

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

% *Judgment Reserved on : September 03, 2014*  
*Judgment Pronounced on : September 08, 2014*

+ **CRL.A. 1321/2012**

VIJAY @ SANTY ..... Appellant

Represented by: Mr.Bankim K.Kulshrestha,  
Advocate with Mr.Sandeep  
Chaudhary and Mr.Harish  
Nautiyal, Advocates

versus

STATE NCT OF DELHI ..... Respondent

Represented by: Mr.Lovkesh Sawhney, APP  
Insp.Om Singh, PS Geeta Colony

**CORAM:**

**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**PRADEEP NANDRAJOG, J.**

1. Believing Beena Mehta PW-4, the wife of the deceased Satyadev Mehta @ Mintu, Master Sahil PW-9, the son of Beena Mehta and Satyadev Mehta, Mohd.Shahid PW-7, a property dealer and known to Satyadev Mehta and Beena Mehta, Ghanshyam PW-8, the brother of Satyadev Mehta, the learned Trial Judge has convicted appellant Vijay @ Santy for the offence of having murdered Satyadev Mehta. Co-accused Sachin @ Banty has been given the benefit of doubt and hence acquitted.

2. The reason why Sachin @ Banty has been given the benefit of doubt is that his name was not mentioned by Ghanshyam PW-8 in his

statement Ex.PW-8/A on basis whereof the FIR was registered. In Master Sahil's statement recorded by the investigating officer under Section 161 Cr.P.C. he had not named Banty. Though Beena Mehta and Mohd.Shahid had referred to Banty as the co-assailant in their statement under Section 161 Cr.P.C. and in their deposition in Court, the learned Trial Judge has found it prudent, applying the rule of caution, to acquit Sachin @ Banty.

3. Learned counsel for Vijay @ Santy had attacked the conviction urging the following points. The first was with reference to daily diary No.52A, Ex.PW-13/A, in which it is recorded that an informant through mobile phone No.9891162208 had informed the PCR of a quarrel taking place at house No.81, near Ambedkar Park, Shastri Nagar. The contention urged was that as per said information the place of the crime is near house No.81 near Ambedkar Park and not Punjabi Rasoi restaurant, statedly the place of business of Vijay and Sachin. The second contention advanced was that the person who made the call through the mobile No. 9891162208 was not examined and thus the best witness was withheld. Learned counsel urged that the best witnesses being suppressed, the prosecution has used planted witness. Learned counsel urged, and which we find to be a very funny argument, since PW-8 claimed to have used the mobile phone No.9891162208 of a person standing nearby to make a PCR call, PW-8 being busy in making the call could not be a witness to the incident. The next submission was premised on Satyadev MLC Ex.PW-1/A which notes that Satyadev was brought to SDN hospital, Shahadara at 12.25 mid-night in the intervening night of March 27, 2010 and March 28, 2010 in a PCR van by HC Bhim Sain with Satyadev's brother Rinku. We find that Rinku is the pet name

of Ghanshyam. The contention urged was that the words '*with brother Rinku*' written on the MLC is an interpolation.

4. The process of law was set in motion when through a mobile phone No. 9891162208 the caller informed the police control room that near house No.81, near Ambedkar Park, Shastri Nagar a quarrel was going on. Being relayed to P.S. Geeta Colony, said information was noted in the daily diary at serial No.52A. It was handed over to SI Harpal Singh PW-13 for investigation, who proceeded to the place disclosed and reached Punjabi Rasoi, Rani Garden. He learnt that the injured had been removed to SDN hospital in a PCR van and thus he reached the hospital. At the hospital Dr.Ajit Pal Singh PW-1 gave primary medical assistance to Satyadev Mehta and drew up the MLC Ex.PW-1/A. SI Harpal Singh obtained Satyadev's MLC Ex.PW-1/A. The patient was unfit for statement. He met Ghanshyam Mehta, PW-8, the younger brother of Satyadev whose statement Ex.PW-8/A was recorded by him, based whereon he got the FIR registered.

5. Returning to Punjabi Rasoi, SI Harpal Singh prepared the rough side plan Ex.PW-13/C and picked up blood with a piece of gauge from the road, a half piece of brick, blood stained earth and earth control. He put the same in different parcels and made an entry in the memo Ex.PW-8/PX1.

