

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

% *Judgment Reserved on: July 22, 2014*
Judgment Delivered on: August 04, 2014

+ **CRL.A. 1467/2011**

NIRANJAN KUMAR Appellant
Represented by: Mr.Krishan Kumar, Advocate with
Mr.Deepak Vohra, Advocate

versus

STATE OF THE NCT OF DELHI Respondent
Represented by: Ms.Aashaa Tiwari, APP
Insp.Harish Kumar and SI Badri
Prasad, PS Connaught Place

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

PRADEEP NANDRAJOG, J.

1. Process of criminal law was set into motion when at around 1:20 hours in the intervening night of December 10 and December 11, 2005, HC Lahari Singh PW-11, recorded DD No.32A, Ex.PW-11/A, noting therein that Birender Kumar Bhardwaj, Chief Security Officer of Shangri La Hotel, has informed over the telephone that a person is lying unconscious in the shopping complex of the hotel.

2. A copy of aforesaid DD entry was handed over to SI Pramod Kumar PW-34, for investigation upon which accompanied by Ct.Banwari Lal he proceeded to Shangri La Hotel. On reaching there the officials at the hotel took SI Pramod Kumar PW-34, to the office of one Vijay Bhaskar (hereinafter referred to as the 'Deceased') situated on the first floor of the

shopping complex in the hotel where the deceased was found dead on the floor of the bathroom attached to his office with a rope tied around the neck and the underwear and the pant pulled below the knee. The body was tied so as to be in a bent/folded position.

3. SI Pramod Kumar PW-34, recorded the statement Ex.PW-1/A of Ajay Ridia PW-1, Security Leader at Shangri La Hotel, and made an endorsement Ex.PW-34/A thereon, and at around 3:10 hours handed over the same to Ct.Banwari Lal for FIR to be registered. Ct.Banwari Lal took the endorsement Ex.PW-34/A to the police station where HC Lahari Singh PW-11, recorded the FIR No.718/2005 Ex.PW-11/F.

4. In his statement Ex.PW-1/A, Ajay Ridia stated that on December 10, 2005 at about 10:30 PM Mr.Vinesh Gupta, Executive Assistant Manager, informed him over the telephone that he had been informed by the daughter of the deceased that the deceased has not reached his house whereupon he asked the security guard Mr.Takhat to check the office of the deceased who was employed as a Project Manager. On checking the office of the deceased Takhat informed him that the deceased was lying in his bathroom and the police was informed.

5 Insp.Brijender Singh PW-42 took over the investigation after the FIR was registered and on the personal search of the deceased recovered a mobile phone having number 9891357777. He summoned the crime team. Mr.S.K.Chadha PW-26 of the crime team, a finger print expert, lifted six chance prints from the spot.

6. The body of the deceased was seized and sent to the mortuary of Lady Hardinge Medical College where on December 11, 2005 at about 1:00 PM Dr.Rajeev Sharma, conducted the post-mortem and prepared the post-

mortem report Ex.PW-14/A the relevant portion whereof reads as under:-

“External Examination – Ligature mark: 3 cm broad, dark brown, hard, dried, continuous ligature mark present all around the neck...

2. Multiple small eccentric shaped, reddish abrasions present all over but more on right side of the neck.

3. Left black eye with surrounding bruise 6 x 6 cm present over left frontal region.

4. Abrasion reddish 5.5 cm x 4.5 cm present over right side of face over right cheek bone.

The cause of death to the best of my knowledge and belief is: - Asphyxia as a result of strangulation with rope (ligature material). Injuries no. 1-4 are antemortem in nature and fresh in duration, Injury no.1 is caused by ligature material, Injury no. 2 would have been caused by the nails, Injury no. 3 and 4 are caused by blunt force surface/object....

- No definite opinion can be given regarding the deceased is habitual of sodomy.

- No evidence suggestive of any fresh act of sodomy active or passive.

- On naked eye examination, injury No 1 is sufficient to cause death in ordinary course of nature.

*Approximate time since death is: 12 – 18 hours.” **(Emphasis Supplied)***

7. He took and handed over the swab perineal, swab anal, swab rectum canal of the deceased along with the pubic hair and the clothes of the deceased to Insp.Brijinder Singh PW-42.

