

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

Judgment Reserved on: September 25, 2014

% *Judgment Delivered on: September 30, 2014*

+ **CRL.A.1181/2012**

SUNIL KUMAR

..... Appellant

Represented by: Mr.Sushant Dahiya, Advocate.

versus

STATE

..... Respondent

Represented by: Ms.Aashaa Tiwari, APP for the
State with Inspector
J.D.Meena, CAW Cell, Nanak
Pura and SI Vikram Singh, PS
Sangam Vihar.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vigilant onlookers Shamshad, Pradeep, Gulshan @ Gullu and Surender helped nail Sunil Kumar for the offence punishable under Sections 302/201 IPC. On April 02, 2009 at about 5.00 PM all four were coming from the side of Ram Pyari Camp towards Lal Kuan after playing cricket when they saw one auto driver removing a gunny bag filled up with something from the auto rickshaw, dragging and pushing the same into the pit. Since the face of the auto rickshaw was towards them, they saw the face of the driver after he threw the gunny bag. The driver immediately turned and drove the auto rickshaw towards Lal Kuna. On suspicion they noted the number of auto rickshaw as DL 1 RC 7864. When they reached near the pit they saw the head visible from the gunny bag and they started chasing the auto rickshaw and making noise however, the auto rickshaw got mixed with

the traffic and could not be stopped. Perplexed for some time they came home, however, when they reached back they found that the police had removed the gunny bag.

2. The police sprung into action on receipt of DD No.11 Ex.PW-24/A received at 5.50 PM from wireless that at the Surajkund Border near Toll Tax a dead body was lying in a gunny bag and the police be send which information was given by Darshan Mandal, PW-13. The SHO along with other staff reached the spot and near the Ram Pyari Camp found a dead body of a male in a gunny bag on the side of the road which was of a boy aged around 14-15 years wearing white half sleeves shirt, blue jeans, no sleepers and red thread around the neck. There were injuries on the neck. On the basis of this information FIR No.152/2009 was registered under Section 302/201 IPC.

3. From the search of the clothes of the deceased one yellow coloured result card was recovered from the right pocket of the pant in the name of Sandeep Kumar s/o Dharmi, class 7th of Government Boys Senior Secondary School, Kalkaji. No one at the spot could identify the dead body. In the meantime, Shamshad, Pradeep, Gulshan @ Gullu and Surender as noted above reached back and narrated the incident and gave the auto rickshaw No.DL 1RC 7864. Their statements were recorded immediately and site plan was prepared. In the meantime, Bimla aunt of the deceased reached the police post and identified the dead body. She informed that Auto Rickshaw No.7864 belonged to Sunil, the brother of her sister-in-law (Bhabhi Virmati) who was residing with Virmati for the last 15-16 years. They went to the house of Sunil but found none. Even the auto rickshaw was not found parked. In the meantime, other relations of the deceased gathered and

identified the dead body in the mortuary. Again police went to the house of Sunil Kumar however, he was not found and was absconding. They went to the shop where Sunil Kumar used to get his auto rickshaw repaired and one Surender Singh met them. Surender Singh, PW-1 stated that Sunil Kumar, who was a three wheeler driver came to his shop at 8 Balaji Estate, Kalkaji near Canara Bank at about 2.00 PM for getting the gas of his three wheeler DL 1RC 7864. On the same day at about 3.00 PM Sunil again came to his mechanic shop and left the shop at 3.15 PM. At that time he had seen one boy sitting in the said TSR on the front seat with him. At 6.00 PM Sunil Kumar again came to his shop and got the CNG of his three wheeler tuned from him. In the meantime, he received a telephonic call and thereafter he left the shop. On seeing the photographs of the dead body Surender Singh identified that to be of the boy sitting with Sunil in his TSR.

4. Appearing in the Court all these witnesses i.e. Shamshad PW-17, Pradeep PW-18, Gulshan @ Gullu PW-19, Surender PW-20 and Surender Singh PW-1 deposed in sync with their statements recorded under Section 161 Cr.P.C.

5. The evidence of PW-1 Surender Singh is assailed by the appellant on the ground that there is no documentary evidence on record to prove that PW-1 had an auto rickshaw workshop and had he known the accused and the deceased since last eight years as according to him they were regular visitors and his shop was one kilometre away from the house of accused then PW-1 Surender Singh must have known about the murder and he ought to have approached the police to get his statement recorded. The murder was neither committed in the presence of PW-1 Surender Singh nor did he see the dead body. Merely because he last saw the two of them together it cannot be

attributed that he should be knowing about the murder as well. Surender Singh was not an eye witness to the murder but witness to the last seen. Further Sunil was a regular visitor at the shop of Surender Singh however, Sandeep had visited the shop of Surender Singh with Sunil only twice prior to the incident and once on his own.

6. The evidence of PW-17 Shamshad, PW-18 Pradeep, PW-19 Gulshan @ Gullu and PW-20 Surender is assailed on the ground that the learned Trial Court has relied upon the statements of these four witnesses without noticing their version in the light of their earlier statements under Section 161 Cr.P.C., site plan and their cross-examination. According to the appellant the distance between the place of alleged incident and where these witnesses were present was 300 meters and thus it was not possible for any normal human to recognise the face of a person by a mere look. Secondly, the place where the gunny bag was thrown by the accused was used for throwing garbage and waste and thus merely by throwing the gunny bag no suspicion could have arisen in their mind. The contentions raised are meritless. The most important aspect of the testimony of these witnesses is that they had noted down the number of the auto rickshaw, which led to the tracing of the appellant. In his statement, under Section 313 Cr.P.C Sunil has not denied that he was not the driver of auto rickshaw DL 1R C 7864. This was not a case of fleeting glimpse. If a person is face to face then even from a distance of 300 meter, especially at around 5.30 PM it is not difficult to recognise a person especially when his activity had aroused suspicious in the mind of four of them. The place where the body was thrown may be a garbage area however, getting a gunny bag in an auto rickshaw and throwing as garbage is certainly unusual so as to create a doubt.

