

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

Judgment Reserved on: February 09, 2016

% *Judgment Delivered on: February 12, 2016*

+ **CRL.A. 476/2000**

SAMIUDDIN

..... Appellant

Represented by: Mr.M.L.Yadav, Advocate.

versus

STATE OF DELHI

..... Respondent

Represented by: Mr.Varun Goswami, APP for
the State with SI Vishvendra,
PS Seema Puri.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. Vide the impugned judgment dated July 04, 2000 Samiuddin has been convicted for the murder of Shibte Hassan and awarded life imprisonment vide order dated July 11, 2000 and a fine of ₹2000/- for offence punishable under Section 302 IPC and R.I. for two years and a fine of ₹1000/- for offence punishable under Section 201 IPC.

2. Process of law was set into motion when at 2.25 PM on November 15, 1995 an information was received through PCR recorded vide DD No.14-A that a burnt dead body has been found at Flat No.354, Pocket-Q, Dilshad Garden. On reaching the spot, SI Anil Sharma along with other staff found that a man whose body was badly burnt, along with a sack and it appeared as if the dead body had been brought to that place after being burnt. On the neck of the dead body almond colour shirt collar was found. Crime team

was called and photographs were taken. Blood stained soil as well as earth control were picked up. On the basis of this information FIR No.634/95 under Section 302/201 IPC was registered at PS Seemapuri.

3. On the other hand a missing report was lodged at PS Welcome on November 15, 1995 at 6.20 PM by one Roshan Jhan stating that her husband Shibte Hassan S/o Afzal Ahmed aged 40 years, wheetish complexion had gone to GTB hospital on November 14, 1995 for getting medicine but had not returned. She gave the description of the dress, his features and also that he had 400 rupees with him. The said information was recorded vide DD No.19-A at PS Welcome exhibited as Ex.PW-7/A

4. On November 16, 1995 Anwar, Kaleem and 12/13 other persons came to the Police Station after seeing the photograph of a dead body in the newspaper. They were taken to GTB Hospital where they identified the dead body to be that of Shibte Hassan.

5. Kaleem Ahmed got his statement recorded that on November 14, 1995 at 9.00 AM when Shibte Hassan left the house, he informed that he was going to GTB hospital along with Samiuddin who stays at Dilshad Garden because a day prior i.e. on November 14, 1995 Samiuddin had come and stated that he would get Shibte Hassan medically checked up. However, Shibte Hassan did not return back on November 14. Samiuddin came to him on November 14, 1995 at about 2.00 PM stating that Shibte Hassan had not come to him. They made efforts to search Shibte Hassan at various places including the relatives but could not find Shibte Hassan. They lodged the missing report on November 15 and on seeing the photograph in the newspaper they came to the hospital and identified the body to be that of Shibte Hassan, who was his nephew. He informed that Samiuddin had taken

a loan of ₹30,000/- from his nephew a few days ago and he suspected Samiuddin for the murder of his nephew Shibte Hassan.

6. Similar statements of Roshan Jhan and Saira, wife and daughter of Shibte Hasan, Anwar and Shabana were also recorded who expressed their suspicion on Shadab besides Samiuddin. Efforts were made to trace Samiuddin and Shadab.

7. On November 19, 1995 at about 1.30 PM on a secret information Inspector Ram Niwas raided House No. E-132/11, Jagjit Nagar, Usmanpur Delhi and arrested Samiuddin. He was brought to the Police station where he got recorded his disclosure statement and stated that he could get the pipe, blood stained clothes and kerosene oil etc. recovered from H.No.Q-350, Dilshad Garden. On reaching the house it was found locked. Lock was broken. On entering the house he brought a pipe lying under the almirah. The pipe was blood stained at various places and was seized. Samiuddin also produced his shirt which was kept under the bed, the shirt was also blood stained. He also produced one bed-sheet and one mattress from behind the bed which were also blood stained. One pillow, one chappal, cover of refrigerator, one pant and one sweeter were also seized which were all blood stained. Blood was found all over in the room. Photographs were taken and blood stained pieces of earth and earth control sample were also seized. A plastic can containing half litre of kerosene oil was seized from kitchen. The blood from the door of the house was also lifted with the cotton. Inspector Ram Niwas found that quarter No.354 and 350 were adjacent, a courtyard connecting the two flats.