6. He thereafter recorded the statements of various witnesses. Satyadev Mehta died on April 03, 2010 and he got conducted the inquest proceedings.

7. Dr.Neha Gupta PW-3 conducted post mortem on the dead body of Satyadev Mehta and noted 19 external injuries all of which were ante mortem. She recorded the same in the post mortem report Ex.PW-3/A which reads as under:-

**“ External Ante mortem Injuries**

1. *Brown scabbed abrasion 1x1 cm present over upper border of left knee joint.*
2. *Brown scabbed abrasion 1.5x1 cm present over lower lateral aspect of left knee joint.*
3. *Brown scabbed abrasion 1x1 cm present over upper end of right knee joint.*
4. *Greenish contusion 6x4.5 cm present over the chest in the midline, 6 cm below sternal notch.*
5. *Multiple greenish contusions present in an area of 9x8 cm, 2 cm from midline, 7 cm below left nipple ranging in size from 0.5x0.5 cm to 4x1.5 cm.*
6. *Greenish contusion 5x3 is present on the left side chest, just above the left nipple.*
7. *Greenish contusion 7x6 cm present over right side chest 4 cm from midline, 8.5 cm above right nipple.*
8. *Greenish contusion 2x2 cm present on right side chest; 3.5 cm from midline, 2.5 cm above right nipple.*
9. *Multiple greenish contusion present on dorsal aspect of left arm, in an area of 21x7 cm, 5 cm above elbow joint ranging in size from 1x1 cm to 3x2 cm.*
10. *Brown scabbed abrasion 2.5x1 cm present over dorso-medial aspect of left arm, 5.5 cm above elbow joint.*
11. *Brown scabbed abrasion (grazed) 1x 1.5 cm present on the dorsal aspect of left arm, 3 cm below shoulder tip.*
12. *Brown scabbed linear abrasion 6x0.1 cm present vertically on dorsal aspect of left arm, 2.5 cm below shoulder tip.*

13. *Brown scabbed abrasion 3x2 cm present over right shoulder top, 2 cm medial to shoulder tip.*
14. *Brown scabbed abrasion 3x1 cm present over dorso-lateral aspect of right elbow joint.*
15. *Greenish contusion 6x4 cm present over right shoulder tip.*
16. *Brown scabbed linear abrasion 10 x 0.1 cm present over dorsal upper aspect of right arm, 8 cm above elbow joint.*
17. *Brown scabbed linear abrasion 7x0.1 cm present over dorsal aspect of right arm, 9 cm below shoulder tip.*
18. *Multiple greenish contusion in an area of 10x8 cm present over dorso-lateral aspect of right arm, 7 cm above elbow joint ranging size from 0.5x0.5 cm to 4x2 cm.*
19. *Stitched lacerated wound 2.5x0.1 cm x bone deep present on right occipital region 6 cm behind and 4 cm above right mastoid process.*
20. *Brown scabbed abrasion 3.5x3 cm present over left middle back, 8 cm below left inferior angle of scapula, 4 cm from midline."*

She opined that cause of death was the extensive cranio-cerebral damage. She further opined that all the injuries were ante mortem and produced by blunt force impact. Injury to the head was opined to be sufficient to cause death in the ordinary course of nature.

8. Since in their statements under Section 161 Cr.P.C. Beena Mehta and Mohd.Shahid had not only named Vijay but even Sachin as the assailants, the investigating officer apprehended the two and they were sent for trial. Charge for the offence punishable under Section 302/34 IPC was framed against the two who pleaded not guilty.

9. Dr.Ajit Pal Singh PW-1 deposed that he gave primary medical aid to Satyadev Mehta when he was brought to the casualty of SDN hospital at 12.25 mid-night and authored the MLC Ex.PW-1/A.

10. Relevant would it be to note that Dr.Ajeet Pal Singh was cross-examined but no suggestion was given to him that he has made an interpolation on the MLC by adding the words '*with brother Rinku*'.