8. On the same day i.e. December 11, 2005 the statement of Hem Lata PW-40, the daughter of the deceased, was recorded under Section 161 Cr.P.C. in which she told the investigation officer that the deceased

possessed two mobile phones having numbers 9810550777 and 9891357777 and that few belongings of her father viz. a mobile phone, a wrist watch, his wallet, few credit cards and a camera were missing. Be it noted here that the mobile phone found in the personal search of the deceased was having number 9891357777 whereas his other mobile phone having the number 9810550777 was missing. The investigating officer also recorded statements of some security guards of Shangri La Hotel which revealed that in the evening of December 10, 2005 two persons had come to the hotel to meet the deceased.

9. Insp.Brijender Singh PW-42, obtained the call details of mobile number 9810550777 and made enquiries from the persons who had spoken to the deceased on the said number on the date of his death. A scrutiny of call details of the mobile number 9810550777 revealed that the deceased was in constant touch with another mobile number 9312042685 on the day prior to his death. Insp.Brijender Singh asked the user of mobile number 9312042685 to join investigation but he did not do so, which aroused the suspicion of Insp.Brijender Singh and he started tracking the number 9312042685. On making enquiry from the telecom operator, Insp.Brijender Singh learnt that mobile number 9312042685 was registered in the name of one Ramesh Singh, who on being contacted denied having ever used the number 9312042685. Insp.Brijender Singh further analysed the call details of the mobile No.9312042685 and was able to reach one Bashir working with ABN Amro Bank, Gurgaon who told him that the said phone belonged to his friend Anand Kishore whose address was provided by Bashir to Insp.Brijender Singh. This led Insp.Brijender Singh to proceed to the house of Anand Kishore where appellant Niranjana Kumar was also present. It is the claim of Insp.Brijender Singh that the conduct of the two

was suspicious. Both were arrested. The personal search of Anand Kishore resulted in the recovery of the mobile phone having number 9312042685, for which the seizure was made as recorded in the personal search memo Ex.PW-34/E. From a personal search of the house a wallet containing two credit cards bearing Nos.5546199923400006 and 4129034010370168 issued by Standard Chartered Bank and Citibank respectively and two counterfoils of bank deposit slips showing deposits made on October 22, 2005 and December 07, 2005 in the saving account No.17604 maintained by Indian Overseas Bank in the name of the deceased and the same were seized vide memo Ex.PW-34/J.

10. The personal search of appellant Niranjana Kumar resulted in recovery of a wrist watch and two credit cards bearing Nos.14550389320863007 and 5546198762805013 issued by Citibank and the same were seized vide memo Ex.PW-34/F.

11. Insp.Brijender Singh PW-42, interrogated Anand Kishore and Niranjana Kumar in the presence of SI Ravi Kumar PW-41 and SI Pramod Kumar PW-34. They made disclosure statements Ex.PW-34/G and Ex.PW-34/H and stated that one Sunil Arora and one Jaiveer Singh had helped them in using the credit cards of the deceased.

12. Since Insp.Brijender Singh had been informed that two persons had visited the deceased in his office, on December 16, 2005 he filed an application Ex.PW-31/N before the Metropolitan Magistrate, Delhi for conducting Test Identification Parade of Anand Kishore and appellant Niranjana Kumar. Ms.Barkha Gupta PW-31, the Metropolitan Magistrate, conducted the proceedings. But, the appellant and Anand Kishore refused to participate in the proceedings as recorded in the record of proceedings

Ex.PW-31/C to Ex.PW-31/L.

13. On January 03, 2006 Sunil Arora surrendered at the Police Station and was arrested. He made a disclosure statement Ex.PW-34/N and pursuant thereto got recovered a mobile phone having IEMI No.354314003411185 from his house.

14. Few days later Jaiveer Singh was arrested and named seven persons viz. Gaurav Arora, Nikesh Kumar @ Nikki, Pritam Lal Verma, Sanjay Kumar, Bhagirath, Deepak Shah and Virender Singh as the ones who had helped him to buy petrol using the credit cards of the deceased. The said seven persons were arrested.

15. On January 31, 2006 test identification of the wrist watch, wallet and camera recovered by the investigating officer was conducted before Ms.Vrinda Kumar PW-36, Metropolitan Magistrate by Tripti Bhaskar the daughter of the deceased and as recorded in Ex.PW-36/B she correctly identified the three articles as owned by her husband.

16. During course of investigation, Insp.Brijender Singh obtained the specimen finger prints of appellant Niranjana Kumar and Anand Kishore. Vide CFSL report dated January 20, 2006 it was opined that one chance print found in the bathroom in the office of the deceased is identical with the right palm print of appellant Niranjana Kumar.