8. On February 29, 1996 Shadab surrendered before the Court where after he was taken on Police remand who got recorded his disclosure

statement and got recovered a 'dabb' (cutting instrument) from underneath a Neem tree.

9. Dr. Anil Kohli PW-14 conducted the post-mortem on the body of Shibte Hassan and found the following injuries:

“POST-MORTEM INJURIES:

- 1. Superficial to deep burns involving nearly the whole of the body surface. No vital reaction seen in the burnt areas. Blisters with yellowish base and containing hair seen at places. Burning and singeing of body hair seen.*
- 2. Heat rupture measuring 9 cm x 5 cm x abdominal cavity deep, seen over left side front of abdominal, placed 3 cm to the left of midline and 10 cm below the rib cage. Coils of intestine are protruding out from the wound. Edges are irregular with no extravagation of blood in the surrounding tissues.*

ANTI-MORTEM INJURIES

- 1. Lacerated wound 2 cm x 1 cm x 1 cm present over right side of face, placed 1 cm to the right of outer angle of right eye-brow.*
- 2. Incise wound 2 cm x 0.3 cm x 0.3 cm present over left side of forehead placed 4 cms to the left of mid line and 3.5 cms above left eye brow.*
- 3. Incise wound 5 cm x 0.4 cm x 0.5 cm present over left side of head placed 4 cms to the left of mid line and 13 cms above left eye brow.*
- 4. Incise wound 4 cm x 0.5 cm x 0.5 cm present over left side of head placed 0.4 cm below and parallel to injury No.3.*
- 5. Incise wound 3 cms x 0.5 cms x 0.4 cms present over left side front of scalp placed 1 cm to the left of midline and 8 cms above left eye-brow.*
- 6. Incise wound 4 cms x 0.4 cms x 0.3 cms present over left side, Back of scalp placed 3 cms to the left of midline and 18 cms above the left eye-brow.*
- 7. Incise wound 3 cms x 0.3 cm x 0.3 cms present over left*

side back of scalp placed 0.8 cms medial to and behind injury No.6.

Injury No.3 to 7 are associated with cutting of scalp hair surrounding the wound.

8. Lacerated wound 2 cms x 0.8 cms x 0.4 cm present over left side of head placed 2 cms to the left of midline and 20 cms above the left eye-brow.

Injury Nos. 3 to 8 are associated with underline fracture of the skull.”

10. On internal examination Dr.Anil Kohli found fracture on the left parietal and occipital bone and left side middle cranial fossa of the base of the skull. Time since death was about two days and the cause of death was opined to be shock due to ante-mortem head injuries. Injuries No.2 to 7 were produced by a sharp-edged weapon and injuries Nos.1 and 8 were produced by blunt force impact. The injuries were sufficient to cause death in the ordinary course of nature both independently and collectively. For the pipe recovered at the instance of Samiuddin, Dr. Anil Kohli opined that ante-mortem injury Nos. 1 and 8 were possible by the said weapon.

11. As per FSL report Ex.PW-17/C blood was detected on the pillow with pillow cover, pant, sweeter, plastic sheet, chappel, shirt, bed-sheet, gadda and iron pipe. With regard to pillow, pant, sweeter chappal, shirt and gadda it was further opined to be of ‘AB’ group which was that of the deceased however rest gave no reaction.

12. During the course of trial both Roshan Jhan PW-2 and Sayara PW-3, the wife and the daughter of the deceased Shibte Hassan did not support the prosecution case and only deposed that the deceased Shibte Hassan went on November 14, 1995, they made search for him and on November 16, 1995

they identified his dead body. However, Kaleem Ahmed PW-13, Anwar Ahmed PW-4 the brothers of the deceased and Shabana PW-5, the niece of the deceased supported the prosecution case.

13. Kaleem Ahmed, PW-13 deposed in sync with his statement as noted above. Both Kaleem Ahmed and Anwar Ahmed pointed out that they identified the dead body because of the injury mark on the cheek of Shibte Hassan which he had from his childhood.

