

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

Judgment Reserved on: November 19, 2014

% *Judgment Delivered on: November 24, 2014*

+ **CRL.A. 1537/2011**

SHESHBIR alias AJAY

..... Appellant

Represented by: Ms.Srilina Roy, Advocate for
Ms.Nandita Rao, Advocate.

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.

1. Sheshbir @ Ajay has been convicted for the conspiracy to commit kidnapping and murder of Satish and destruction of evidence vide the impugned judgment dated July 16, 2011 and directed to undergo imprisonment for life and fine of ₹5,000/- for offence punishable under Section 302/120B IPC, Rigorous Imprisonment for a period of seven years and a fine of ₹3,000/- for offence punishable under Sections 364/120B IPC and Rigorous Imprisonment for a period of three years and a fine of ₹2,000/- for offence punishable under Sections 201/120B IPC. Charge sheet was filed against Sheshbir @ Ajay and Vinod Kumar wherein Vinod Kumar was acquitted by the learned Trial Court and one 'B' juvenile was also proceeded against before the Juvenile Justice Board.

2. Learned counsel for Sheshbir @ Ajay assailing the impugned judgment contends that Manoj Kumar PW-6 is not a reliable witness and

initially the complainant suspected Manoj. The version of Manoj Kumar PW-6 is contradicted by Akbar Khan PW-4 and Mst.Nusrat Jahan PW-9. Kishore Kumar PW-21 who allegedly purchased the stolen vehicle does not support the case of the prosecution and does not identify the appellant. The learned Trial Court has held that the prosecution has failed to prove that the mobile No.9250800582 belongs to Sheshbir @ Ajay and thus the entire evidence with regard to the phones and call details is required to be rejected. The gap of time between the last seen and the dead body being recovered being long, thus the appellant cannot be said to have been last seen with the deceased. No recovery of the dead body took place at the instance of the appellant. Hence the appellant be acquitted of the charges.

3. The defence of Ajay is of false implication and that he was picked up from his Village Barhat, PS Sadiapur, District Ghazipur and falsely implicated in this case. He examined Smt.Seema DW-2, his sister who deposed that she had never talked on the telephone with her brother in connection of this case and also denied that mobile No.9760456944 belonged to her. Ct.Satender DW-3 and Ct.Anurag Yadav DW-4 exhibited the General Diary Nos.6 and 9 dated July 03, 2008 of PS Sadiapur, HC Vijay Kumar DW-5, exhibited the DD Nos.26 and 35 dated July 03, 2008 of PS Chirayakot vide Ex.DW-5/A and Ex.DW-5/B.

4. Process of law was set into motion by Radhey Shyam PW-1 the grandfather of Satish the deceased on the basis of whose statement FIR No.131/2008 was registered on June 01, 2008 under Section 365 IPC at PS Jamia Nagar. Radhey Shyam stated that his grandson Satish Kumar had gone to Firozabad on May 26, 2008 as a driver with Toyota Qualis Vehicle DL 2CM 2548 owned by one Manoj Sharma from the taxi stand of Okhla

however, he had not returned till date. He also told the police that his son Vijay Pal, father of Satish Kumar had come from Village Gakhghari, U.P. and told him that on May 27, 2008 at 8.00 PM he received a call on his mobile number 9897447054 from Satish informing him that Satish was in Lucknow and would return after three-four days but he has not returned and the deceased's mobile i.e.9811099585 was also switched off. Thus he suspected that his grandson Satish Kumar had been abducted by someone. He gave the description of Satish which were recorded in the FIR.

5. Inspector Shahid Khan, PW-22 who was assigned the initial investigation made inquiries from Manoj who also stated that his Qualis Car had not returned and that on May 25, 2008 in the evening Akbar who operates another taxi stand had come to him along with two boys and one of the boys had given his name as Ajay and had asked for new Qualis for going to Agra and Firozabad on May 26, 2008. On the same day Manoj received telephone call from Ajay regarding the Qualis vehicle and asked him to send the same near Okhla Tank, near Sarita Vihar. Manoj along with the driver Satish had reached Okhla Tank at about 5.15 PM in the Qualis car. Ajay had already given ₹500/- as advance to Manoj on May 25, 2008 for booking the Qualis car. At Okhla Tank four boys met Manoj and Satish. All the four boys boarded the car and Manoj got filled the diesel in the Qualis car at Sarita Vihar petrol pump. ₹1,500/- were paid to Manoj by Ajay before proceeding to Firozabad via Mathura and Manoj alighted from the car. Vijay Pal, father of Satish came to his father Radhey Shyam and told that on May 27, 2008 he had received a telephonic call from his son Satish that he was unwell. According to the father, Satish appeared to be fearful and was in Lucknow at that time and he stated that he would return within two-three