17. The articles seized during the investigation were sent to FSL for forensic examination. As recorded in FSL report Ex.PW-42/D human semen was detected on anal, perineal and rectum swabs of the deceased and blood was detected on the pant recovered at the instance of Anand Kishore.

18. As already noted herein above, the call details Ex.PW-18/B and

Ex.PW-30/B of mobile numbers 9810550777 (number of the deceased) and 9312042685 (number of the phone stated to have been recovered at the instance of Anand Kishore) respectively were obtained during the investigation. A perusal of call details Ex.PW-18/B and Ex.PW-30/B shows that on December 10, 2005 the last outgoing call from number 9810550777 was made to number 9312042685 at 18:19:58 which lasted for eight seconds and last incoming call was received from number (011) 51196401 at 18:55:39 which lasted for 51 seconds; two outgoing calls were made to number 9312042685 at 16:38:30 and 16:41:22 and the location of mobile number 9312042685 was Navyug Public School, Pataudi House, Pandit Ravi Shankar Prasad Road at 18:19 and 19:19 on December 10, 2005.

19. Armed with the aforesaid material, a challan was filed charging the appellant and Anand Kishore of having murdered the deceased. Sunil Arora was charged for the offence of dishonestly receiving stolen property i.e. the mobile phone of the deceased. Jaiveer Singh, Gaurav Arora, Nikesh Kumar @ Nikki, Pritam Lal Verma, Sanjay Kumar, Bhagirath, Deepak Shah and Virender Singh were charged for dishonestly using the credit cards of the deceased.

20. Gaurav Arora, Nikesh Kumar @ Nikki, Pritam Lal Verma, Sanjay Kumar, Bhagirath, Deepak Shah and Virender Singh were discharged, charges were framed against the appellant and Anand Kishore for the offence punishable under Sections 302 and 394 IPC read with Section 34 IPC. Sunil Arora was charged for having committed the offence punishable under Section 411 IPC. Jaiveer Singh was charged for having committed an offence punishable under Section 404 IPC.

21. At the trial, the prosecution examined 47 witnesses. We need not note

in detail the testimonies of the witnesses associated with the investigation of the case for they have deposed on the lines, of factual narrative, noted by us in the foregoing paragraphs, but would be highlighting such testimonies or other evidence which needs to be brought out for evaluating the creditworthiness of the evidence led at the trial. But before that we would note that the appellant as also Anand Kishore have been held guilty of the charge framed against them. Appeal filed by Anand Kishore No.1468/2011 was disposed of on April 21, 2014 noting that he was a juvenile and since he had undergone a sentence of eight years and three months he was let off. We are concerned only with the appeal filed by Niranjana Kumar and thus would be focusing on the evidence against him.

22. Ajay Rida PW-1, Security Supervisor at Shangri La Hotel, deposed on similar lines as the contents of his statement Ex.PW-1/A.

23. Dr.S.P.Sethi PW-2, deposed that in the night of December 12, 2005 he received a call from the Chief Security Officer of Shangri La Hotel at about 11:45 PM with a request that he should come to the office of the deceased. On reaching there he saw the deceased lying unconscious on the floor of the bathroom in his office. On examining the deceased he pronounced him dead.

24. D.S.Pradeep PW-3, deposed that on December 10, 2005 he was working as Chief Engineer in the Shangri La Hotel and that the deceased was also working there. He left the office at 6:00 PM and met the deceased at the Staff Gate of the hotel who told him that he was waiting for someone. In the night he learnt that the deceased had been murdered. Being relevant, we note a portion from what he said during cross-examination:-

“I was not having family visiting terms with Vijay Bhaskar. I

did not know any friend of deceased Vijay Bhaskar as I was constrained with the official work. I was not aware of the habit or choice of Vijay Bhaskar. I cannot tell the name of security personnel posted on 10.12.2005. The security personnel were present on the staff gate and a register was maintained for the visitors having their names etc.” **(Emphasis Supplied)**

25. Tripta PW-4, the wife of the deceased, deposed that her daughter Tripti had participated in the Test Identification Parade conducted on January 31, 2006 and identified the wrist watch, wallet and camera belonging to the deceased. Being relevant, we note the following portion of the cross-examination of the witness:-

“My husband was not homosexual. I was married in the year 1973. Since the day of my marriage till the day of my husband’s death I have never heard or sensed anything about my husband being a homosexual.” **(Emphasis Supplied)**

26. Subhash Chand Grover PW-5, deposed that in the year 2005 he was working as a Project Engineer in Shangri La Hotel where the deceased also worked. On December 10, 2005 he left his office at 6:15 PM and before that when he had a talk with the deceased he was told by the deceased that he was expecting someone.