14. Anwar Ahmed PW-4 deposed that Shibte Hassan doubted the character of Samiuddin who used to visit his house for the last several years. Shahdab was cousin brother-in-law of Shibte Hassan who was unemployed for the last 14-15 days. Shibte Hassan was annoyed with Shahdab and Samiuddin and since November 15, 1995 both Samiuddin and Shahdab were missing from their house. Anwar Ahmed had been extensively cross-examined but most of the cross-examination is irrelevant as it relates to the relations of Shibte Hassan with various other family members and the marriages performed in the family. The only relevant suggestion which was denied by Anwar Ahmed is that he had some land dispute with Shibte Hassan and that Shibte Hassan was not happy with Samiuddin which he admitted.

15. PW-5 Shabana w/o Muzamil Ahmed who also identified the dead body of the deceased deposed that her uncle Samiuddin and Shahdab disappeared on November 15, 1995. She stated that her uncle did not have good relations with Samiuddin and Shahdab. She deposed about the participation of Samiuddin in searching Shibte Hassan on November 15, 1995 to the extent that he made call to his paternal house at Bullandshehar asking if Shibte Hassan had reached there and after the telephone call he had

food at her aunt's house, that is, Roshan Jhan's house. After that he stated that her uncle will not come back. Samiuddin advised Roshan Jhan not to lodge the report to the police.

16. In his explanation under Section 313 Cr.P.C. Samiuddin has pleaded ignorance and that he was falsely implicated in this case at the instance of Anwar Ahmed and other witnesses who were relatives of Shibte Hassan. Samiuddin examined five defence witnesses as he took the plea that he was falsely implicated, tortured by the police and illegally detained till November 19, 1995. Though DW-1 and DW-2 could not bring any such record, DW-3 Dr. Pratibha Nanda who was CMO, DDU Hospital deposed about the treatment of one Samiuddin S/o Kalimuddin after having been brought from Central Jail, Tihar on November 20, 1995. Though the patient had old injuries, however he was not referred to X-ray examination. Further Ex.DW-3/A was not prepared by DW-3 nor in her presence nor she identified the author of the said document. DW-4 R.P. Singh and DW-5 Shyam Sunder, Record Clerks of GTB Hospital deposed about Samiuddin suffering from epileptic fit on the night of November 19, 1995 which fact was also deposed by the Investigating Officer that during investigation Samiuddin suffered an epileptic fit and was taken to the Hospital.

17. The learned Additional Sessions Judge noted the following circumstances established against Samiuddin and Shahdab: -

"1) Shibte Hassan left his house for Dilshad Garden, Delhi on 14.11.95, where he was to meet Samai-ud-din, who was to help him for his urine test.

2) On 14.11.95 itself around noon hours Samai-ud-din approached Kalim Ahmed and informed him that Shibte Hassan had not reached his house.

- 3) *Kalim Ahmed and others started searching for Shibte Hassan.*
- 4) *In the morning of 15.11.95, Samai-ud-din reached the house of Shabana and accompanied her for search of Shibte Hassan. He made two telephone calls to Bullandshehar to enquire about the whereabouts of Shibte Hassan. On his way back, Samai-ud-din told Shabana that Shibte Hassan would not return back, since he had left the house after having a quarrel with his wife.*
- 5) *Samai-ud-din advised Roshan Jahan and others, in presence of Shabana, not to lodge the report with the police.*
- 6) *Smt.Roshan Jahan lodged the report with the police on 15.11.95 at 6.20 p.m.*
- 7) *Samai-ud-din and Shadaab disappeared after the report was lodged by Roshan Jahan.*
- 8) *Shibte Hassan had a doubt about the character of Samai-ud-din, who was visiting his house from the last several years and in this regard, he made a complaint to his brother Kalim Ahmed.*
- 9) *On 15.11.95 at about 2.25 p.m. charred dead body of a male was recovered from Quarter No.Q-354, Dilshad Garden, Delhi.*
- 10) *On 16.11.95, the said dead body was identified by Kumari Saira, Anwar Ahmed, Shabana and Kalim Ahmed as to be of Shibte Hassan.*
- 11) *On 19.11.95, Samai-ud-din was arrested from a place outside house No.E-132/11, Jagjit Nagar, Usmanpur, Delhi. He made a disclosure statement Ex.PW1/B and disclosed that he can get recovered blood stained clothes and iron*

pipe.