days. Verifications were got done and it was found the telephone number from which Satish called his father Vijay Pal was a STD booth and the owner was not in a position to tell as to who had made the telephone call. The Investigating Officer collected the call details of Satish, Vijay Pal, Manoj, Ajay and Akbar. From the call details of Ajay it was revealed that one Sumit Dabar made call to the phone of Ajay and thus Sumit Dabar was contacted at Lajpat Nagar. Sumit Dabar told that Ajay was working with him as a driver for the last one year and reside at Sangam Vihar, Devli in a rented accommodation and he had also given him a Toyota Mobile Phone for his use which was issued at his address and that Ajay was not coming to him from May 26, 2008 and his phone was switched off. Thus he made inquiries from the persons who had made calls on the Toyota mobile phone of Ajay. He spoke to one Rajender at Mainpuri who had made number of calls to Ajay. Rajender told that Ajay @ Sheshbir was his maternal nephew who was resident of Village Lukharpura, Kotwali Puravali, District Mainpuri and worked as a driver in Delhi with somebody. The Investigating Officer went to the house of Ajay where his mother and sister told that Ajay had sold out a portion of his house 15-20 days back and went to Delhi. He was further informed that wife of Ajay had died and he wanted to marry his sister-in-law. According to the Investigating Officer Seema sister of Ajay made a call to one Renu, sister-in-law of Ajay and when she inquired about Ajay, Renu informed that Ajay, along with Vinod, 'B' of Village Lukharpura, Rajiv@ Raju of Village Vikrampur and Bunty of Village Nangla Hallu District Mainpuri had come to her house at Village Barhat in a Blue Qualis car. Vinod, Rajiv and Bunty stayed for two-three days and left and Ajay and 'B' were still staying at Village Barhat and had gone

somewhere. When Seema asked as to when Ajay would be returning, Renu informed that Ajay would be returning to the village that night itself. However, he did not come back to the village and thus Insp.Shahid Khan came back to Delhi.

6. Further investigations were done and on July 02, 2008 when the police team headed by Insp.Mohd.Iqbal went to Aauriya; where mother-in-law of Vinod told them that he had left the place at 9.00 PM on May 28, 2008 itself and at that time the driver of Qualis Car was also with them. The mother-in-law of Vinod further told that the driver of Qualis was suffering from loose motion and was feeling fatigued and tired. While leaving they had told that they were going to the place of in-laws of Ajay at Village Barhat, District Ghazipur. Sister-in-law Renu and the mother-in-law of Ajay also told that Ajay and 'B' were still in Village Barhat and had gone somewhere and sold the Qualis car to Kishore Kumar @ Pagla, R/o Village Bachista, District Mau. On surveillance being kept finally on identification by Manoj, Ajay and 'B' were apprehended. Ajay got recorded his disclosure statement Ex.PW-6/E and was formally arrested. Pursuant to the disclosure statement of Ajay and 'B' the Qualis car was found parked on a Khadancha and was duly recovered on being identified by both the accused and seized. They went to the house of Kishore Kumar @ Pagla and made inquiries from him who stated that he became suspicious as a brand new car could not be sold for ₹70,000/- so he did not purchase the car. The two then led to the place between Fatehpur and Kanpur which was in the jurisdiction of Maharaj Pur, PP Purvamir and they pointed out the place where the dead body was thrown. On inquiry from the Police Post Purvamir it was revealed that on May 29, 2008 morning a dead body was recovered lying near the

bushes with the head injury on the body. The photograph of the dead body was shown to Manoj Kumar who identified the same to be that of Satish.

7. During the course of trial the prosecution sought to establish the guilt of Ajay on the basis of the legal evidence that Manoj had sent and last seen Satish as the driver with Ajay and 'B' at Delhi on May 26, 2008, the recovery of Toyota Qualis car DL 2CM 2548 at the instance of Ajay and 'B', the conduct of Ajay in pointing out the place of incident resulting in discovery of the fact that the dead body with head injury was found at the place on May 29, 2008 which was identified to be that of the deceased Satish.

8. As contended by learned counsel for the appellant the prosecution has not been able to prove that the phone No.9250800582 belonged to Ajay and thus the evidence with regard to the call details is of no avail to the prosecution case.

9. Material evidence in the case is recovery of Toyota Qualis car bearing No.DL 2CM 2548 on the pointing out of Ajay and 'B' from a distance of 1/2 kms from Village Bachista where it was found parked at a Khadancha. A perusal of the statement of Inspector Shahid Khan as noted above would reveal that even before Ajay made disclosure about where the car was, the fact that the Toyota Qualis car had been sold to Kishore Kumar @ Pagla, R/o Village Bachista, District Mau was already in knowledge of the Investigating Officer from the statements of sister-in-law and mother-in-law of Ajay. Thus the recovery of the Qualis car from village Bachista could not be treated as a fact discovered pursuant to the disclosure statement of the accused. Though Kishore Kumar denied having purchased the vehicle but the fact that the vehicle was taken to Village Bachista, District Mau had

already been revealed to the Investigating Officer from where the recovery was made.