11. Dr.Neha Gupta PW-3 deposed that she conducted post mortem of the dead body of Satyadev and authored the post mortem report Ex.PW-3/A. Since in Satyadev's MLC Ex.PW-1/A only three injuries were mentioned as noted by Dr.Ajit Pal Singh, she was cross-examined with respect to only three injuries being noted on the MLC Ex.PW-1/A. Being relevant for our discussion with respect to whether the offence committed is one of murder or culpable homicide not amounting to murder we note the entire cross-examine of Dr.Neha Gupta. It reads as under:-

*"Before conducting post mortem I had seen the MLC of the deceased which is part of the inquest record submitted by IO. It is correct that the MLC is prepared after clinical examination of the patient. It is correct that only three external injuries are mentioned on the MLC of the patient and in my P/M report 19 external injuries are found mentioned. Vol. MLC is prepared under emergency with the objective to provide immediate first aid to the patient and most of the time only major injuries mentioned in it. It is wrong to suggest that the deceased had suffered only three external injuries and the remaining injuries were suffered by him during his treatment. Injury No.19 in the external ante mortem injuries was stitched surgically by the doctor in emergency.*

*In my opinion injury No.19 on the P/M report under external injuries correspond to injury No.2 in the MLC of the deceased. It is correct that dimensions of the injury No.19 mentioned in the P/M report are different from injury No.2 mentioned on MLC since MLC is prepared in emergency and*

*injuries are not measured and rough estimate is made by the doctor but while conducting P/M injuries are measured with scale and accordingly dimensions are measured.*

*The weight of the liver i.e. 1200 grams was within the normal limits of a person aged about 38 years. In our set-up mostly micro nodularity changes are present in the liver of a person if he used to consumption of alcohol but other reasons are also possible. Keeping in view the condition of the liver, it is not possible to conclude that deceased was heavy drinker.*

*It is incorrect that injury No.4 to 9 was caused to the patient during his treatment while resuscitating him.*

*Q. The greenish contusion occurs on the chest only due to Deep Painful Stimuli (DPS)?*

*A. When resuscitation is done, it is done at a one point on the chest. Whereas injury No.4 to 9 are spread over various areas of chest. Due to this reason in my opinion these injuries were not due to DPS.*

*In my opinion injury No.4 is not because of the DPS because this injury is 6 cms below sternal notch and normal DPS is given over the Xphisternum. I had gone through the death summary before conducting P/M.*

*Q. Your opinion regarding cause of death mentioned in the P/M. report is wrong, the patient as per the death summary has died due to sudden cardiac arrest?*

*A. The cardio respiratory arrest has occurred consequent upon the extensive cranio cerebral injury sustained by the deceased as a result of blunt force impact.*

*It is wrong to suggest that I have given a false P/M report of the injuries at the behest of the prosecution. It is wrong to suggest that injury No.4 to 9 mentioned in P/M report are not caused due to DPS. It is wrong to suggest that my opinion regarding cause of death is incorrect.”*

12. We simply highlight that Dr.Neha Gupta succinctly brought out the reason why only three external injuries were mentioned on the MLC of the patient and why the post mortem report authored by her listed 19. She clarified that injury No.19 which was stitched surgically by doctor in emergency was not a surgical suture. She succinctly linked the same to injury No.2 recorded in the MLC. She gave a good reason as to why dimension of injury No.19 mentioned in the post mortem report is different from injury No.2 mentioned in the MLC. She gave a good reason as to why injuries No.4 to 9 could not be the result when the patient was resuscitated, the reason being that resuscitation is done at one point on the chest and injuries No. 4 to 9 were spread over various areas of the chest besides, she had noted greenish contusions which could occur if there was deep painful stimuli.

13. Beena Mehta PW-4 deposed that on March 27, 2010 since she had not cooked vegetable her husband asked her to purchase cooked *daal* from the market and hence accompanied by her son Sahil she went to Punjabi Rasoi which was at a distance of 2-3 minutes from her house and bought a plate of *daal* for ₹15/-. On returning home she found the *daal* watery. Accompanied by her husband and son Sahil, she went to Punjabi Rasoi to return the *daal*. Sachin and Vijay were sitting in Punjabi Rasoi. Her husband told them that the *daal* was watery and hence the two should take it back and return ₹15/-. The accused took the *daal* but refused to return the money. Her husband insisted for money to be returned. Sachin and Vijay started beating her husband, inflicting fist blows and kicked him. She intervened to help her husband. She went to the house of her brother-in-law who lived in 1/14 Rani Bagh. She could not find Rinku (Ghanshyam) and hence came back to the spot. 20-25 minutes were consumed in the process, and on return she learnt that her brother-in-law

Rinku had taken her husband in a PCR van to SDN hospital. On reaching the hospital Rinku told her that after hitting her husband with a brick, Sachin and Vijay had run away.