27. Naresh Tokas PW-6, deposed that on December 10, 2005 he was working as a security guard in Shangri La Hotel and was posted at the staff gate of the hotel. At about 07:00 PM Niranjana Kumar and Anand Kishore had come at the staff gate of the hotel and had requested him to allow them to go inside the hotel since they had to meet the deceased. He did not allow them entry. He then saw the deceased standing at some distance who signalled to him to allow the two to enter and thus he allowed the two to enter the hotel. After half an hour the two departed. Being relevant we note a portion of what he said on being cross-examined:-

*“I was working in the hotel since 2-3 months prior to the incident. On 10.12.2005 I was on duty from 1 PM to 10 PM There are three gates to Shangri La Hotel besides one more which is generally not used for entry but is largely for taking in tents etc. On 10.12.05 I alone was posted at one gate as security guard. A visitor’s register is maintained at the entry gate. It is correct that every person who entered through this gate had to fill in the particulars in the entry register. I had told this fact to the police. The police had not seized the visitor’s register in my presence. We also permit the visitors who come to visit the staff to make an entry through staff gate on which I was posted. We ascertain whether the person visiting is a guest or has come to meet any staff member by making an enquiry from the person. The four gates to the hotel are identified as In Gate, Out Gate, Shopping Plaza Gate and Staff Gate. I also make an entry in the Visitor’s Register who leaves the hotel through staff gate. The signatures of such person is also taken on the register. A attendance is maintained in the hotel in which we mark our attendance when we report for duty and also when we leave. I do not know if the attendance register was seized by the police. I cannot tell how many visitors had come on 10.12.05 to meet Mr. Bhaskar. No entry was made in the visitors register in regard to the two accused when they came to meet Mr.Bhaskar as Mr.Bhaskar had signaled that they may be let in. For this reason only entry in regard to their leaving the hotel was made in the visitors register. Generally, visitors pass is issued to all those who come to visit the staff and enter through the staff gate. The visitors passes were not seized by the police in my presence. I had told the police that we issue visitor passes. I had told the police that the two accused had come back after about half an hour.” **(Emphasis Supplied)***

28. Anil Kumar PW-7, deposed that on December 10, 2005 he was working as a security guard in Shangri La Hotel and was posted at the exit gate of hotel. At about 06:45 PM Niranjana Kumar and Anand Kishore came at the exit gate and wanted to enter the hotel informing him that they had to go to the office of J&K Tours & Travels which was in the precincts of the hotel. He told them that visitors are not allowed entry inside the hotel from

the exit gate whereupon they told him that they had to meet the deceased. He told them that office time was over and the deceased might have left. They told him that they had spoken to the deceased on the phone and he had requested them to come. But he still did not allow the two to enter the hotel whereupon they left. Being relevant, we note the following portion of what he said during cross-examination:-

*“I had not given any document in proof of my employment in the hotel to the I.O. during the investigations. I had not got any employment letter from the hotel as I was an employee of Vision Security Services Pvt. Ltd. with which the hotel had a contract had I was posted in the hotel by the Vision Security. I was issued a memo from the Vision Security for my posting at the hotel. I do not have the copy of the said memo as it remains in the Control Room. There was no visitors register maintained at the In/Out Gate of the hotel. I used to mark my attendance in the attendance register. The staff, the guests of the staff and all the articles which are brought in the hotel make an entry through the staff gate. No Visitors register is maintained at the In gate which opens at Ashok Gate. One register is maintained at Exit gate in which the security guard notes down the number of card which leave through it. A visitors register is maintained at the staff gate. There are many registers maintained at the staff gate like Visitors Pass register, labor register, challan register, vehicle register and such other registers.” **(Emphasis Supplied)***

29. Mohd. Zalil @ Zalil Ahmed PW-12, deposed that in the year 2005 he was employed as peon with Shangri La Hotel and as he left at about 7:00 PM he saw the deceased standing outside the Staff Gate and appeared to be waiting for someone.

30. Laxman PW-15, deposed that between the years 2004 and 2006 he worked as a supervisor in Hotel Shangri La and developed intimacy with the deceased and had sexual relation with him. That the deceased had

developed sexual relations with Anand Kishore who used to be taken to different places by the deceased. Being relevant, we note a portion of what he said during cross-examination :-

“It is correct that deceased used to tell on phone that he had homo sexual relations with Anand. I know accused Anand and I used to talk to him on the phone. Whenever I used to visit office of deceased Vijay Bhaskar then he used to talk with Anand and at that point of time he also made to arrange my talks with Anand.”