7. Learned counsel for the appellant assailing the deposition of these witnesses submits that as per the testimony of PW-17 Shamshad, PW-18 Pradeep, PW-19 Gulshan @ Gullu and PW-20 Surender they chased the auto rickshaw and raised voice but the auto rickshaw got mixed with the traffic and thus could not be caught. However, in the statement under Section 161 Cr.P.C. it is stated that while chasing the auto rickshaw they raised alarm thus number of people came to know about it and it is thus the police was informed but these people did not inform. Merely because these witnesses failed to inform the police their evidence cannot be brushed aside as these four witnesses are the only witnesses who have witnessed the appellant in the auto rickshaw and throwing the gunny bag. In the cross-examination of these witnesses no motive has been imputed to them as to why they would falsely implicate Sunil and the only suggestion was that they were stock witnesses of the police which was denied and no evidence in this regard was produced.

8. Darshan Mandal PW-13 has clarified that when he was going from his office to his home by scooter on April 02, 2009 at about 5.00 PM he saw a crowd gathered near a pit at Ram Pyari Camp. People were saying that somebody had dropped a bag containing dead body. Thus he went near Surajkund Road, Toll Tax where generally the PCR van was stationed but as no PCR van was found there, he went to M.B.Road, Surajkund Road, T Point where he found the PCR van and gave the information.

9. The conduct of Shamshad is assailed on the ground that he was a driver in the school van up to 3.00 PM and thereafter he went to the cricket ground to play cricket which according to the learned counsel for the appellant is highly unbelievable. There is nothing unnatural in it. Cricket

could be played in the day light only without any provision of lights on the ground so immediately after finishing the work a boy of 20-22 years of age could have easily gone to play the cricket. It is also stated that the site plan does not show the place where the electricity pole was fixed however, that has no relevance in the present case as the body was dumped in the day light and not at night when the visibility aspect had also be looked into. Again the testimony of Gulshan @ Gullu is assailed on the ground that he was a Welder and April 02, 2009 being a Thursday was not holiday and thus it was not possible for him to be playing cricket at that time. Gulshan in his cross-examination has clearly stated that he was learning the work of welding in the shop of his brother thus he was not an employee at that time and that they were playing the cricket match and in his team there were 11-12 men.

10. An application was filed by the investigating officer for conducting TIP of Sunil vide Ex.PW-4/A. Saurabh Kulshreshta Ld. MM PW-4 conducted the proceedings vide Ex.PW4/B wherein Sunil declined to participate in the same on the ground that he was shown in the Police station. No suggestion has been given to either of the witnesses i.e. Surender Singh, Shamshad, Pradeep, Gulshan or Surender that Sunil was shown to them in the Police Station.

11. The prosecution case is further assailed by the learned counsel for the appellant on the ground that the entire area was a jungle with adjacent kaccha Rasta and it was not necessary for the appellant to have thrown the dead boy in the garbage and it could have been thrown anywhere in the jungle. What went on in the mind of the appellant at the time as to where he had to throw the body is not relevant for this court to determine however, what is relevant is that the dead body was thrown in a pit near the garbage

area from where it was recovered, which fact is established by the testimony of the Police witnesses and the PCR information given by Darshan Mandal. The prosecution version is further doubted on the ground that the report card of the deceased was found in his pocket. According to learned counsel the results are declared on 30th or 31st March and the presence of report card in the pocket on April 02, 2009 was unnatural. This argument is totally hypothetical without demonstrating on which date the result was declared. Further the presence of the report card only revealed the identity of the deceased which is not disputed by Sunil that instead of Sandeep someone else was found murdered.

12. Besides the last seen evidence and the conduct of the appellant in throwing the dead body of Sandeep in the garbage the prosecution has also proved the motive for the commission of offence.

13. Dharamveer Singh PW-2 father of the deceased stated that his sister-in-law Smt.Bimla was married to one Ram Kumar and after five-six months of the marriage of Bimla one female child was born where after she was deserted by her husband. Thereafter she started living in her parental house. Dharamveer Singh's two brothers-in-law and the father-in-law had passed away. Virmati was the wife of his brother-in-law Bijender and Sunil her brother. His son Sandeep used to reside with his mausi (aunt) Bimla for the last 14-15 years. Sunil who was the brother-in-law of his brother-in-law Vijender also used to reside in the same house. His sister-in-law Bimla wanted to transfer the property in her name to that of his son Sandeep after marriage of her daughter Satto. At this Sunil was annoyed and used to harass Sandeep.

14. Version of Dharamveer is corroborated by Krishna PW-5, the mother

of the deceased though, Bimla and Satto did not depose on this aspect in the witness box. However, Bimla deposed with regard to the identification of the body and stated that the police asked her relationship with the deceased Sandeep and she told them that Sandeep was his son. It is thus evident that despite not being son of Bimla, she treated Sandeep as her son. Further Bimla and Satto both deposed that Sunil was living with Bimla as her husband.

15. The post-mortem of the dead body was done by Dr.Raghvendra Kumar PW-9 who noted two ligature marks over right side of the neck of the deceased and abrasion on the finger, left leg, lip etc. He opined that the cause of death was due to asphyxia as a result of strangulation by ligature.

16. In view of the evidence on record the prosecution has proved beyond reasonable doubt the offence committed by the appellant Sunil punishable under Sections 302/201 IPC. Consequently the impugned judgment of conviction dated July 10, 2012 and order on sentence dated July 31, 2012 are upheld.

17. Appeal is dismissed.

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 30, 2014 /‘vn’