14. Mohd.Shahid PW-7 deposed that he knew Satyadev Mehta, his wife Beena and their son Sahil as they were residing near his house which was situated near Punjabi Rasoi. He deposed that it was past 11.00 P.M. on March 27, 2010 when he saw Satyadev Mehta, his wife Beena Mehta and son Sahil purchasing *daal* from Vijay and Sachin. After some time the three returned to Punjabi Rasoi. At that time he was watching television at Punjabi Rasoi. Deceased asked Vijay to take back the *daal* and give some vegetable curry or return the money. Vijay took back the *daal* but refused to return the money and boasted that the deceased could do what he wanted. The deceased insisted that money should be returned to him. At that, Sachin and Vijay started kicking Satyadev Mehta and inflicted fist blows. The two picked a stone and hit it on the head of Satyadev Mehta. He fell down. Blood started oozing from his head. Sahil made a phone call to Ghanshyam @ Rinku to reach the place and somebody made a call at No.100. The police came and took Satyadev Mehta to the hospital.

15. Ghanshyam PW-8 deposed that he was a property dealer and was residing at 1/14, Rani Garden, Shastri Nagar. Deceased was his younger brother and was residing at A-81, Rani Garden. At about 10.30 P.M. he went to his brother's house and his nephew Sahil came there and requested him to rush to Punjabi Rasoi, informing that the owners of the Punjabi Rasoi were beating his father. He rushed to Punjabi Rasoi. He saw his brother lying on the road. Vijay and Sachin were kicking his brother. Vijay picked up a half piece of brick from the road and hit on

the head of his brother who started bleeding. From a phone of a bystander he rang up 100 number. Both accused ran away.

16. Master Sahil PW-9 deposed in sync with his mother and said that when his father was being beaten he got scared and went to his house where he met his uncle Ghanshyam to whom he told the facts and at which his uncle Ghanshyam went to Punjabi Rasoi.

17. HC Bheem Sain PW-10 in charge of PCR van deposed that on receiving information he along with the staff reached Punjabi Rasoi and removed injured Satyadev Mehta to SDN Hospital.

18. Now, every witness has deposed that Satyadev Mehta was assaulted at Punjabi Rasoi. The testimony of none has been challenged in said respect. HC Bheem Sain PW-10 the in charge of the PCR van has categorically deposed that he removed the injured to SDN hospital from Punjabi Rasoi. SI Harpal Singh PW-13 has deposed that he picked up blood stained earth and a blood stained piece of brick from outside Punjabi Rasoi.

19. Dealing with the contention that DD entry No.52A, Ex.PW-13/A records that the place of quarrel is house No.81 near Ambedkar Park, suffice it to note that the site plan Ex.PW-13/C drawn up by SI Harpal Singh shows that house No.A-81 is hardly 20 yards away from Punjabi Rasoi. Thus, the informant informing of a quarrel near house No.A-81 and the actual place being outside Punjabi Rasoi does not dent the deposition of the witnesses. There is no shifting of the place of the crime as deposed to by the witnesses and as informed to the police control room.

20. The second contention that the maker of the call through mobile No.9891162208 who informed the police control room being not examined requires a presumption to be drawn that the prosecution has

withheld the best evidence, overlooks the fact that the informant was none other than Ghanshyam PW-8, who deposed to said fact. His testimony in said regard has not even been challenged.

21. The third contention, which while noting we have opined to be a funny argument, was that if Ghanshyam rang up the police control room through the mobile number of a by-stander, he could not be a witness to the incident. Now, one would ring up the police informing about a crime if one sees one.

22. Realizing that Ghanshyam @ Rinku was the person whose name was mentioned in the MLC Ex.PW-1/A of Satyadev Mehta, the contention urged was that HC Bheem Sain took Satyadev to SDN hospital and the words '*with brother Rinku*' were an interpolation. It is obvious that what was intended to be dented was the credibility of Ghanshyam because as per him and SI Harpal Singh, Ghanshyam met SI Harpal Singh in the hospital from where the rukka was dispatched for FIR to be recorded after SI Harpal Singh recorded Ghanshyam's statement Ex.PW-8/A.

