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

+ **CRL.A. 1142/2012**

PRAKASH alias KALU Appellant
Through: Mr. Dinesh Malik, Advocate
(DHCLSC)

versus

STATE Respondent
Through: Ms. Kusum Dhalla, APP for State
SI Ashok Kumar, PS-Patel Nagar
Inspector Pramod Joshi, SHO/Patel
Nagar

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

% **ORDER**
15.01.2018

1. This is an appeal against judgment dated 31st August, 2012 passed by the learned Additional Sessions Judge-FTC (Central), Tis Hazari Courts, Delhi in Sessions Case No.46/2010 arising from FIR No.181/2010, registered at Police Station ('PS') Patel Nagar convicting the Appellant for the offences under Sections 328/411/302 Indian Penal Code 1860 ('IPC'). It is also directed against the order on sentence dated 7th September, 2012 whereby for the offence under Section 302 IPC the Appellant was sentenced to undergo to Rigorous Imprisonment ('RI') for life and to pay a fine of Rs.5,000 and in default of payment of fine, to undergo Simple Imprisonment ('SI') for a period of six months; for the offence under Section 328 IPC he was sentenced to undergo RI for 7 years and to pay a fine of Rs.2500/- and

in default of payment of fine, to undergo SI for three months; for the offence under Section 411 IPC he was sentenced to undergo RI for 3 years and to pay a fine of Rs.2500 and in default of payment of fine, to undergo SI for three months.

2. The case of the prosecution begins with one Sachin Arora (PW-25), who was residing at the same address as the complainant and the accused but on a different floor, going to police PS Patel Nagar at around 09:30 pm, meeting the Duty Officer ASI Sohanveer Singh (PW-13) and giving him information about a girl lying in a bleeding condition on the third floor above Deepika Clinic at Baljeet Nagar. PW-13 reduced that information in writing as DD No.36-A (Ex.PW-13/A) and handed it over to SI Narender Dagar (PW-21) through Constable Satish (PW-10). Soon thereafter Inspector Pawan Singh Rana (PW-24) the Station House Officer ('SHO') of PS Patel Nagar, who was also the Investigating Officer ('IO') of this case left for the spot.

3. PW-24 reached the third floor of T-704/D4 Baljeet Nagar, Prem Nagar, Delhi on 16th August, 2010 and found the dead body of a four year old girl child near the kitchen with a large amount of blood spread all around. Her name was revealed as Sunaina, daughter of Amar Bahadur (PW-16). The head of the girl was towards the stairs and legs towards the kitchen and her throat was found slit with some sharp weapon. The mother of the girl, Smt. Sushila Devi (PW-1) was found in a semiconscious condition in a room adjacent to the kitchen. A boy aged 2½ years, later revealed to be Dev, the brother of the deceased, was found lying unconscious on the bed in the other

room. By the time PW-24 reached there, the husband of PW-1, Amar Bahadur (PW-16) was also present. PW-24 noticed that in their semiconscious state, both PW-1 and Dev had started vomiting, after which both of them were taken to the RML hospital by PW-16.

4. At RML hospital Dr. O.P. Meena (PW-5) examined both Dev as well as PW-1. Both of their MLC's (Ex. PW-5/A and Ex.PW-5/B) noted history of patient consuming 'frooti mixed with some poisonous substance'. However, since both patients had been brought to the hospital more than ten hours after they had consumed the poisonous substance, their respective stomach wash was not preserved by the doctor.

5. Meanwhile the crime team was called to the spot by PW-24 and they took photographs of the place of incident. Sunaina's dead body was sent to the mortuary.

6. PW-24 then proceeded to the RML hospital and at around 03:30 am, the doctor there declared Sushila Devi and Dev as still being unfit for statement. At around 5:30 am the doctor declared PW-1 fit for statement, after which PW-24 recorded her statement (Ex.PW-1/A) in the presence of her husband Amar Bahadur (PW-16). A *rukka* was prepared on that basis and handed over to PW-21 for registration of the FIR.

