

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

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Reserved on: 15th November, 2022
Pronounced on: 23rd December, 2022

+ CRL.A. 571/2014
SURAJ @ SONU

..... Appellant

Represented by: Ms. Mohini Chauhan,
Advocate with appellant in
person.

versus

STATE

..... Respondent

Represented by: Mr. Prithu Garg, APP for
the State with Insp. Manish
& SI Ranbir, P.S. Vasant
Kunj (South).

+ CRL.A. 9/2015
SONU DAHIYA

..... Appellant

Represented by: Mr. Abhinav Bajaj
(DHCLSC), Mr. Saksham
Ojha & Ms. Meetashi
Chandna, Advocates.

versus

STATE THE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr. Prithu Garg, APP for
the State with Insp. Manish
& SI Ranbir, P.S. Vasant
Kunj (South).

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

1. These appeals assail the impugned judgment dated 28th February, 2014 convicting the appellants for offences punishable under Section

302/201/34 IPC and order on sentence dated 05th March, 2014 sentencing the appellants to life imprisonment for the offence punishable under Section 302 IPC and rigorous imprisonment for two years for the offence punishable under Section 201 IPC. Both sentences were to run concurrently.

The Incident

2. As per the case of the prosecution, a police patrol on 11th February, 2011 found a dead body in Ruchi Vihar Forest. As per the *rukka* Ex. PW-13/A, the FIR No.36/2011 was registered by PS Vasant Kunj (South). Since, no ID was found on the deceased, a hue and cry notice with the photograph of the deceased led to his identification as one Bansidhar Patra by his office colleagues. Further investigation revealed the involvement of the labour contractors with the employer of the deceased (M/s Saundraya Decorators) and subsequent recovery of mobile phone and ATM cards of the deceased from the appellants. The investigation was concluded, and charge-sheet was filed against the appellants. Charges were framed under Section 302/201/34 IPC to which the appellants pleaded not guilty and claimed trial. 32 witnesses were examined by the prosecution in support of the case, the statements of the appellants were recorded under Section 313 Cr.P.C. and the evidence of one witness was led in defence by appellant Suraj@Sonu.

Submissions on behalf of the Appellants

3. The counsel for the appellants contended that the evidence was highly insufficient to convict the appellants by the impugned judgment of the learned Trial Court. The police officials had not properly investigated the matter qua the appellants and had instead, based only on circumstantial evidence, concocted a false and frivolous story and

arrested the appellant/s without his being involved in the case. According to the learned counsel, there was no evidence or witness which would show that the deceased was last seen alive in the company of the appellant/s and hence the theory of the last seen as part of the chain of the circumstances was not available to the prosecution. As per the case of the prosecution, it was contended that there is only the recovery of the ATM card of the deceased from the possession of the appellant and an alleged withdrawal of money from the ATM card. The same, it was contended, is planted as there is no independent witness of the recovery of the said ATM card from the possession of the appellant. Even the CCTV footage of the ATM which the prosecution relied upon was discredited by the testimony of PW-10, the Branch Manager who said he was not able to identify any of the persons in the footage. There was an indication that the number used by appellant Sonu (9818162060) was called by the deceased, which was identified by PW-4 as that belonging to appellant Sonu, however, the said number was in the name of one Ganesh, as per the testimony of PW-9 the Nodal Officer from Bharti Airtel Limited, who had not been examined. Appellant Sonu had in fact in his statement recorded under Section 313 Cr.P.C. categorically responded in answer to question No.71 that this phone number was never used by him and did not belong to him. Further, no details of location charts had been exhibited by the prosecution.

3.1 The case was based on last heard witness PW-3 who had deposed that on 10th February, 2011 the deceased had left the office of Soundarya Decorators and when he spoke to him at about 8:30 p.m., he mentioned he was in the house of appellant Sonu Dahiya and he would return soon at about 10:00-10:30 p.m. but did not return the next day for work. The

learned counsel for the appellant contended that there was no evidence that the deceased was with the appellant at 10:30 p.m. that night or that the deceased had stayed with the appellant or any evidence relating to the whereabouts of the deceased on that night.