10. This brings us to the evidence of the prosecution with regard to the pointing out of the place where the dead body was thrown by Ajay and 'B' resulting in discovery of the fact that a dead body was recovered from that spot on May 29, 2008. It is the case of the prosecution that appellant Ajay was arrested on July 03, 2008 at 3.40 PM near Hanuman Mandir, Main Road, PP Sarsena, PS Chiryakot, Dholapur, District Mau, U.P. and the prosecution witnesses have deposed in sync with the arrest memo. Ajay has examined DW-4 Ct.Anurag Yadav from PS Sadiabad, District Ghazipur and DW-5 HC Vijay Kumar of PS Chiryakot, District Mau, U.P. Ct.Anurag Yadav has proved on record to GD/DD Entry Nos.6 and 9 of PS Sadiapur, District Ghazipur of Village Barhat, U.P. and exhibited the same as Ex.DW-4/1 and Ex.DW-4/2. The two DD entries were recorded at 5.30 AM and 6.40 AM respectively on July 03, 2008. As per GD No.6, Inspector Mohd.Iqbal from PS Jamia Nagar, Delhi along with SI Shahid Khan, Ct.Joginder Singh, Ct.Devender Singh and Ct.Mahender Singh and Ct.Raj Kumar had come for the investigation of FIR No.131/2008 under Sections 365/34 IPC and from the Police Station SI Rajender Pandey, Suresh Yadav and Anil Kumar were sent to Village Barhat. GD No.9 recorded at 6.40 AM on July 03, 2008 notices the arrival of SI Rajender Pandey along with Ct.Anil Kumar and Suresh Yadav and according to the said GD entry Inspector Mohd.Iqbal, SHO Jamia Nagar found accused in Village Barhat whom he took away to Delhi.

11. Further DD Entry Nos.26 and 35 recorded at PS Chiryakot, District Mau, U.P. were proved by HC Akbar Khan vide Ex.DW-5/A and DW-5/B

respectively. As per DD No.26 recorded at 13.10 hours on July 03, 2008 Inspector Mohd.Iqbal along with SI Shahid Khan, Constable Joginder Singh, Constable Devender Singh and Constable Mahender Singh and Constable Raj Kumar from PS Jamia Nagar reached the Police Station Chiryakot in private vehicle DL 4C NB 1401 Scorpio with regard to the investigation of FIR 131/2008 and SI Radha Raman Chaturvedi and Constable Gopal were sent with him along with a revolver and six cartridges. The return DD entry recorded vide DD No.35 at 17.15 hours on July 03, 2008 at PS Chiryakot notices that SI Radha Raman Chaturvedi and SHO Mohd.Iqbal, SI Shahid Khan, Head Constable Yogender Singh and Mahender Singh and Devender Singh along with the arrested accused Sheshbir @ Ajay s/o Radha Kishan, r/o Village Lokharpura, PS Karavali, District Mainpuri, U.P., and 'B' along with the Qualis car bearing No.DL 2CM 2548 required in FIR No.131/2008 under Sections 365/302/201/34 IPC at PS Jamia Nagar arrived and were searched. Nothing except the wearing clothes were found and there was no fresh injury. They were made to sit in the Police Station and kept in custody with description given. This detailed DD entry No.35 was noted as an application for the transit remand was to be filed before the Court.

12. From the perusal of the GD No.9 a reasonable doubt is cast as to the version of the prosecution that the arrest of the accused took place in the jurisdiction of PS Chiryakot or from village Barhat, PS Sadiapur, District Ghazipur, U.P., the benefit of which is required to be given to the appellant herein. In view thereof the evidence that after the arrest Ajay pointed out the place where the dead body was thrown leading to the discovery of the dead body of Satish being found out is required to be discarded.

13. As per Manoj the deceased was in company of Ajay, Vinod and 'B'

and one more person on May 26, 2008 in the noon time. The dead body of Satish was found in the jurisdiction of PS Maharaj Pur, District Kanpur City, U.P. on the morning of May 29, 2008. The post-mortem on the dead body was conducted at 4.15 PM on May 29, 2008 and as per PW-19 Dr.G.N.Dwivedi the post-mortem doctor the time since death was 24 hours. Thus the murder of Satish was took place somewhere around in the noon time on May 28, 2008. There being a gap of 2 days in the last seen evidence and especially in view of the evidence of the witness of the family of the deceased stating that on May 27, 2008 the deceased called them from Lucknow and he was unwell, in our opinion the prosecution has not been able to prove that last seen evidence beyond reasonable doubt. Consequently, the chain of circumstances not being complete the appellant is entitled to the benefit of doubt. The appeal is disposed of acquitting the appellant Sheshbir @ Ajay of the charges framed against him.

14. Appellant be released forthwith if not required in any other case.

15. T.C.R. be returned.

16. 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

NOVEMBER 24, 2014
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