This legal position was reiterated in (2012) 10 SCC 433 Kuriya & Anr. Vs. State of Rajasthan.

13. Coming to the recoveries at the instance of Heera Lal admittedly Heera Lal was staying at the said house. Thus his clothes would be naturally in the said house and as per the prosecution case these clothes were recovered from the room constructed on the fourth floor where Heera Lal was staying. It is amazing that despite suspicion on Heera Lal no search of the room of Heera Lal was taken from where these clothes could have been recovered.

14. As regards the mobile phone Nokia make 2600 and wrist watch made Sconda golden colour recovered from Heera Lal from his village is concerned, Tushar did not identify the two to be belonging to the deceased and hence cannot be held incriminating against the appellant. Though Tushar informed the police about the jewellery and cash missing, in cross examination he admitted that he had no knowledge of the cash and jewellery with the deceased. Thus, the version of missing jewellery and cash was introduced to bring in the motive.

15. As regards the recovery of iron rod at the instance of appellant it may be noted that the said recovery was from an open plot behind the school and the Shani mandir and thus place was accessible to one and all. Despite the opinion of the post-mortem doctor that the injury to the deceased was possible by the said iron rod the same cannot be held discriminately against Heera Lal in view of the recovery being from an open and accessible place.

16. In the decision reported as AIR 1954 SC 36 Trimbak Vs. State of M.P. the Supreme Court held that when the recovery of incriminating articles was made from an open and accessible place it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring the knowledge about its whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles. This position was reiterated in the decision reported as (1983) 2 SCC 251 Kora Ghasi Vs. State of Orissa. Clarifying the legal position further in the decision reported as AIR 1999 SC 1293 State of Himachal Pradesh Vs. Jeet Singh the Supreme Court noted:

26. There is nothing in Section 27 of the Evidence Act which renders the statement of the accused inadmissible if recovery of the articles was made from any place which is "open or accessible to others". It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others, it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others. For Example, if the article is buried on the main roadside or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office, the article would remain out of the visibility of others in normal circumstances. Until such article is disinterred its hidden state would remain unhampered. The person who hid it alone knows where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the concealed place is accessible to others.

17. It has thus to be seen whether the recovery, if from an open and

accessible place is lying concealed and could be recovered only after the accused disinterred the same from the said hidden stage. In the present case there is no such evidence. Further no jewellery or cash has been recovered at the instance of the appellant and the recovery i.e. of the shirt of Heera Lal is also from the room in the same house. Since we are discarding the last seen evidence and the recovery of weapon of offence merely on account of the shirt of Heera Lal which was blood stained being found from his room and in view of the appellant being able to probabalize his plea of alibi we are of the opinion that the appellant is entitled to the benefit of doubt.

18. Consequently, we allow the appeal granting benefit of doubt to the appellant. The judgment of conviction and order on sentence are set aside. Superintendent Tihar Jail will release the appellant forthwith if not required in any other case.

19. T.C.R. be returned.

20. 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

DECEMBER 12, 2014
‘ga’