3.2 Further, CCTV was not shown to the employees of the company and appellant Sonu Dahiya was not present in the CCTV footage. The alleged deposit of Rs.33,000/- by appellant Sonu Dahiya which has been touted by the prosecution as being incriminating and pointing to his involvement in having withdrawn money from the account of the deceased, a full accounting had been given to explain that deposit by the appellant Sonu. While the *post mortem* report says it was a case of smothering and not of strangulation, the prosecution's reliance on the broken piece of belt could not be corroborated since there was no ligature mark on the neck of the deceased.

3.3 It was contended that the last heard evidence could not by itself incriminate the appellant or the bag full of alleged evidence which was recovered from the appellants at the bus stop, which by its very nature of recovery was highly suspicious and obviously planted. It was not natural that the clothes of the deceased which were recovered from a public dustbin were lying undisturbed even after 7 days on the road. All recoveries were at public places and there was no recovery from the appellant's house or any evidence to prove the presence of the deceased in the appellant's house. PW-28 SI Lohiya was the solitary witness for almost everything and therefore it was evident that the case against appellants had been fabricated by the police or some interested party.

3.4 The counsel for the appellant Suraj @ Sonu *inter alia* relied upon *Navaneethakrishnan v. State*, (2018) 16 SCC 161 and *Nizam v. State of Rajasthan*, (2016) 1 SCC 550 to further the argument on the issue of last seen together theory and *Reena Hazarika v. State of Assam*, (2019) 13 SCC 289 on requirements of conviction based on circumstantial evidence.

Submissions on behalf of the Prosecution

4. The learned Additional Public Prosecutor (APP) countering submissions of the appellants submitted that it was clear from the testimony of PW-3 that the deceased was in the company of appellant Sonu Dahiya on the date of the incident and this was fully corroborated by the telephone calls between PW-3 and the deceased and between appellant Sonu Dahiya and the deceased on that day. Further, both the deceased and appellant Sonu Dahiya did not report for work on 11th February, 2011. The appellants were apprehended by the police team led by PW-13 on 17th February, 2011 and gave disclosure statements regarding the motive, the manner and the weapon which led to recovery of the incriminating articles and documents. Six *Alpraquil* tablets were recovered from the appellant Sonu Dahiya who disclosed that he had purchased and then administered two tablets to the deceased in his alcoholic drink which was corroborated by the report of the viscera of the deceased. Most importantly, the belongings of the deceased viz. mobile phone, election card and ATM cards were recovered from the appellants and the appellants had withdrawn sums totalling to Rs.68,000/- using the deceased Axis Bank debit card between 11th February, 2011 and 14th February, 2011 which was corroborated by the account statement of the deceased's bank account. The CCTV footage

from these ATM centres duly proved and corroborated the presence of appellant Suraj at the ATM centres using the debit card of the deceased. Pursuant to the disclosure, clothes of the deceased were recovered from Rangpuri Extension near a dustbin which was identified in TIP proceedings by PW-3 and PW-4 besides a piece of a belt which the appellants disclosed had been used to kill the deceased. The cause of death being asphyxia due to smothering, which could be possible by belt, it was evident that the death was homicidal in nature.

Evidence

5. The evidence relevant and necessary for the assessment of this case is *inter alia* as under:

5.1 PW-3 I.B.S Sharma testified that he was working as a Project Manager in M/s Saundraya Decorators at Mahipal and he was able to identify the body from the photograph at PS Vasant Kunj as that of Bansidhar Patra, the deceased. As per PW-3 on 10th February, 2011, the deceased had brought remaining articles from Saket at their office at Mahipalpur and met him at about 6:00 p.m. and left saying he would return after 1 or 2 hours. At about 8:30 p.m., he called the deceased (on his mobile phone 9650699483) from his mobile phone (9650699484). The deceased informed him that he was in the house of Sonu Dahiya, and he would return soon. At about 10:00-10:30 p.m., the deceased again called PW-3 mentioning that he would not come to Mahipalpur and would directly go to the site. On the next day, the deceased did not come to the site for work and nor did Sonu Dahiya who was their labour contractor. PW-3 identified Sonu Dahiya in Court. In his cross-examination, he stated that the mobile numbers that he had mentioned

were given by the company to PW-3 and other employees, while the mobile handset is not provided by the company. He stated that Sonu Dahiya used to report to the deceased who in turn used to inform the administrative and safety department regarding the work.

