

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

% *Judgment Reserved on: November 25, 2014*
Judgment Delivered on: December 01, 2014

+ **CRL. A. 1168/2010**

KANHIYA LAL YADAV Appellant
Represented by: Mr.Vibhakar Mishra,
Advocate.

versus

STATE Respondent
Represented by: Mr.Lovkesh Sawhney, APP for
the State with Inspector Jaipal
Singh, PS Mayur Vihar, Delhi.

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

MUKTA GUPTA, J.

1. Kanhiya Lal is convicted for the murder of Miraz vide impugned judgment dated August 09, 2010 and directed to undergo imprisonment for life and to pay a fine of ₹2,000/- and in default of payment of fine to undergo Simple Imprisonment for a period of two months which he assails in the present appeal.
2. Learned counsel for the appellant contends that the prosecution has planted the witnesses to foist a false case against the appellant. The evidence of PW-4 Prashant Aggarwal, PW-16 Gurpreet Singh and PW-18 Inspector Surender Singh is contradictory. The FIR was lodged belatedly

and it is strange that the first informant did not call the police but the landlord and owner of the factory whereafter the FIR was lodged. Even as per PW-16 Gurpreet Singh, the maker of the FIR, he left the place and thus he could not have witnessed the incident. At the time of alleged recovery no public witness was associated. The defence of the appellant that he was not present at the spot has not been considered. Hence the appellant be acquitted.

3. No defence evidence has been led, however, it would be relevant to note certain answers of the appellant to the questions put to him under Section 313 Cr.P.C:

“Q7.It has come in evidence against you that you along with deceased and Sandeep were residing in the room provided by PW-4 in house No.102, Pandit Gali Chilla Village. Whereas PW1-16 was residing with his family in Harijan Basti, Chilla Village. What you have to say?

A. Sandeep used to reside with us but I do not know where Gurpreet used to reside.

Q8. It has come in evidence against you that on 1.10.09 PW-4 had gone to his native place at Muradabad and on 05.10.09 he received a phone from PW-16 telling him that PW16 had found a dead body of Miraz in the room and you were found missing along with your belongings. PW-4 called his landlord PW-5 Prem Dutt Sharma and asked him to reach at the spot and verify the fact and thereafter PW-4 reached at the spot. What you have to say?

A. I do not know. I had gone for my village Nauli, Dist.Mau, UP on 04.10.09 at about 7.30 AM.

Q9. It has come in evidence against you that PW-5 was

landlord of house No.102, Village Chilla, Pandit Mohalla and he was given a house on rent to PW-4 in the year 2008 through Harish Aggarwal and the said house was occupied by PW-4, deceased, you and Sandeep. What you have to say?

A. It is correct.

Q10. It has come in evidence against you that PW-16 was working as an Electrician in Grameen Engineer 102, Pandit Gali in Chilla for the last one year from the date of incident. Deceased and you were working with him in the said factory and you both were residing in the same house where this factory was being run by PW-4. What you have to say?

A. It is correct.

Q11. It has come in evidence against you that one Sandeep who was a driver of brother in law of Prashant Aggarwal was also living in the said house. Deceased was working with PW-4 for about eight months prior to the date of incident and you had joined work about two months prior to the incident. What you have to say?

A. I do not know since how long Miraz was working with Prashant. It is correct that I joined Prashant for about two months prior to the incident.

Q12. It has come in evidence against you that PW-16 used to remain present in the factory and you and deceased Miraz used to work at the site. Both of them used to leave for work together and also used to return back together. What you have to say?

A. It is correct.

Q13. It has come in evidence against you that on 04.10.09 an altercation took place between you and deceased on

account of cleaning the room in which you both used to sleep. Deceased used to sleep on a cot and you used to sleep on the floor. The said altercation took place in presence of PW16 and he pacified both of you and thereafter he returned back to his house. What you have to say?

A. It is incorrect. It was not present in the house on 04.10.09 in the evening as I had left for my village early morning at 7.30 AM."

