

(2009) 08 DEL CK 0367**Delhi High Court****Case No:** Criminal Appeal 391 of 2001

Hardev Prasad @ Pujari

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 21, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: Pradeep Nandrajog, J; Indermeet Kaur, J**Bench:** Division Bench**Advocate:** Charu Verma, for the Appellant; Richa Kapoor, APP, for the Respondent**Final Decision:** Dismissed**Judgement**

Indermeet Kaur, J.

The incident relates to the murder of Ram Kesar who died at 10.30 PM on 20.9.1997. The cause of his death is cyanide poisoning. On the said day i.e. on 20.9.1997, at about 8.00 PM, the accused Hardev Prasad invited the deceased Ram Kesar, his landlord, and joined by Shubhan Ali PW-5, he had drinks with the deceased at the first floor of Jhuggi No. B-563, Jawahar Camp Kirti Nagar. The deceased used to reside on the ground floor and the accused used to reside on the first floor. Shubhan Ali also used to live with the accused. After consuming liquor, at the first floor, Ram Kesar came down; froth started coming out from his mouth which was noted by his wife Kewla Devi PW-13. She immediately called her neighbours who advised her to pour water on her husband to wear away the effect of alcohol, if any. Condition of Ram Kesar did not improve. Kewla Devi with the help of her neighbour Om Prakash PW-4, removed Ram Kesar to the ESI Hospital, where as per MLC Ex.PW-6/A, he was declared brought dead.

2. The information of the death of the deceased was recorded in DD No. 23A by Const. Hari Om PW-18 which had been conveyed to the local police station Kirti

Nagar by Const. Kalu Ram PW-9 who was working as a duty Constable in ESI Hospital Basai Darapur. The DD was marked to SI Ran Singh PW-22, who along with Const. Chitarmal PW-19 reached Jawahar Camp Jhuggi cluster and finding that everybody was at the ESI Hospital, proceeded to the said hospital where they met Kewla Devi whose statement Ex.PW-13/A was recorded. Endorsement was made on this statement and the ruqqa was sent at 3.55 AM on 21.9.1997 pursuant to which FIR Ex.PW-2/A was recorded by H.C. Ashok Kumar PW-2.

3. Returning to the jhuggi, two steel glasses and a pouch containing liquor were seized as recorded in the memo Ex.PW-19/A from the first floor jhuggi of the accused. A photographer, Ram Bilas Pandey PW-16, took three photographs of the scene of crime Ex.PW-16/A to Ex.PW-16/C. The rough site plan Ex.PW-22/A was prepared by SI Ran Singh and thereafter the site plan to scale Ex.PW-8/A was prepared by Const. Sonu Kaushik PW-8.

4. The post-mortem of the dead body of Ram Kesar was conducted on 21.9.1997 by Dr. Ashok Jaiswal PW-11, who vide his report Ex.PW-11/A, opined that the death of the deceased had taken place due to poisoning cyanide being a strong possibility; he noted blood stained froth in the nose, mouth, trachea and both lungs and nails had turned blue; smell of bitter almond was emanating from the body; time since death was opined as 15.00 hours from 11.30 AM of 21.9.1997; final opinion on the cause of death was kept pending to await the viscera report. The viscera of the deceased was handed over to the investigating officer.

5. The exhibits of the case which included the viscera of the deceased, two glasses seized from the spot and the lumpy mass recovered from the house of the accused duly sealed were deposited by SI Ran Singh with the Mohorar Malkhana HC Jodha Singh PW-17 who sent them through Const. Yogeshwar Dutt PW-1 to the CFSL under the supervision of Inspector Harpal Singh PW-23 who was the second Investigating Officer. The CFSL, vide its report Ex.P-X opined that the viscera tested positive for cyanide and alcohol; the sealed bottle containing the lump Ex.1 which had been seized from the house of the accused also tested positive for cyanide; glasses had however negatived presence of cyanide.