31. SI K.L.Yadav PW-20, deposed to have participated in the investigation of the present case. On being questioned about the arrest of the appellants, the witness stated that: - *‘None of the accused was arrested in my presence’.*

32. Anand Prakash PW-23, Officer Service (Legal), Standard Chartered Bank, deposed that credit card bearing no.4129 0340 1037 0618 was issued in the name of the deceased.

33. Takhat Singh PW-25, deposed that in the month of December, 2005 he was employed as a security guard with Shangri La Hotel. In the intervening night of December 10/11, 2005 service leader Ajay Ridia had asked him to check the office of the deceased. On reaching the office of the deceased he saw that the deceased was lying on the floor of the bathroom in his office. He immediately gave said information to Ajay Ridia.

34. Balwinder Kumar Bhardwaj PW-29, who was employed as Chief Security Officer in Shangri La Hotel on December 10, 2005 deposed facts relating to discovery of the body of the deceased in his office in the night of December 10, 2005.

35. Vished PW-37, Assistant Manager, Citibank, deposed that he had

collected information from the Citibank and Standard Chartered Bank regarding the credit cards recovered from the personal search of the appellant and Anand Kishore. Vide letters Ex.PW-23/A and Ex.PW-23/B Standard Chartered Bank and Citibank had informed that the credit cards bearing nos.4129034010370168, 554619992340006, 14550389320863007 and 5546198762805013 were issued in the name of the deceased.

36. Sanjeev Lakra PW-39, Alternate Nodal Officer, Reliance Communications Ltd. deposed that the call details Ex.PW-30/B of mobile number 9312042685 and Cell I.D. chart Ex.PW-30/C showed that the location of mobile number 9312042685 was Navyug Public School, Pataudi House, Pandit Ravi Shanker Road at 18:19 and 19:19 on December 10, 2005.

37. Hem Lata Bhasker PW-40, the daughter of the deceased, deposed having identified the body of the deceased. She dock identified the properties of the deceased seized during investigation. Being relevant, we note the following portion of the cross-examination of the witness:-

“I was not aware about the character and nature of my father. (voltd. he was having good moral character). It is wrong to suggest that my father was involved in gay sex.”

38. Insp. Brijender Singh PW-42, Investigating Officer of the present case, deposed facts regarding the investigation conducted by him in the present case. Be it noted here that Insp.Brijender Singh has deposed that SI K.L. Yadav was part of the team which had arrested the appellants. Being relevant, we note the following portion of the cross-examination of the witness:-

“There were three main gates at the spot. Guards were present at the main gates. On one gate, from where there is entry for

staff, a visitors register and staff was maintained there. I did not seize any of such register. I did not seize staff register which show presence of security guards on duty on the gates during the period of incident and at the time of my presence there. I had not collected any documents to show that the witness from the hotel examined in this case were the employees of the said hotel. One Vinod was joined in the investigation after we reached at the spot. We reached the house of accused at about 1.15 PM. Vinod was the owner of said house. I did not collect any document to show that accused Anand Kishore was residing at tenant or that Vinod was owner of the said house. I did not prepare the site plan of places of arrest of the accused and the places from where the recoveries were effected.”

39. In their statements under Section 313 Cr.P.C. the appellant and Anand Kishore denied everything. Their defence was of false implication by the police officials.

40. Vide judgment dated May 27, 2011 the learned Trial Judge has convicted the appellant and Anand Kishore for the offence of murder and has sentenced them to undergo imprisonment for life. The learned Trial Judge has held that the prosecution has proved the following:-

(i) The testimony of Laxman PW-15 and the suggestion given to Hem Lata PW-40 during cross examination established that the deceased used to indulge in gay sex and Anand Kishore was one person with whom the deceased developed intimacy.

(ii) With reference to human semen detected in the anal, perineal and rectum swab of the deceased, it was established that the deceased had indulged in homosexual activity soon before his death.

(iii) With reference to the call details Ex.PW-18/B and Ex.PW-30/B pertaining to mobile numbers 9810550777 and 9312042685 the prosecution has proved that the deceased made three telephone calls to Anand Kishore in

the evening of December 10, 2005. The former telephone number being proved to be that of the deceased and the latter possessed by Anand Kishore, a fact established from the personal search memo of Anand Kishore when he was arrested.