7. PW-24 then reached back at the spot and with the help of PW-16 prepared a rough site plan (Ex.PW-16/DA) and lifted the blood spread of the floor. A plastic bottle of Maaza and one steel glass lying in the room in which Dev

was found unconscious were taken into possession. PW-24 also made inquiries from other residents of the locality and examined Dr. Deepika Sharma (PW-8) who was the owner of the building in which both PW-1 and the Appellant were tenants.

8. The post-mortem of the deceased was performed by Dr. B.N. Mishra (PW-9) at the DDU hospital, New Delhi. Among the injuries found were one cut throat injury present on anterior aspect of the neck at the level above thyroid cartilage, extended both sides below the angles of mandible of size 10 cm in length, 4 cm in width (at middle part of injury) and deep to the cervical vertebra with sharp and regular margins and surface of the wound covered by dark reddish coloured blood clots. This cut throat injury was by itself found to be sufficient to cause death in the ordinary course of nature. The death was certified as homicidal.

9. Subsequently when the knife recovered at the instance of the Appellant was shown to this very doctor, he opined that the aforementioned external injury 'could have been inflicted by the produced weapon of offence (knife)'.

10. According to PW-24, the mobile number of the Appellant was revealed by PW-25 whom the Appellant had called on the date of incident. PW-24 learnt that the Appellant had shifted his premises from the room which he already had taken on rent i.e. the room next to that of PW-16 and PW-1 at third floor of T-704/D4 Baljeet Nagar, Prem Nagar, Delhi to another premises in the same locality i.e. T-580/D1, Gali No.2, Baljeet Nagar, Delhi

second floor which was owned by one Dalip Singh (PW-19). On inquiry with PW-19, PW-24 learnt that the Appellant had taken that room on the second floor on rent only on 15th August, 2010 i.e. one day prior to the incident.

11. In her statement to the police, PW-1 had stated that on 16th August, 2010 she was in her house and her husband (PW-16) had already left for his workplace. On his way he had dropped his younger daughter Sunaina (the deceased) at school. The elder daughter Divya (PW-27) had left for school at around 7:30 am. PW-1 and the youngest child Dev were at home. Their immediate neighbour in the next room was the Appellant who came to their house around noon time and offered them a bottle of 'Frooti' which he had poured out in a glass and offered it to both PW-1 and Dev. Without suspecting, PW-1 drank it and also gave it to Dev. Soon thereafter she became unconscious and was not aware of what happened till about 8 pm at night when the neighbour who lived in the flat one floor below, Sanjay sprinkled water on her face.

12. When PW-1, Divya (PW-27) and Sanjay started looking for the youngest daughter Sunaina they noticed that the kitchen was locked. The key to the said lock was lying nearby. When it was opened they found the dead body of Sunaina lying on the floor of the kitchen. PW-1 then pulled the body out from the kitchen and noticed that her throat had been slit. Thereafter PW-1 recollected that the police had reached there and she herself was taken to the RML hospital.

13. PW-24 deposed that on 27th August 2010, more than 10 days after the date of incident, he received secret information about the Appellant and on that basis they apprehended him from DMS Road, near SBI ATM when he was coming from the side of Shadipur along with his wife. The Appellant was arrested in the presence of his father, who was also called to the spot. The personal search of the Appellant revealed *inter alia* one strip of Nitrazepam-10 having 5 tablets apart from his Driving Licence, Voter identity card, mobile phone, etc. The bag of the accused containing his clothes was also taken into possession.

14. According to PW-24, the Appellant led them to the place of incident and pulled out one piece of cloth from a slab in the kitchen claiming that it had been used to clean the knife with which he had murdered the deceased. That piece of cloth with blood stains on it was seized.

15. Thereafter the Appellant led the police to his newly rented place at T-580/D-1, 2nd Floor, Gali No.2, Baljeet Nagar. At that time PW-16 and PW-19 joined the police and in their presence the room was opened by the Appellant. One blue colour bag containing his clothes including those worn by him at the time of the incident was taken into possession. One gold chain, one pair of silver *pajeb* and *chutki* kept in the same bag were also recovered from the Appellant. A knife was also recovered from that room from under the bed by the Appellant and was seized by the police. The sketch of the knife was prepared (Ex PW-24/F).