23. The author of the MLC, Dr.Ajit Pal Singh PW-1 deposed to prove the MLC and as noted above he was cross-examined, but not a suggestion was put to him that he had interpolated the said three words in the MLC. We have perused the original MLC and find no interpolation.

24. Though learned counsel made no submissions to discredit the testimony of Ghanshyam, Master Sahil, Beena Mehta and Mohd.Shahid, we find that with slight minor variations which are not of a kind that the witnesses would contradict each other, each one of them has deposed consistently. It assumes importance that the residence of deceased was A-81 Rani Garden and Punjabi Rasoi as per the site plan Ex.PW-13/C drawn up by SI Harpal Singh is about 20 yards away. Thus, the

consistent testimony of Sahil and Ghanshyam that as Satyadev was assaulted Sahil rushed to his house where Ghanshyam was present and he thus went to Punjabi Rasoi and so the assault finds support from two other witnesses. Though learned counsel never argued but we note that there is no scope for an argument that if Sahil went to his house when the fight started and told Ghanshyam thereby inducing Ghanshyam to go to Punjabi Rasoi and therefore Ghanshyam could not see the assault for the reason the distance between Punjabi Rasoi and house of the deceased is 20 yards. There are 19 injuries inflicting on the deceased. Most of which are deep painful stimuli. Injury No.19 is in fact is not one injury. It is the result of a hard object being repeated struck on the scapula. If we look at the 19 injuries, it is apparent that injuries No.4, 5, 6,7 and 8 are the result of the broken brick picked up from the scene of crime being struck on the chest causing greenish contusions. In fact injury No.5 is in fact more than one injury because the greenish contusions were multiple in an area of 9 cm x 9 cm on the left side of the chest. Injuries No.1,2 and 3 appeared to be fall injuries or the result of somebody kicking the deceased. Injuries No.9, 10, 11, 12, 13, 14, 15, 16, 17 and 18 are ex-facie defence injuries or the result of being hit while taking defensive action in the form of the head being covered with the arms to protect the skull. This explains injury No.19, explained by PW-3 during her cross-examination being the result of the occipital region being repeatedly struck with a brick.

25. Sachin appears to be a lucky person and has been let off by the learned Trial Judge on the reasoning that in Ghanshyam's statement Ex.PW-8/A his name was not mentioned nor was it mentioned in Beena's statement recorded soon after the incident under Section 161 Cr.P.C. notwithstanding two witnesses not only stating in their

statements under Section 161 Cr.P.C. but standing it by in Court that even he joined in the assault. The learned Trial Judge has overlooked that soon after the incident and especially if the injured is a relative, the witnesses, who would expectedly be traumatized would only narrate the core of the acts constituting the crime and since Vijay was the more aggressive of the two and used the half brick to repeatedly hit Satyadev, the only stated his name. The other two witnesses whose statements were recorded by the investigating officer the next day had time to regain their composure and narrate the incident more expensively.

26. Though no arguments were advanced, we consider whether the offence committed is murder or culpable homicide not amounting to murder.

27. Firstly, it is not a case of a sudden quarrel. The deceased who was in the company of his wife and son had returned the *daal* purchased from Vijay because the *daal* was watery. Vijay took back the *daal* but refused to replace it with vegetable curry or return the money. It was natural for the deceased to protest. No witness has said that the deceased started a verbal dual. The witnesses have simply said that the deceased insisted for ₹15/- to be returned. At that the brutal assault was launched. Vijay picked up a half brick and repeatedly struck Ghanshyam with the brick on the chest as also in the occipital region. If a person repeatedly strikes blows in the occipital region knowledge would be presumed of the person knowing that extravasation of the capillaries and arteries supplying blood in the skull would take place. It is not a case where only one blow was struck. Multiple blows were struck in the occipital region. The wound was bone deep. The appellant has to be imputed knowledge that he knew that the injuries caused by him were so imminently dangerous that in all probability death would result.

28. The appeal is dismissed.

29. Copy of this decision be sent to the Superintendent, Central Jail Tihar to be supplied to Vijay who is in custody.

**(PRADEEP NANDRAJOG)**  
**JUDGE**

**(MUKTA GUPTA)**  
**JUDGE**

**SEPTEMBER 08, 2014**

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