4. The process of law was set into motion when SI Nagender Singh reached the spot on receipt of DD No.11A on October 05, 2009 regarding the murder of Miraz at 102, Pandit Gali, Chilla Gaon, Mayur Vihar-I, Delhi. At the spot he found the dead body of Miraz son of Haneef on the cot with injury marks between left ear and eye and his head and face were stained with blood. Statement of Gurpreet Singh who was present at the spot was recorded who stated that for the last one year he was working as an electrician with Pyramid Engineering and Consultant Company whose owner was Prashant Aggarwal. Miraz son of Mohd.Haneef resident of Lucknow was working there for one year and Kanhiya Lal son of Shiv Narayan resident of District Mau was working for the last two months. Miraz and Kanhiya were staying with the owner Prashant Aggarwal at Village Chilla as work of motor winding was done in the said house. A boy named Sandeep was also residing who was working as a driver with the brother-in-law of Prashant Aggarwal. On October 01, 2009 Prashant Aggarwal had gone to Moradabad with his children and on October 03, 2009 Sandeep also went to Moradabad along with his employer. Prashant Aggarwal also had work at Dankaur, District Ghaziabad for which Miraz

and Kanhiya used to go to Dankaur site every day. On October 04, 2009 Miraz and Kanhiya came to the spot at around 8.10 PM from Dankuar. On their arrival Gurpreet left the place and went to his residence. On October 05, 2009 at about 8.45 PM when he returned to the spot he found that the lock of the house was opened. When he entered the room he found body of Miraz lying on the cot which was blood stained with injury marks and Kanhiya along with his bag and articles was missing. He informed Prashant Aggarwal on telephone who gave the information to the police through PCR. On the basis of this statement of Gurpreet Singh FIR No.314/2009 under Section 302 IPC was registered at PS Mayur Vihar.

5. The post-mortem of the body of Miraz was conducted by Dr.Vaibhav Agarwal PW-13 who noticed the following external injuries:

- “1. Lacerated wound placed 4.8 cm above nose at midline of forehead placed obliquely measuring 3 cm x 2.3 cm x bone deep with aberaded margins with underlying depressed fracture frontal bone width of surrounding abrasion 0.8 cm.*
- 2. Lacerated wound placed obliquely on left forehead 3.3 cm from midline 3.8 cm from injury No.1 with surrounding abrasion, irregular margins sizes varying 0.4 cm to 0.3 cm. Bone underlying visible with fracture size of wound 5 cm 0.8 cm bond deep.*
- 3. Lacerated wound at left side of forehead laterally, obliquely placed measuring 3.3 cm 1 cm x bone deep located 1 cm above left eyebrow, 1.7 cm from injury No.2, margins irregular surrounding abrasion present measuring 4 cm x 2.5 cm.”*

6. Dr.Vaibhav Agarwal exhibited the post-mortem report vide Ex.PW-

13/A and opined the cause of death as shock due to ante mortem head injury produced by blunt force impact. All injuries were ante mortem in nature and injury Nos.1, 2 and 3 were sufficient to cause death in the ordinary course of nature in individually and collectively. The time since death was opined to be 30-38 hours. Though this witness was cross-examined on the time since death however, he reiterated that even considering the variations the time since death was 30-38 hours since October 06, 2009 at 1.30 PM when the post-mortem was conducted.

7. Dr.Vinay Kumar Singh PW-19 who conducted the post-mortem along with Dr.Vaibhav Agarwal also proved his signature at point 'B' on the report Ex.PW-13/A. He also exhibited his opinion Ex.PW-19/A regarding the weapon of offence i.e. that the wooden stick with cylindrical shape base and broad rectangular head and opined that the injury Nos.1 to 3 on the body of the deceased could be possible with the danda/weapon examined by him. In cross-examination he clarified that the injury Nos.1 to 3 in the post-mortem report could be caused with the similar type of other object but could not be caused by brick, stone, iron, saria etc. He further stated that as per the post-mortem the deceased had semi-digested food which indicated that he had consumed food about 1½ to 2 hours prior to his death.