16. On completion of the investigation, the charge sheet was filed; thereafter

by the order dated 27th January, 2011 the following charges were framed against the accused:

“That on 16.08.10 at about 12 Noon at H.No.T-704/D-4, 3rd Floor, Baljeet Nagar, you administered stupefying thing to Complainant Smt. Sushila Devi and her minor son Dev after mixing the same in a soft drink with the intention to commit or facilitate the commission of an offense and thereby committed an offence punishable under Section 328 IPC within my cognizance.

Secondly, on the aforesaid date, time and place, you had committed theft of cash of Rs.10,000/-, one gold, chain, one silver chain, a pair of pajeb, a pair of bichua and an ATM card of SBI Bank belonging to the complainant and thereby committed an offence punishable under Section 380 IPC within my cognizance.

Thirdly, on the aforesaid date and place, you had committed murder of a minor girl namely Sunaina daughter of the Complainant and thereby committed an offence punishable under Section 302 IPC within my cognizance.”

17. A separate charge was framed against the Appellant under Section 411 IPC on the same date for being found in possession of the stolen articles.

18. The prosecution examined 27 witnesses.

19. In his statement under Section 313 Cr.P.C, while denying many of the circumstances put to him as incorrect, the Appellant answered in the affirmative to some questions as under:-

“Q-1 It is in evidence against you that 16.08.10 PW-1 Smt. Sushila was residing at H.No.T-704/D-4, III Floor, Baljeet Nagar along with her husband Amar Bahadur,

daughter Divya, son Dev aged about 2 ½ years and daughter Sunaina aged about four years (deceased) and you were also residing as tenant in the adjacent room of PW-1. What have you to say?

Ans. It is correct.”

20. In other words the Appellant did not deny that he was indeed a tenant in the room adjacent to the premises of PW-1 and her husband PW-16.

21. In response to the question concerning the recovery of articles from his newly rented place in the presence of its owner PW-19 and the husband of PW-1, PW-16; the Appellant denied it and stated ‘police collected all my belonging on its own’. When asked question No.27 as to why the witnesses had deposed against him, he offered an explanation that he had a dispute with the elder sister of PW-1 regarding payment for some painting job that he had supposedly carried out at the sister’s house. Instead of paying him Rs. 6,500/-, which was the actual cost, she had paid him only Rs. 1,500/- whilst assuring him that she would get the delivery of the child due to him (Appellant) and his wife conducted by Dr. Deepika Sharma (PW-8) for Rs.1500/-. However, PW-8 charged him Rs.4,000/- for the delivery and when he confronted the sister of PW-1 about the money in front of 7-8 other persons, she felt bad about it. According to the Appellant, PW-1 might have falsely implicated him in this case for that reason.

22. When asked whether he had to say anything else, the Appellant replied:

“I am innocent and have been falsely implicated in this case.
I had already shifted from T-704/D4, III Floor, Baljeet

Nagar, Delhi on 15.08.2010 to the rented room on II floor of T-580/D-1, Gali No.2, Baljeet Nagar, Delhi belonging to Sh. Dalip Singh. I had gone to H.No.T-704/D4, Baljeet Nagar, Delhi in the night of 15.08.2010 after keeping my belongings in the house of Sh. Dalip Singh, as I had to bring my cooler, mattress and one cylinder, which were lying in an said room. I left the said house on 16.08.2010 at about 11-11:30 AM. However, since the cooler could not be taken out from the narrow gali, I sold it at a nearby shop from where I had purchased it and left with my mattresses and gas cylinder (small cylinder of 5 litres).”

23. In the impugned judgment dated 31st August, 2012 the Trial Court held as under:-

(i) The intension of the Appellant was to commit theft in the house of PW-1 after making her unconscious. Being aware that only she and her minor son would be present in the house at the relevant time, he chose the appropriate time for committing it.

(ii) The Appellant took other premises on rent a day prior to committing the theft and after keeping his belongings in the newly rented accommodation he left the room after locking it on the night of 15th August, 2010 itself (this is proved from the evidence of PW-19).