5.2 PW-4 A.K. Sharma testified that he was working as Assistant General Manager in M/s Saundarya Decorators with their office at Mahipalpur in Delhi. He stated that he had met the deceased on 10th February, 2011 in the morning and he did not come the next day. Even though he had informed the head office about him being missing, no report was lodged. Only on 15th February, 2011 pursuant to being shown a hue and cry notice with a photograph that he identified the dead body of the deceased. He also identified the green colour shoes as that of the deceased as also the call details of the mobile No.9650699483 as belonging to the deceased and informed that the last two calls by the deceased were to 9650699484 (identified as that of I.B.S Sharma PW-3) and 9818162020 (identified as that of the house keeping contractor Sonu Dahiya). PW-4 identified the appellant Sonu Dahiya in Court.

5.3 PW-1 Kali Charan, the brother of the deceased, who was also working in M/s Soundarya Decorators as a safety supervisor, deposed that on 15th February, 2011 he identified the dead body of his brother and his statement Ex. PW-1/A was recorded. He stated in his cross-examination that the deceased was unmarried, and he had no idea where he used to reside.

5.4 PW-6 Dr. Hari Pershad of the Department of Forensic Medicine, AIIMS Hospital, New Delhi testified that on 17th February, 2011 he had

conducted the *post mortem* along with Dr. Ashish Jain on the dead body of the deceased. The *post mortem* report was exhibited as Ex. PW-6/A. As per the report, six external injuries were observed including a right and left black eye, multiple bluish colour contusions over upper and lower lips and gums, red colour contusion present below the chin, red colour abrasion over left side of chest below the collar bone, two red colour crescent shaped abrasions present over the right side of the neck and a congested posterior part of the tongue. In their opinion, cause of death was asphyxia due to smothering and all injuries were *ante mortem* in nature. Time since death was opined as being about 7 days. In his cross-examination, he mentioned that there were no ligature marks present on the dead body and it was not a case of strangulation but a case of smothering.

5.5 PW-22 HC C.M Meena testified that on 11th February, 2011 at about 10:30 a.m. while patrolling some children informed him that there was a dead body lying in the Ruchi Vihar jungle area. When he inspected further, he found a dead body of a young male aged about 28-30 years having an underwear and sock on the person and injuries on the neck and the face with blood oozing out from the nose. The crime team was called and efforts from made to get the dead body identified. Photographs were taken and the *rukka* was sent for registration of the case. Pursuant to a hue and cry notice and inquiries in Mahipal Extension, they reached a house in Gali No.9 where they met A.K. Sharma and upon showing the photo the deceased was identified.

5.6 PW-30 Inspector Gagan Bhaskar, the SHO at PS Vasant Kunj (South), testified that on 11th February, 2011 pursuant to finding the