8. Gurpreet Singh deposed in sync with his statement on the basis of which the FIR was registered. He also stated that on October 04, 2009 an altercation took place between Miraz and Kanhiya on account of cleaning the room in which both of them used to sleep. Miraz used to sleep on the cot and Kanhiya used to sleep on the floor and this altercation took place when both of them returned back from their work in his presence. He pacified both of them and thereafter returned to his house. In cross-examination he

further stated that after returning to their room they used to go outside for their meals and that they never quarrelled with each other in his presence except on October 04, 2009 when deceased Miraz had borrowed ₹100/- from Kanhiya during day time and immediately on reaching the house, Kanhiya started demanding money from him. Due to this reason quarrel started between them. Since Miraz and Kanhiya were quarrelling he offered to give ₹100/- to Miraz to give to Kanhiya which Miraz took from him and gave it to Kanhiya. He also stated that both of them slapped each other in his presence.

9. The testimony of this witness was assailed solely on the ground that despite having noted a dead body he did not inform the police in the first instance, rather informed his employer and thus this witness is not reliable. There is nothing unusual in this conduct of Gurpreet Singh who on seeing the incident first informed his employer who in turn informed the police. On the first available opportunity when he saw the dead body he informed the employer by whom the police was informed and thus there was no delay in registration of the FIR.

10. Though it is contended that the evidence of Prashant Agarwal, Gurpreet Singh and Surender Singh is contradictory however no contradictions have been pointed out by the learned counsel much less material contradictions which go to the root of the matter.

11. Gurpreet Singh does not claim himself to be the witness of the incident. He is the witness of last seen. He saw the deceased Kanhiya Lal Yadav in the room at night before leaving and otherwise as well Kanhiya Lal Yadav and the deceased used to sleep in the said room daily which fact is admitted by the appellant in the statement under Section 313 Cr.P.C as noted

above. In the morning Kanhiya Lal Yadav was nowhere seen and was arrested only after 17 days. Thus Kanhiya Lal being the only person with the deceased at night the onus shifts on him under Section 106 of the Evidence Act to explain the circumstances as to how the deceased died which he has miserably failed to do.

12. The appellant absconded after the incident which circumstance has also been proved by the prosecution, as after the incident he could be arrested on October 22, 2009 when he surrendered in Court. Though the plea of alibi has been taken however, Kanhiya Lal has failed to prove the same even by preponderance of probability.

13. Disclosure statement of the appellant was recorded and pursuant to his disclosure statement from near the heap of garbage which was lying on the side of a road and a canal a wooden handle of “Gantiji” was recovered at his pointing out. Dr. Vinay Kumar Singh PW-19 examined the said weapon of offence which was a wooden stick of 17.42 centimetres in length and 2.3 centimetres in diameter, width of its head being 2.9 centimetres and 5 centimetres broad, opined that the injuries on the body of the deceased were possible by the said weapon.

14. Learned counsel for the appellant has sought to assail the recovery of weapon on the ground that no public person was associated at the time of recovery. In (2001) 1 SCC 652 State, Govt. of NCT of Delhi Vs. Sunil & Anr. the Supreme Court drew a distinction between a search and seizure under Section 100 of the Cr.P.C. and a recovery made pursuant to a disclosure statement which is admissible under Section 27 of the Evidence Act. The Supreme Court noted that it was fallacious impression that when recovery is affected pursuant to any statement made by the accused the

document prepared by the investigating officer contemporaneous in such recovery must necessarily be attested by the independent witnesses. Of course, if any such statement leads to recovery of any article, it is open to the investigating officer to take the signature of any person present at that time on the document prepared for such recovery, but if no witness was present or if no person had agreed to affix his signatures on the document, it is difficult to lay down, as a proposition of law, that the documents so prepared by the Police Officer must be treated as tainted and the recovery evidence unreliable.

15. In view of the report of the post-mortem doctor it is apparent that the deceased died somewhere around 11.30 in the intervening night of October 4 & 5, 2009 and he had semi-digested food which would show that he had consumed the food around 1½ to 2 hours prior to his death. The appellant has taken the plea of alibi which he has not proved. As noted above no defence evidence has been led. From the responses recorded under Section 313 Cr.P.C. appellant has admitted residing at the room with the deceased Miraz, though he denies that he left for the village at 7.30 AM on October 04, 2009. The appellant has not discharged the onus to prove the said defence and hence in view of the circumstances proved by the prosecution we have no hesitation in upholding the judgment of the learned Trial Court convicting the appellant for offence punishable under Section 302 IPC and the order on sentence.

16. Appeal is dismissed.

17. T.C.R. be returned.

18. 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 01, 2014
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