(iii) That the Appellant mixed poisonous substance with the drink was proved by the report of the Forensic Science Laboratory (‘FSL’) (Ex.PW-24/K) since it noted the presence of ‘Metallic poisons, ethyl and methyl alcohol, cyanide, phosphide, alkaloids, barbiturates, tranquilizers and pesticides could not be detected in exhibits ‘2A’,

‘2B’ & ‘3’ i.e. viscera of the deceased and the glass recovered from the place of occurrence. However, as per the said report Ex.-1 i.e. the bottle of soft drink was found to contain Benzodiazepine drug (Lorazepam).’

(iv) Kuldeep @ Rinku (PW-6) noticed the Appellant on the staircase of the building at around 1:30 pm. From his testimony and that of PW-1 it was established that the Appellant was present in the house of PW-1 from around 11:45 am till 1:30 pm. The fact that PW-1 and her minor son became unconscious after consuming the soft drink offered by the Appellant was duly proved by PW-1’s testimony.

(v) PW-27 Divya stated that she reached the house at around 02:30 pm from her school and found her mother and younger brother lying on the floor and presumed that they were sleeping. She also tried looking for Sunaina (the deceased) at the time but was unable to find her. Assuming that her sister must be out of the house or with someone else, she duly left for her tuitions at around 05:30-06:00 p.m. It was only upon her return at around 08:00 pm that she saw that all the lights of the house were still switched off and her mother and younger brother were still sleeping at the same spot. Realizing that something had gone wrong she had called for help.

(vi) The Appellant who was arrested on 27th August, 2010 lead the police party to recover the weapon of offence, the clothes used for cleaning the blood stained knife and the jewellery articles that he had

stolen.

24. It was held that all of the above circumstances conclusively form a complete chain and unerringly point towards the guilt of the accused. The trial Court proceeded to sentence the Appellant in the manner indicated herein before by the order on sentence dated 7th September, 2012.

25. Mr. Dinesh Malik, learned counsel for the Appellant, submitted that the arrest of the Appellant 11 days after the date of incident was unnatural and unbelievable. It was not to be expected that the Appellant would suddenly decide to return to Delhi and when arrested would still be carrying with him five of the tablets which he is supposed to have mixed in the frooti drink which was allegedly given to PW-1 and her son.

26. Mr. Malik also referred to the sketch of the knife to point out that it did not show that the knife had any blood stains and it was improbable that the knife could have been recovered in the manner suggested by the prosecution from the room taken by the Appellant on rent. It is submitted that the Appellant had been acquitted of the charge of theft under Section 380 IPC but was wrongly convicted under Section 411 IPC which was for receiving stolen property. Thus the person who actually committed the theft might have murdered the deceased. The testimony of PW-1 only proved that the Appellant gave her drinks but not that he murdered the deceased.

27. Mr. Malik questioned the last seen evidence *qua* the deceased. It was submitted that there was no forensic evidence that the tablets found in the

possession of the Appellant i.e. Nitrazepam-10 could cause unconsciousness or whether they were easily available in the market or whether the Appellant knew that they contained intoxicating properties..

28. Learned APP supported the impugned judgment of the trial Court and submitted that all the circumstances as mentioned by the trial Court as forming a continuous chain have been conclusively proved and unerringly point to the guilt of the Appellant.

29. The Court first proposes to discuss the evidence of the complainant (PW-1) who was the mother of the deceased. She has entirely stood by the statement made by her to the police in the first instance in the hospital itself after she regained consciousness and was declared fit to make a statement by the doctor present. She is categorical that it was the Appellant, who was her neighbour, who came at around 11.45 am on 16th August 2010 and offered frooti drink to her and her son Dev and that after consuming the drink both she and her son became unconscious. There is nothing in the cross-examination of this witness that remotely suggests that she is not speaking the truth. She was clear in her cross-examination that the Appellant's wife was already away at her parental house at that time. Strangely there was a suggestion given to this witness in her cross-examination about the Appellant having left the house after himself drinking frooti from that bottle. The answer was as under:

“It is wrong to suggest that the accused left my house after drinking Frooti from that bottle. (Vol. As I became unconscious after consuming the soft drink offered by the accused, I cannot tell whether he went out or remained in

the house).”