dead body in the Ruchi Vihar jungle area, he got the FIR registered and requisitioned the dog squad and the crime team. He prepared a site plan Ex. PW-30/C of the place where the body was found and seized a piece of belt from the spot having blood stains vide a seizure memo Ex. PW-20/B as also one pair of shoes, blood-stained soil and earth control from the spot which was sealed vide a seizure memo Ex. PW-20/C and Ex. PW-20/D. Pursuant to the identification through the hue and cry notice and the mobile phone used by the deceased, they zeroed in on the contractor Sonu Dahiya. Through an information by a secret informer that Sonu Dahiya was to come to Rangpuri bus stop at NH-8, a police party reached and found two boys were standing who started running on seeing the police but were apprehended and identified as the appellants. Upon interrogation, appellant Sonu Dahiya stated that the deceased was pressurising him to give commission and mobile phone and threatened that if his demands were not met, he will not get labour issued from the appellant. Therefore, in order to get rid of the appellant he made a plan with his friend Suraj to eliminate him and had called the deceased to his house on the night of 10th February, 2011 where they took liquor after the appellant had mixed two tablets of *Alpraquil* in the drink of the deceased. Upon him becoming unconscious, they took him to the Ruchi Vihar forest and killed him by smothering. Appellant Sonu Dahiya was arrested and a deposit slip of Rs.33,000/- of Canara Bank, Sonipat was produced. The appellant Sonu Dahiya stated that he had deposited this amount from his share of Rs.34,000/- which was distributed between him and the other appellant Suraj. Six tablets of *Alpraquil*, a mobile phone Nokia which he stated was that of the deceased and the election card of the deceased were recovered from appellant Sonu Dahiya which were all seized. PW-30 further stated that on 17th February, 2011 he had

seized one bag containing passbook and chequebook of Canara Bank, ration card, letter pad, diary, scale register, pen, stapler and calculator from the possession of appellant Sonu Dahiya vide a seizure memo Ex. PW-28/L. The appellants disclosed that they had withdrawn various amounts at different points of time to the tune of Rs.68,000/- by using ATM cards of the deceased. Later, both the appellants led them to Safdarjung Hospital crossing and subsequently to Rangpuri Extension near a dustbin where the clothes of the deceased were recovered i.e., a brown colour jacket, dark grey colour pant and green colour shirt with stripes which were duly sealed vide a seizure memo Ex. PW-28/P as also a piece of belt lying at some distance ahead of the dustbin. Both appellants also pointed out the place of murder and a pointing out memo Ex. PW-28/A was prepared. On 18th February, 2011, both appellants took the police team to ATM booth of PNB Bank and City Bank in Vasant Vihar where they had allegedly withdrawn the money from the deceased's debit card and later also to the ATM booth of Corporation Bank at Gharaunda, Haryana and then to the ATM booth of State Bank of Patiala in the same area.

5.7 DW-1 Vijay, the maternal uncle of appellant Suraj, testified that he had not received any money from the appellant Suraj.

5.8 PW-9, the Nodal Officer from Bharti Airtel Limited, testified that mobile No.9818162060 was in the name of Ganesh, resident of Kapashera, New Delhi and mobile No.9650699483 was in the name of M/s Soundarya Decorators. The call details of both these mobile numbers for the period of 9th February, 2011 to 11th February, 2011 were

exhibited as Ex. PW-9/B and Ex. PW-9/C along with a certificate under Section 65B of the Indian Evidence Act.

5.9 PW-7 Sh. Jitender Singh, Assistant Manager, Axis Bank, Vasant Kunj Branch confirmed in his deposition that the debit card No.5267019000765260 had been issued in the name of the deceased and linked to Account No.909010033158720 and had provided the certified copy of the account from 10th October, 2009 to 20th July, 2011. He further stated that during 11th February, 2011 to 14th February, 2011, this card was used in ATMs at Gharaunda for withdrawing money.

5.10 PW-10, Branch Manager, Corporation Bank, Gharaunda, District Karnal, Haryana testified that he had provided the CCTV footage for the ATM of 12th & 13th February, 2011 to the police officials of PS Vasant Kunj and he saw the CCTV footage of the transactions relating to the debit card No. 5267019000765260 but was unable to identify any of the persons.

5.11 PW-11 Sh. Gaurav Rao, learned MM, South, Saket Courts, New Delhi deposed that he had conducted the TIP proceedings in respect of the case property on 26th March, 2011. Two witnesses A.K. Sharma and I.B.S. Sharma were produced and correctly identified the clothes of the deceased and the proceedings were exhibited as Ex. PW-11/A and Ex. PW-11/B.

