

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

% *Date of Decision: 4th June, 2010*

+ **CRL.APPEAL No.629/2010**

RUPESH KUMAR CHAUDHARY @ ROOP
LAL @ NARENDER SINGH @ HABIB KHAN
@ MAHENDER KR.MAURYA Appellant
Through: Mr.Pradeep Rana, Advocate

versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Two FIRs, being FIR No.205/2003 under Section 302/201 IPC PS Nabi Karim (Ex.PW-1/A) and FIR No.303/2003 under Section 366 IPC PS Srinivaspuri (also exhibited as Ex.PW-1/A) were the subject matter of two Sessions Trials being SC No.87/2009 and SC No.88/2009. Both were clubbed for the reason they related to the same victim; Sweety. The appellant was the accused. He has been acquitted of the charge for having committed the offence punishable under Section 366 IPC, but has been convicted for the offence of having murdered Sweety. He has been acquitted of the charge for the offence punishable under Section 201 IPC. The impugned decision is dated 24.2.2010. The order on sentence

dated 24.2.2010 has directed the appellant to undergo imprisonment for life for the offence of murder.

2. The impugned decision, which is extremely prolix, and one would have expected the learned Judge to be more focused, has returned a finding of guilt holding that a motive i.e. passion and anger has been established by the prosecution. It has been held that the prosecution has successfully proved that the appellant and Sweety checked in at Hotel Shiv Dev International, Arakasha Road, Nabi Karim Delhi under an assumed name on 4.7.2003 and were last seen together in room No.406 in the hotel when supper was served to them in the room at around 7:30 PM, in which room dead body of Sweety was recovered inside a blue coloured suit case in the late evening of 6.7.2003 and the appellant was found absconding. It has further been held that a Mangalsutra Ex.PW-14/1, a pair of gold tops Ex.PW-14/2, a pair of gold earrings Ex.PW-14/3 and 4 gold rings Ex.PW-14/4 collectively belonging to the deceased were proved to be removed by the appellant and pledged to Shanti Lal PW-14 after availing the services of Mohd.Abid PW-18. There being no explanation from the side of the appellant as to how Sweety died and how he came into possession of the jewellery of Sweety has been held as an incriminating evidence against the appellant.

3. It is thus apparent that our job in the appeal is to reflect upon the evidence and the findings returned on 4 distinct facts in issue, being: (a) whether the appellant had a motive to kill Sweety and has it been proved; (b) whether appellant and Sweety checked in under assumed name in Hotel Shiv Dev International; (c) whether the dead body found concealed in a suit case in room No.406 of Hotel Shiv Dev International on 6.7.2003 was that of Sweety; (d) whether it

stands proved that the gold articles Ex.PW-14/1 to Ex.PW-14/4 belonged to Sweety and were pawned by the appellant after availing the services of Mohd.Abid with Shanti Lal PW-14.

4. Needless to state if aforesaid is proved the chain of circumstances would be complete wherefrom the inference of guilt can be drawn against the appellant.

5. Case of the prosecution was that appellant and Sweety were residing in the neighbourhood and in spite of being married, the appellant had an infatuation for Sweety who was got married by her parents to Ashish Dwivedi PW-2 on 22.6.2003. The appellant abducted Sweety on 29.6.2003 from or near her matrimonial house in the city of Delhi. Under assumed names of Mahender Maurya and Kavita Maurya the two first checked into J.M.Deluxe Hotel in Paharganj on 1.7.2003 and checked out therefrom at around 9:00 AM on 4.7.2003 and checked in under same assumed names on 4.7.2003 at Hotel Shiv Dev International, with the appellant first checking in and thereafter bringing the deceased to the said hotel at around 2:00 PM. The two were served supper in room No.406 which was allotted to them. Nobody saw the appellant or Sweety thereafter, till Sweety's dead body was detected in the late evening of 6.7.2003. After the appellant was arrested he made a disclosure statement confessing to the crime and informed that one gold chain belonging to Sweety was sold by him to Rajender Kumar PW-16 and he led the investigating officer to his shop wherefrom a gold chain was got recovered by the appellant. The appellant further disclosed that he had handed over the Mangalsutra, pair of gold tops, pair of gold earrings and four gold rings belonging to Sweety to Mohd.Abid PW-18 who had pledged the same to Shanti Lal PW-14 and had given him the money. Mohd.Abid

confirmed as aforementioned qua him and from the shop of Shanti Lal the articles pledged were duly recovered.