12) In pursuance of the said disclosure statement, he led the police party to flat No.Q-350, Dilshad Garden, Delhi, and from there got recovered blood stained clothes, fridge cover, chappal and iron pipe, pillow and mattress.

13) There was a blood spot and blood on the door of the said house, which was lifted by the police.

14) The objects lifted from flat No.Q-350, Dilshad Garden, Delhi, were sent to FSL and there was blood on these objects.

15) The blood of the deceased was of AB group and blood stains on the aforesaid objects were of AB group. Dr.Kohli opined that injury No.1 and 8 were possible by the iron pipe recovered from flat No.Q-350, Dilshad Garden, Delhi.

16) Flat No.Q-350, Dilshad Garden, Delhi, was in possession of Samai-ud-din. Family of Samai-ud-din was missing from the said flat from 11.11.95 till the date of the recovery of the aforesaid objects and on account of absence of Gazalanaz, her name was struck off the rolls of the school.

17) On 29.2.96, Shahdab had surrendered before the Court. He was arrested and on 3.3.96 he made a disclosure statement Ex.PW15/C.

18) On 3.3.96, he led the police party to DESU sub station in Q Block, Dilshad Garden, Delhi and from there got recovered daab Ex.PW15/1.

19) Dr.Kohli opines that the injuries from Serial No.1 and 8 were mentioned in post-mortem report were possible by the said daab.

20) Dr.V.K.Goel, found no blood stains on the said daab."

18. On the basis of the above-noted evidence, the learned ASJ convicted Samiuddin however, acquitted Shahdab. No reasons have been assigned for the acquittal of Shahdab. Be that as it may, no appeal has been preferred against the acquittal of Shahdab thus we need not delve into that aspect. What is to be seen whether the circumstances as noted above have been proved and whether the same form a chain so as to prove that Samiuddin committed the offence of murder of Shibte Hassan coupled with destruction of evidence.

19. The conviction of Samiuddin based on circumstantial evidence primarily rests on his conduct and recoveries at his instance. Though Roshan Jhan and Sayara have turned hostile however, Kaleem Ahmed, Anwar Ahmed and Shabana have deposed about the frequent visits of Samiuddin and that though initially he helped in search however, later he was not traceable. Further Anwar Ahmed deposed that Samiuddin discouraged Roshan Jhan to lodge missing report of her husband. There is no cross-examination to challenge the veracity of these witnesses on these counts. The conduct of Samiuddin in absenting, after the missing report was lodged, is a relevant fact. Further his discouraging Roshan Jhan to lodge the missing report of Shibte Hassan is also a relevant fact. Though the dead body was recovered earlier however, the weapon of offence, which is connected with the injury Nos.1 and 8, was recovered at the instance of Samiuddin, the place where offence was committed being Quarter No.350, Dilshad Garden was in the exclusive knowledge of Samiuddin and was traced only pursuant to his disclosure statement. The clothes, the bed sheet, the gadda and the pillow etc. recovered from spot were all found to be

stained with the blood of the deceased. No challenge has been laid to the recoveries made pursuant to the disclosure statement of Samiuddin and the cross-examination though extensive does not touch the core issues.

20. The conviction of Samiuddin for offence punishable under Sections 302/201 IPC can safely be based on the circumstances as noted above. The impugned judgment dated July 04, 2000 convicting Samiuddin for offences punishable under Sections 302/201 IPC and the order on sentence dated July 11, 2000 are upheld.

21. The appeal is dismissed.

22. Samiuddin would surrender to custody. Bail bond and the surety bonds are forfeited.

23. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

24. TCR be returned.

(MUKTA GUPTA)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

FEBRUARY 12, 2016
‘ga/vn’