5.12 PW-12 Ms. Sudha Rani, Officer of Canara Bank, Sonipat Branch, Haryana testified that she had supplied the statement of account for account No.SB2216101018744 held in the joint names of Rekha and

Sonu as per which Rs.33,000/- was deposited in cash on 14th February, 2011. In her cross-examination, she further clarified that on 9th February, 2011 Rs.49,000/- had been deposited in cash in this account as well.

Analysis

6. Pursuant to an examination of the evidence on record and contentions of the parties, the following evidences emerge for the purpose of this Court's assessment:

6.1 As per the testimony of PW-6, the doctor who conducted the *post mortem*, the cause of death was asphyxia due to smothering and all injuries were *ante mortem* in nature. The death of the deceased was therefore clearly homicidal in nature.

6.2 As per the testimony of PW-3, the Project Manager in the company in which the deceased was working, the deceased had left at about 6.00 p.m. stating that he would return but at about 8.30 p.m. he had called the deceased who mentioned that he was in the house of Sonu Dahiya and would return soon. In yet another call between 10.00 p.m. to 10.30 p.m. received by PW-3 from the deceased he mentioned he would not come to the Mahipalpur office and would go directly to the site. These calls are fully corroborated by the CDR of the deceased Ex. PW-9/C which shows one call from PW-3 to the deceased on 10th February, 2011 at 20:26:35 hours and another call at 21:50:44 hours. As per the testimony of PW-9, the Nodal Officer from Bharti Airtel Limited, the number used by the deceased (9650699483) was in the name of M/s Saundarya Decorators, the employer of both PW-3 and the deceased.

PW-4, the Assistant General Manager in M/s Saundarya Decorators corroborated the deposition of PW-3 and confirmed the mobile numbers of PW-3 and the deceased.

6.3 The discovery of the body on 11th February, 2011 at about 11.30 a.m. on receipt of DD No.20-A at 11:20 a.m. in the Ruchi Vihar jungle area and as per the testimony of PW-30, who was present along with PW-13 and other police officials, the dead body was wearing underwear, socks and blood stains were noticed near the face of the dead body.

6.4 The Nokia phone recovered in the personal search of Sonu Dahiya (vide search memo Ex. PW-28/B) had IMEI No.352768044436257 which matches with the IMEI number as mentioned in the CDR of Sonu Dahiya's mobile No.9818162060 at Ex. PW-9/B (except for the last digit which is considered not relevant as per settled law as decided in **Gajraj v. State**, 2009 SCC OnLine Del 4351). Although, the call owner details of this number (was that of Ganesh as deposed by PW-9), however the matching of the IMEIs on what was seized from Sonu Dahiya and that in the CDR corroborating the calls which had been made, would be sufficient to prove that mobile number 9818162060 was used by Sonu Dahiya thereby providing a link in the chain of circumstances. The CDR of Sonu Dahiya's mobile number shows that call was exchanged between Sonu Dahiya and the deceased on 10th February, 2011 at 19:31:39 hours, 19:36:23 hours, 20:08:03 hours and 20:13:20 hours which would also corroborate the testimony of PW-3 who said that the deceased had first said at 6 O' clock (1800 hours) that he would be going to Sonu Dahiya's place and again called at 8:30 p.m. (2030 hours) that he was in the house of Sonu Dahiya and would return soon. The CDR of

the deceased mobile number Ex. PW-9/C also reflects these four calls exchanged between the deceased and Sonu Dahiya on 10th February, 2011. The arrest and recoveries made from both the appellants was testified too by PW-28 along with the IO PW-30 on 17th February, 2011 at Rangpuri bus stand. The recovery from Sonu Dahiya was of six tablets of *Alpraquil* Ex. PW-28/F and his disclosure that he used two of the tablets to mix in the drink of the deceased. The *post mortem* report dated 8th August, 2011 Ex. PW-29/E confirms the presence of alprazolam along with ethyl alcohol in the stomach, intestine, liver, spleen, kidney and blood of the deceased.