6. From the evidence led, it became apparent that Sweety had voluntarily accompanied the appellant and had resided with him firstly in Hotel J.M.Deluxe from 1.7.2003 till 4.7.2003 on which date she had voluntarily shifted company to hotel Shiv Dev International and for said reason the charge for the offence punishable under Section 366 IPC has failed.

7. The witnesses to prove the motive are Ashish Dwivedi PW-2, the husband of Sweety, Devki Nandan PW-4, father of Sweety, Sachit Yagnik PW-6, the brother of Sweety, Surender Dwivedi PW-9, the father-in-law of Sweety and Pramouila Devi Yagnik PW-20, the mother of Sweety. All of them have deposed that Sweety was got married to Ashish on 22.6.2003 and a few days prior thereto, the appellant had threatened all of them not to marry Sweety with Ashish. The brother and the father of Sweety additionally deposed that 3 days prior i.e. on 19.6.2003, the appellant had attacked, using a sword, the mother and brother of Sweety.

8. Admittedly none has lodged any complaint with the police pertaining to the appellant threatening anyone of them. No complaint has been lodged with the police pertaining to the appellant injuring the mother and brother of Sweety with a sword.

9. It is apparent that the challenge to the version of aforementioned witnesses is predicated on their conduct alleging the same to be unnatural in not reporting to the police that the appellant was threatening them not to marry Sweety with Ashish Dwivedi and if the marriage went through, they would have to bear the consequences. The most unnatural conduct

would be of not reporting to the police about the assault by the appellant on the brother and mother of Sweety and that too when he was armed with a sword. Verbal threats may be ignored, but not an assault with a deadly weapon of offence like a sword.

10. The witnesses have explained not reporting the matter to the police for the reason the marriage was scheduled for 22.6.2003 and having police snooping around the house would have affected the family pride, being the expression used by Sweety's father, to explain the conduct as a natural conduct.

11. With reference to the explanation given by the witnesses as to why they did not inform the police, it cannot be said that the explanation is so preposterously stupid or irrational that no reasonable person would accept the same. In the Indian society nobody wants to make a spectacle of himself or the family and especially when a daughter is to get married in the near future. It is the desire of every parent and the family members of a girl to let taxing and unfortunate events go pass under the hope that when the girl gets married, everything would be fine. Thus, we conclude by holding that through the testimony of the aforementioned witnesses the prosecution has successfully established that the appellant, who was married, had an infatuation for Sweety, and probably even Sweety had a soft corner for the appellant. It assumes importance that, as would be noted from the evidence hereinafter mentioned by us, Sweety moved around with the appellant of her own free volition and without any compulsion from the side of the appellant. We would be failing if we do not note that as per Sweety's father, he and the father of the appellant were employed in the same office and resided

in the same building. It is apparent that the appellant and Sweety knew each other quite well.

12. On the issue whether the appellant and Sweety had checked into Hotel J.M.Deluxe, Paharganj on 1.4.2003 and left the hotel on 4.7.2003 to shift to the Hotel Shiv Dev International, Nabi Karim and whether the body of the lady which was recovered inside a suit case from room No.406 was that of Sweety and that the appellant absconded, the relevant witnesses are Santosh Kumar Chaubey PW-5, the Manager of Shiv Dev International, Varun Mandal PW-11, also the Manager of Shiv Dev International, Udai Singh PW-12, a waiter at Shiv Dev International and Amar Sarkar PW-15, the receptionist of Hotel J.M.Deluxe Paharganj.

13. Amar Sarkar PW-15 proved entry at serial No.1335 dated 1.7.2003, at page 138 of the Reception Register Ex.PW-15/A as in the name of Mahender Maurya and his wife Kavita Maurya as the two guests who checked into the hotel on 1.7.2003 and departed at around 9:00 AM on 4.7.2003, but stated that he could not identify the appellant as the one who checked into the hotel under the name of Mahender Maurya. Santosh Kumar Chaubey PW-5 deposed that the appellant came to the hotel Shiv Dev International, where he was working as a Manager, and around 10/10:30 AM came to the counter where he was present with Varun Mandal and room No.404 was allotted after the appellant filled up the register (at the reception). Thereafter, at around 2/2:30 PM he came with a lady, his wife, Kavita Maurya and requested that an AC room be allotted and hence they were shifted to room No.406. A waiter Udai Singh served meals to them at 7/7:30 PM. There was no contact with the appellant or his wife till 6.7.2003 when at around 7:30 PM he used the duplicate key to access the

room and immediately detected foul smell inside the room. He informed the police. Inspector S.R.Meena recovered the dead body of the woman who had checked into the hotel with the accused. Some hair were found on the bed sheet which were seized. The dead body was seized and various other articles were seized as mentioned in the memos Ex.PW-5/A to Ex.PW-5/E which were signed by him at point A.