(iv) The testimony of Naresh Tokas PW-6 and Anil Kumar PW-7 establishes that Niranjana Kumar and Anand Kishore had visited the deceased in his office soon before the deceased died.

(v) With reference to call details Ex.PW-30/B and cell Id chart Ex.PW-30/C pertaining to mobile number 9312042685 it was established that Anand Kishore was in the vicinity of Shangri La Hotel in the evening of December 10, 2005.

(vi) Anand Kishore and Niranjana Kumar refused to participate in the TIP without any justifiable cause.

(vii) Credit cards, wallet, counterfoils of bank deposit slips concerning the deceased were recovered at the instance of Anand Kishore. Wrist watch and two credit cards of the deceased were recovered from Niranjana Kumar during his personal search.

(viii) Anand Kishore got recovered the camera of the deceased.

(ix) Palm print of Niranjana Kumar was found in the office of the deceased.

41. Be it noted here that accused Jaiveer Singh and Sunil Arora were acquitted by the learned Trial Judge of the charge framed against them.

42. At the hearing of the appeal, following arguments were advanced by the learned counsel for the appellant:-

A The main edifice of the case of the prosecution against the appellant is

that the appellant had met the deceased along with Anand Kishore in the office of the deceased soon before his death, which circumstance is sought to be proved by the prosecution through the testimonies of Naresh Tokas PW-6 and Anil Kumar PW-7. Counsel pointed out that the place of incident i.e. Shangri La Hotel where CCTVs would have definitely been installed. The prosecution did not seize the footages from the CCTVs which would have been the best evidence to prove whether appellant and Anand Kishore did or did not visit the hotel. Further, counsel pointed out that the testimonies of hotel officials, particularly that of Naresh Tokas PW-6 and Anil Kumar PW-7, clearly established that a visitors register was maintained at the staff gate of the hotel and that Naresh Tokas PW-6, had made an entry about the departure of appellants in the visitors register when they had left the hotel.

B Though the officials learnt about the deceased being murdered at 11:00 PM on December 10, 2005, they delayed informing the police till 1:20 hours on December 11, 2005. Vinish Gupta, the Project Engineer who was the first person to receive information that the deceased had not returned to his house has not been examined.

C As per the prosecution the appellant and Anand Kishore were arrested in the presence of one Vinod, the landlord of the appellant and Anand Kishore who has not been examined as a witness and thus the recoveries, both on the personal search, and on the disclosure statements made by the appellant and Anand Kishore are tainted.

D SI K.L.Yadav PW-20 denied that Anand Kishore and the appellant were apprehended in his presence and thus Insp.Brijender Singh PW-42 who claims to the contrary stands contradicted. Therefore, this would be the

additional reason for the recoveries to be tainted.

E Insp.Brijender Singh PW-42 did not take the permission from the Magistrate to obtain the sample finger prints of the appellant and thus the CFSL Report dated January 20, 2006 cannot be admitted in evidence.

F Denial by the wife Tripta PW-4 and the daughter Hem Lata PW-40 of the deceased that the deceased was a homosexual belies the case of the prosecution that the deceased was a homosexual.

43. The deceased was employed as a Project Manager with Shangri La Hotel. The office of the deceased was situated on the first floor of the shopping complex in the hotel. Usually, the deceased used to leave his office at about 06:00-6:30 in the evening. However, on December 10, 2005 the deceased did not leave the office at his usual time. On the said day i.e. December 10, 2005 at about 06:15 PM the deceased was seen by D.S.Pradeep PW-3 and Subhash Chand Grover PW-5 at the staff gate of the hotel and he told them that he is not leaving the office at his usual time since he was waiting for someone.

44. The hotel officials found the deceased dead in his office at about 11:30 PM on December 10, 2005. The post-mortem report Ex.PW-14/A records that the death of the deceased had taken place 12-18 hours before the post-mortem commenced. The post-mortem of the deceased was conducted at about 1:00 PM on December 11, 2005. Meaning thereby, that the death of deceased had taken place between 07:00 PM on December 10, 2005 to 1:00 AM on December 11, 2005.

45. Now, the question is : what happened in the office of the deceased between 06:15 PM (when the deceased met D.S.Pradeep PW-3 and Subhash

Chand Grover PW-5) to 11:30 PM (when the body of the deceased was found by the hotel officials).

46. The answer to the aforesaid question lies in the testimonies of security guards Naresh Tokas PW-6 and Anil Kumar PW-7 and call details Ex.PW-18/B and Ex.PW-30/B of mobile numbers 9810550777 and 9312042685.