6.5 The deceased's Nokia mobile phone was seized vide a seizure memo Ex. PW-28/H from appellant Sonu Dahiya with the IMEI No.358290034757208 which matches with the IMEI number mentioned in the CDR of the deceased i.e. 358290034757200 (the last digit, as per the settled law as decided in ***Gajraj v. State***, *supra*, being irrelevant). The election card of the deceased E x. PW-28/G-1 was also seized vide a seizure memo Ex. PW-28/G from the appellant Sonu Dahiya. There was also the recovery of the clothes of the deceased, brown jacket, a dark grey pant and green shirt with stripes vide a seizure memo Ex. PW-28/P which was identified in a TIP proceeding by both PW-3 and PW-4 as the clothes of the deceased as well as in the Court. This dustbin was of cemented walls as per cross-examination of PW-30 and therefore was not an open space accessible to the public. The two pieces of belt, one found at the crime scene (with blood on it) and one part found at the Rangpuri dustbin could not be correlated as even though the blood detected on the piece of belt was found of human origin but did not exhibit any reaction for getting a blood group. However as per the testimony of PW-6 the doctor who conducted the post mortem, there

were no ligature marks and death was due to smothering and not strangulation. By smothering, he explained, he meant when the air is blocked through the nose and mouth. The correlation of the belt with the deceased's body would therefore not be that relevant.

There was also a recovery of two ATM cards from appellant Suraj@Sonu of Axis Bank and Indian Overseas Bank Ex. PW-28/J.

6.6 Most importantly, there was withdrawal of Rs.68,000/- from the bank account of the deceased using his ATM cards. This is corroborated by the bank account statement of Axis Bank Ex. PW-30/L which shows a total amount of Rs.68,000/- withdrawn between 11th February, 2011 and 14th February, 2011 and is also corroborated by the testimony of PW-7, the Assistant manager of Axis Bank as regards the usage of the card. The CCTV footage, which was also perused by this Court, shows that appellant Sonu Dahiya (as identified by the IO) along with some other persons making attempts on 12th February, 2011 at about 12:50 hours, 13th February, 2011 at 09:50 hours and then again at 09:57 a.m. using the ATM of the debit card No.526701900076526 for withdrawals. The corroboration with the number of the debit card was evident since the footage would flash the number of the card which was being used at that time of usage by any customer. The CDs containing the transaction details of the CCTV footage were exhibited as Ex. PW-10/B (for Citi Bank, Vasant Vihar) Ex. PW-24/P-1 (for PNB, Vasant Vihar) and Ex. PW-27/A-1 (for Corporation Bank, Ghironda, Haryana). It is relevant also to note that the location of these ATMs from where these withdrawals were made were on the pointing out of the appellants which would corroborate them having used the same. As the perusal of the

CCTV footage by the Court was akin to examining primary evidence, the said evidence was admissible without compliance with conditions in Section 65-B of the Indian Evidence Act as held by the Hon'ble Supreme Court in *Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 and reiterated by this court in *Kishan Tripathi @Kishan Painter v. State*, 2016 SCC OnLine Del 1136.

6.7 The prosecution has, therefore, been able to successfully complete the chain of circumstantial evidence *inter alia* on the basis of last heard evidence, corroboration by CDRs, non-reporting at work by the deceased and Sonu Dahiya, apprehension by the police of the appellants together, recoveries of the *Alpraquil* tablets, recovery of the mobile phone, election and ATM cards of the deceased, the withdrawal of Rs.68,000/- from the Axis Bank debit card of the deceased, the presence of appellant Suraj @ Sonu in the CCTV footage and recovery of the clothes of the deceased at the pointing out of the appellants.

Conclusion

7. In light of the above discussion and analysis, this Court finds that the guilt of the appellants for the murder of the deceased has been proved beyond reasonable doubt and duly supported by circumstantial evidence by the prosecution. Consequently, this Court finds no error in the impugned judgment of conviction and order on sentence by the learned Trial Court.

8. Appeals are accordingly dismissed.

9. Copy of this judgment be uploaded on website and be also sent to Superintendent, Tihar Jail for intimation to the appellants and updation of records.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

DECEMBER 23, 2022/mk