14. It be noted that Santosh Kumar Chaubey deposed as aforementioned on 26.5.2005. His further examination-in-chief was deferred for 15.7.2005 as the original register Ex.P-4 pertaining to the reception was not produced and hence on 15.7.2005 he proved entry at serial No.53 dated 4.7.2003 as the one which recorded the name of the visitor as Mahender Maurya. (Incorrectly typed as Mongia). He further deposed that the woman who had checked into the hotel as Kavita Maurya was the one who could be seen in the photograph Mark A. Request was made by a counsel for the appellant to defer cross-examination and as was expected, on the next date, on 9.8.2005 the witness turned hostile and denied that the appellant checked into the hotel or made any entry in the Reception Register. He claimed that whatever he deposed to on 26.5.2005 was at the instance of Inspector S.R.Meena. Relevant would it be to note that the only thing which he affirmed during cross-examination was that one man and a woman whose dead body was found in the room had checked into the hotel.

15. Varun Mandal PW-11 also turned hostile, but supported the case of the prosecution limited to stating that a man had checked into the hotel at around 10:15 AM and he came with a woman at 2:00 PM. They gave their names as Mahender Maurya and Kavita Maurya and that a waiter had

supplied food to them. He stated that on being suspicious, on 6.7.2003, Santosh Kumar Chaubey opened the room by using a duplicate key and from the room a dead body of a woman was recovered, but could not state whether the body was of the woman who had checked into the hotel with Mahender Maurya.

16. Udai Singh PW-12 also turned hostile in that he refused to identify the appellant as the person to whom he had served dinner in the room at around 7:30 PM. But, he stated that the lady who had checked into the room with a man was wearing jammni (purple) coloured suit and a yellow coloured salwar and that the same clothes were on the person of the dead body of the female which was recovered from the room.

17. It is apparent that all the witnesses have uniformly stated that a man and a woman who disclosed their names as Mahender Maurya and Kavita Maurya had checked into Hotel Shiv Dev International. Santosh Kumar Chaubey in his examination-in-chief identified the appellant as the person who represented himself to be Mahender Maurya and with reference to the photograph Mark A identified the lady therein as the one who checked in as Kavita Maurya.

18. Now, Devki Nandan PW-4 deposed that the photographs D-1 to D-5, which we note includes the photograph Mark A, were handed over by him to the investigating officer and pertained to his daughter.

19. As noted by the learned Trial Judge, in the decision reported as AIR 1991 SC 1853 *Khujji Vs. State of MP*, the Court can rely upon the testimony of a witness who turns partially hostile. In view of said decision, notwithstanding even PW-5 turning hostile during cross-examination, the learned Trial

Judge has accepted his testimony during examination-in-chief to return a finding that the same establishes that the appellant and the deceased had checked into hotel Shiv Dev International where the deceased was murdered and the appellant absconded.

20. We would like to note some further evidence, before we reflect on the findings returned by the learned Trial Judge. We may note that the sample handwriting of the appellant was sent to a handwriting expert to render opinion on the entries stated to be in the hand of the appellant in the register Ex.P-4 as also the register Ex.PW-15/A and the report Ex.PW-33/J is inconclusive opining that it was not possible to express any definite opinion. It has not been clearly stated in the report, but meaningfully read, the reason appears to be the insufficiency of the written disputed sample. The hair which were seized by the investigating officer from the room where the dead body was recovered were sent for forensic evaluation, to be compared with the hair sample of the appellant which were handed over by the doctor who examined the appellant to HC Hemraj PW-23, who we note has not been cross-examined. The report Ex.PW-33/H is to the effect that the hair sample seized from the room, morphologically matched that of the appellant.

21. We may further note that the post-mortem on the dead body was conducted on 10.7.2003 at 12:30 PM by Dr.Bhim Singh PW-17. As per the post-mortem report Ex.PW-17/A the probable time since death was stated to be around 6 days which happens to coincide with the day when sweety was last seen alive when she along with the appellant checked into Hotel Shiv Dev International.

22. On the issue whether the dead body was that of Sweety, as noted above, Udai Singh PW-12's testimony establishes that the lady who accompanied the male visitor was wearing a purple coloured suit and a yellow salwar, which were the clothes on the person of the dead body, in our opinion, sufficiently concludes the issue that the dead body was that of Sweety.