47. The call details Ex.PW-18/B and Ex.PW-30/B of mobile numbers 9810550777 and 9312042685 show that the deceased was repeatedly calling mobile number 9312042685 in the evening of December 10, 2005 inasmuch as he made three calls to mobile number 9312042685 at 16:38, 16:41 and 18:19 on December 10, 2005. Further, the call details show that the user of mobile number 9312042685 was in the vicinity of Shangri La Hotel i.e. the place of murder of deceased between 18:19 and 19:19 on December 10, 2005 i.e. around the time of death of deceased.

48. Anil Kumar PW-7, deposed that on December 10, 2005 he was present at the exit gate of the hotel. At about 06:45 PM the appellant accompanied by Anand Kishore came and expressed a desire to go inside the hotel to meet the deceased. He did not allow the appellant and Anand Kishore to go inside the hotel since entry to the hotel was prohibited from the exit gate at which the appellant and Anand Kishore went away.

49. Naresh Tokas PW-6, deposed that on December 10, 2005 he was posted at the staff gate of the hotel. At about 07:00 PM the appellant and Anand Kishore came there and expressed a desire to enter the hotel to meet the deceased. He stopped the two. At that time the deceased signalled him to allow the appellant and Anand Kishore to enter the hotel and thus he allowed the two to enter. He saw the appellant and Anand Kishore depart after half an hour.

50. The evidence of the security guards Naresh Tokas PW-6 and Anil Kumar PW-7, establishes that on December 10, 2005 the appellant and Anand Kishore visited Shangri La Hotel and were present in the office of the deceased approximately between 07:00 – 07:30 PM.

51. Further, we have the evidence to the effect that the deceased had indulged in homosexual activity soon before his death. The presence of human semen on anal, perineal and rectum swabs of the deceased coupled with the fact that pant and underwear of the deceased was found below his knees when his body was discovered establishes said fact. We also note that the testimony of Laxman PW-15, establishes that the deceased used to indulge in homosexual activities.

52. The police got no clue about the identity of the appellant and Anand Kishore until December 15, 2005 when Bashir informed Insp.Brijender Singh that he was the user of mobile number 9312042685 but had given the same to Anand Kishore.

53. On the same day i.e. December 15, 2005 the police apprehended Anand Kishore and appellant Niranjan from their residence. The personal search of the two resulted in the recovery of a wallet, wrist watch, credit cards and counterfoils of deposit slips pertaining to bank account of the deceased. Most significantly, a mobile phone having number 9312042685 i.e. the mobile number which was repeatedly contacted by the deceased on December 10, 2005 was found on the person Anand Kishore.

54. After their arrest, the appellant and Anand Kishore refused to participate in the Test Identification Parade alleging that the police had already shown them to the witnesses. (Security guards Naresh Tokas PW-6 and Anil Kumar PW-7). The appellant and Anand Kishore have not

suggested to the security guards Naresh Tokas PW-6 and Anil Kumar PW-7 and Investigating Officer Insp.Brijender Singh PW-42, in their cross-examination that they were shown to Naresh Tokas and Anil Kumar before the Test Identification Parade. Further, there is nothing on record to indicate that the police had shown the appellant and Anand Kishore to Naresh Tokas and Anil Kumar before the Test Identification Parade.

55. In a nutshell, the circumstances established by the prosecution in the present case can be enumerated as under:-

A The deceased was employed as Project Manager with Shangri La Hotel and his office was situated on the first floor of shopping complex in the hotel.

B On December 10, 2005 the deceased did not leave his office at his usual time as he was waiting for someone.

C The deceased had made three calls to mobile number 9312042685 in the evening of December 10, 2005.

D The appellant and Anand Kishore were allowed to enter the hotel on the directions from the deceased.

E The appellant and Anand Kishore were present in the office of the deceased approximately between 07:00-07:30 PM on December 10, 2005.

F The death of deceased had taken place between 07:00 PM on December 10, 2005 to 1:00 AM on December 11, 2005. Meaning thereby, the death of deceased had taken place around the time when the appellant and Anand Kishore were present there.

G The location of mobile number 9312042685 was in the vicinity of

Shangri La Hotel between 06.19 and 07:19 PM on December 10, 2005. Meaning thereby, the user of mobile number 9312042685 was present in the vicinity of Shangri La Hotel around the time of death of deceased.

H The deceased had indulged in homosexual activity soon before his death.