30. The above suggestion is fatal to the defence of the Appellant that he was not present in the house on the fateful day. It is in fact a complete give away of the case of the Appellant. Any amount of denial thereafter that he was not present appears to sound hollow and unconvincing. This also has to be seen in the perspective of his answer to the very first question in the statement under Section 313 Cr PC where he did not dispute that he was ‘also residing as a tenant in the adjacent room of PW-1’ on 16th August, 2010. He did not clarify at that stage that he had already shifted to new premises on the previous day.

31. In his answer to question 29, which has been extracted hereinbefore, he even goes to suggest that he had returned to his room on the night of 15th August, 2010 ‘after keeping my belongings in the house of Shri Dalip Singh’ and that he left the said house only at about 11:00 to 11:30 AM on 16th August, 2010.

32. Clearly the above assertion was not backed by any evidence led by the Appellant. For instance if it was his case that between 16th and 27th August (when he was arrested) he was at the house of his wife’s parents or elsewhere, he ought to have led some evidence in that regard. Further the stand taken by him as regards the motive for PW-1 to falsely depose against him, namely that he had a dispute with her sister, was not given as a suggestion to PW-1 in her cross-examination. Therefore, this defence was clearly an afterthought and not backed by any evidence. He also did not

cross-examine Dr. Deepika Sharma (PW-8) about her having charged him Rs.4,000/- for the delivery of his child. So this too appears to be an afterthought.

33. The false explanation given by the Appellant in his statement under Section 313 Cr PC without any supporting evidence provides another important link apart from the various links already outlined by the trial Court.

34. Since the Appellant did not have any valid explanation for his absence between 16th August 2010 (it must be remembered that he admits his presence near the place of occurrence till then) up till 27th August 2010, the circumstances pointing to the arrest of the Appellant on 27th August 2010 do not raise any serious suspicion that can be held to be in favour of the Appellant.

35. As regards the recoveries made at his instance, what is damaging to the Appellant, and for which he has no explanation, is that they were made in the presence of two independent witnesses, one of them who was not in any way interested in this case, namely, the owner of the premises taken on rent by the Appellant after vacating the room adjacent to that of PW-1, namely Dalip Singh (PW-19). There was no need for PW-19 to falsely implicate the Appellant. In fact, in his examination-in-chief PW-19 goes to the extent of stating that in his presence, the Appellant had confessed to the crime of murder when he was brought there by the police. Be that as it may, nothing in the cross-examination of PW-19 suggests that he had any reason to falsely

implicate the Appellant.

36. Much was made of the sketch of the knife but a careful perusal of the same does show that when a sketch of it was drawn, one tip of the knife still contained some blood stains. Even if no knife had been recovered, the medical evidence adequately proves that the death of the deceased, Sunaina, was homicidal and on account of a cut throat injury and the fact that it was caused by a sharp edged weapon.

37. Added to the above is the fact that the contents of the frooti bottle seized from the house was proved by the FSL report to contain a poisonous substance after the consumption of which both PW-1 and Dev remained unconscious for more than eight hours. The last seen evidence in the form of PW-6's testimony only corroborates the version of PW-1. It also ties up with the evidence of PW-27, the elder daughter, who became suspicious when after returning from the tuition at around 8 pm, she found her mother and younger brother still sleeping.

38. The Court is, therefore, also satisfied that none of the grounds raised in this appeal, including those advanced during the course of hearing by learned counsel for the Appellant, have any merit. The analysis of the evidence and the conclusion reached by the trial Court in the impugned judgment do not suffer from any legal infirmity. The Court concurs with the conclusion that the circumstances put forth by the prosecution form a complete chain and all the links in the chain have been proved by the prosecution beyond reasonable doubt and that the circumstances thus proved

unerringly point to the guilt of the Appellant alone and no one else.

39. The conviction of the Appellant under Section 302 IPC as well as for the offence under Sections 328/401 IPC and the order on sentence does not call for interference. The appeal is accordingly dismissed.

40. The trial Court record be returned forthwith together with a certified copy of this judgment.

S. MURALIDHAR, J.

I.S. MEHTA, J.

JANUARY 15, 2018

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