23. Factoring in the testimony of Udai Singh and the report Ex.PW-33/H and then considering the testimony of Santosh Kumar Chaubey, who after initially fully supporting the prosecution, has turned hostile, we concur with the view taken by the learned Trial Judge that there is sufficient and credible evidence to hold that it was the appellant who checked into the hotel with Sweety and the two disclosed their identity as Mahender Maurya and Kavita Maurya and that the two were last seen together at around 7:30 PM when Udai Singh served dinner to them.

24. Thus, three more incriminating circumstances stand established against the appellant. Firstly, his attempt to hide his identity by declaring an assumed name. Secondly, his and the deceased checking into the hotel on 4.7.2003 in the evening whereof the two were last seen together and the room being the place where the deceased died. Lastly, the appellant absconding without checking out, a most unnatural thing to do.

25. In our opinion this itself is sufficient evidence wherefrom the guilt of the appellant can be inferred.

26. But we have further evidence to discuss, being the disclosure statement of the appellant and the recoveries pursuant thereto.

27. We note that the prosecution's attempt to prove that a gold chain belonging to the deceased was recovered after the appellant led them to the shop of Rajender Kumar PW-16 got somewhat dented for the reason Rajender Kumar stated that the police came to his shop and got weighed a gold chain and left. But, he did admit his signatures on the memo Ex.PW-16/A. Shanti Lal PW-14 stood by the prosecution and deposed that a Mangalsutra Ex.PW-14/1, a pair of gold tops Ex.PW-14/2, a pair of gold earrings Ex.PW-14/3 and 4 gold rings Ex.PW-14/4 collectively were pledged to him by Mohd.Abid PW-18 to whom he gave Rs.10,000/-. But, Mohd.Abid PW-18 dented the case of the prosecution when he claimed that these jewellery articles were handed over to him by Pramoula Devi PW-20. It be noted that the jewellery articles were duly put up for test identification before Sh.P.K.Jain MM Tis Hazari PW-26 and as recorded in the record Ex.PW-26/B of the test identification proceedings, Pramoula Devi successfully identified each jewellery item as that of her daughter. Needless to state while deposing in Court Pramoula Devi once again identified the same as belonging to her daughter Sweety.

28. It assumes importance that of the various jewellery articles, Ex.PW-14/1 is a Mangalsutra. It is given to a Hindu wife by her husband at the time of marriage. It is worn by a Hindu wife all her life till her husband is alive for it signifies her being as a married woman.

29. We agree with the reasoning of the learned Trial Judge that Mohd.Abid is a liar when he claimed that Pramoula Devi had given the jewellery to him for pledging the same. We wonder how would Pramoula Devi get hold of the Mangalsutra of her daughter. In this connection we must note that in the

report Ex.PW-3/A lodged by Ashish Dwivedi pertaining to Sweety being missing he has mentioned that his wife Sweety was wearing her Mangalsutra.

30. No suggestion has been given to Pramoila Devi that her daughter had handed over to her i.e. Pramoila Devi, her i.e. Sweety's Mangalsutra.

31. Notwithstanding the attempt made by Mohd.Abid to deny the case of the prosecution, we find credence to the fact that the jewellery of the deceased was got recovered at the instance of Mohd.Abid from the shop of Shanti Lal and this certainly inculcates the appellant as the person who had an access to Sweety. Further, notwithstanding Rajender Kumar PW-16 turning hostile, but his admitting that his signatures were to be found on the recovery memo Ex.PW-16/A and the police witnesses standing by the credibility of the recovery memo Ex.PW-16/A, even the recovery of the gold chain identified to be belonging to Sweety by her mother is incriminating evidence against the appellant.

32. To summarize we hold that the prosecution has established that the appellant was infatuated with Sweety and even Sweety reciprocated the love and infatuation and both of them went missing since 29.6.2003. The two checked into Hotel J.M.Deluxe on 1.7.2003 and left on 4.7.2003 and checked into Hotel Shiv Dev International where the two were allotted room No.406 where they were served dinner at 7:30 PM and that was the two last seen together. The appellant went absconding and Sweety's dead body was recovered rather discovered at around 7:30 PM on 6.7.2003 in the same room. The jewellery of Sweety was removed by the appellant and one gold chain was sold by him and the other was pledged

through an intermediary, which jewellery articles were recovered with information as to the place or the source thereof from the disclosure statement of the appellant.

33. We find no merit in the appeal which is dismissed.

34. Since the appellant is in jail we direct that a copy of this order be supplied to the Superintendent Central Jail Tihar to be made available to the appellant.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**JUNE 04, 2010
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