I There is nothing on record to show that anyone entered the office of the deceased after the departure of the appellant and Anand Kishore from there.

J The death of the deceased is the handiwork of more than one person.

K The belongings of the deceased viz. wrist watch, credit cards, wallet, counterfoils of deposit slips were found in the possession of the appellant and Anand Kishore when they were arrested.

L Mobile phone having number 9312042685 was found in the possession of Anand Kishore when he was arrested.

M The appellant and Anand Kishore refused to participate in the Test Identification Parade without any justifiable reason.

56. We ignore the palm print of the appellant lifted from the scene of the crime.

57. The afore-noted 13 circumstances, when seen cumulatively, unerringly point to the fact that the appellant and Anand Kishore are the assailants of the deceased.

58. Dealing with the arguments advanced by learned counsel for the appellant. The veracity of the testimony of security guards Naresh Tokas PW-6 and Anil Kumar PW-7 has been challenged on two counts viz. (i)

Investigating Officer did not obtain CCTV footage from the hotel and (ii) Investigating Officer did not seize Visitors Register of the hotel.

59. It may be true that being a five-star hotel, CCTVs must have been installed in the hotel. But it is not essential that each and every portion of the hotel was being monitored by a CCTV. We have no evidence to show that the area around the staff gate of the hotel was being monitored by a CCTV. No suggestion was given to the Investigating Officer Insp.Brijender Singh PW-42, or any hotel official that the area around the staff gate of the hotel was monitored by a CCTV. Such being the position, nothing turns on the fact that the investigating officer had not obtained CCTV footage from the hotel.

60. Concerning the non-seizure of Visitors Register, the testimony of Naresh Tokas PW-6 is to the effect that he did not record the entry of the appellant and Anand Kishore in the visitors register because the deceased had signalled to him that the two be allowed to enter the hotel. We also have to keep in mind that the purpose of the appellant and Anand Kishore visiting the deceased was the desire of the deceased to be satisfied of having anal sex and such kinds of activities are usually clandestine and not public.

61. We do not find any delay in informing the police for the reason the testimony of Takhat Singh PW-25 establishes that he was the first person to have noticed the body of the deceased at 11:30 PM. He informed the security supervisor Ajay Ridia PW-1 who came to the office of the deceased and in turn informed the Chief Security Officer Balwinder Kumar Bhardwaj PW-29. He called Dr.S.P.Sethi PW-2 who on checking the deceased pronounced him dead and thereafter the police was informed. Assuming there was a delay in informing the police, nothing turns thereon for the

reason it is not the case of the appellant that the hotel officers have contrived to falsely implicate him.

62. Record of the Trial would evidence that summons were issued to Vinod to appear in Court on May 11, 2009. He did not appear. Bailable warrants were issued to secure his presence on May 19, 2010 on which date he appeared but the learned Trial Judge was on leave. Thereafter no steps were taken to summon Vinod. Thus, no adverse inference can be drawn against the prosecution for not examining Vinod.

63. It may be true that SI K.L.Yadav PW-20 has deposed at variance with Insp.Brijender Singh PW-42, but in view of the search memos and recovery memos drawn up which have not been dented, it has to be held that SI K.L.Yadav PW-20 suffered from a memory lapse. The recoveries are credible keeping in view the fact that Hem Lata PW-40 the daughter of the deceased, had deposed that the same viz. the mobile phone, the wrist watch, the wallet and the credit cards etc. were missing. It is significant to note here that said fact was also stated by Hem Lata in her statement recorded by the police under Section 161 Cr.P.C. few hours after the death of the deceased.

64. In the decision reported as AIR 1983 SC 957 Machi Singh vs. State of Punjab one of the factors which weighed with Supreme Court in coming to the conclusion that the witness in question was a truthful witness was that the version of the incident given by witness in court was similar to the version given by him in his statement to the police which was recorded four hours after the occurrence.

65. Nothing turns on the fact that Tripta PW-4 and Hem Lata PW-40, the wife and daughter of the deceased respectively, denied that the deceased was a homosexual in their testimonies for the reason in Indian society it is highly

improbable that a wife/daughter would admit to her husband/father being a homosexual because of the social stigma attached to homosexuality in India. The fact of the matter is that the presence of human semen on the anal, perineal, rectum swabs of the deceased, the state in which the body of the deceased was found and testimony of Laxman PW-15, leaves no room for any doubt that the deceased was a homosexual.

66. In view of above discussion, we do not find any merit in the appeal which is dismissed.

67. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

AUGUST 04, 2014
mamta/skb