6. Manmohan Singh PW-10, the owner of M/s. Well Forge Industry informed the investigating officer that Ram Kesar and accused were his employees and that Ram Kesar remained in his employment till 11.10.1996. Accused was dismissed from service. During his employment the accused formed a Union which was not joined by Ram Kesar in spite of pressure put on him by the accused. Kanwal Nain Luthra PW-12 informed the investigating officer that the accused was his employee.

7. The accused was arrested on 21.9.1997 and his disclosure statement Ex.PW-21/C was recorded as per which he admitted his guilt and disclosed that he had hidden cyanide in his house and that he could get the same recovered. He led the investigating officer to his house and got recovered a packet containing cyanide.

8. The Trial Judge vide its impugned judgment and order dated 27.11.2000 has convicted the accused for the offence punishable u/s 302 IPC. The accused has been sentenced to undergo life imprisonment and to pay a fine of Rs. 5000/-; in default of payment of fine to undergo S.I. for six months.

9. The finding of guilt has been returned on circumstantial evidence which has been adduced by the prosecution. In para No. 20 of the impugned judgment and order the circumstances relied upon by the Trial Judge have been elicited:

(i) That the accused was living as a tenant of the deceased in the first floor portion of a jhuggi for about 1 years prior to the date of incident.

(ii) That the accused and the deceased both were working together in the same company M/s. Well Forge Industries till 11.10.96.

(iii) That the accused had formed a union along with 4-5 other workers and was pressurizing the management to meet their illegal demands. The deceased Ram Kesar did not join the accused in those union activities. The management of M/s. Well Forge Industries dismissed the accused from service on 11.10.96 because of his union activities.

(iv) That the accused started thinking that the deceased was responsible for his dismissal from service and he had threatened the deceased to kill him but at that time the deceased did not took that threat seriously.

(v) That for about four months prior to the date of incident the accused had started working in the factory of electro plating at Subhash Nagar where sodium cynide was used for the business of electro plating.

(vi) That as per unrebutted testimony of accuseds employer PW12 Kanwal Nain Luthra, accused had committed theft of a lump of sodium cynide from his factory.

(vii) That on the date of incident, i.e., on 20.9.97 the deceased had returned to his house around 2 PM whereas the accused returned from his duty around 7 PM on that day and thereafter the accused invited the deceased to have liquor with him. The deceased and the accused took liquor together in the house of the accused just before the deceased came downstairs and froth started coming from his mouth which was noticed by his widow PW13 Smt. Kewla Devi.

(viii) That after the condition of the deceased deteriorated after his return from the house of the accused, the accused also came downstairs and asked deceaseds widow Kewla Devi not to take the deceased to the hospital on the pretext that the deceased would be alright after influence of liquor was over. When deceaseds wife insisted for taking the deceased to the hospital the accused offered himself for accompanying them to the hospital but ultimately he did not go with them.

(ix) That thereafter the accused hide himself in the house of his employer Kanwal Nain Luthra at Subhash Nagar from where he was apprehended by the police

during the night of 20/21.9.97. He was got medically examined vide his MLC Ex.PW20/A and at that time smell of alcohol was coming from his mouth which also establishes that accused and deceased both have taken liquor together just prior to the death of the deceased.

(x) That a lump of cynide was got recovered by the accused to the police from his jhuggi which was identified by his employer Kanwal Nain Luthra that such cynide was used in his factory of electro plating and theft of the same was alleged by him against the accused.

(xi) That the CFSL report Ex.PX and MLC of the deceased Ex.PW6/A as well as post mortem report Ex.PW11/A confirmed the death of the deceased by cynide poisoning.

10. The Trial Court had also taken note of the admission made by the appellant in his statement u/s 313 Cr.P.C. wherein he had admitted that he was a tenant of the deceased in Jhuggi No. B-563, Jawahar Camp, Kirti Nagar; they both had been working in the factory of PW-10 where there were labour disputes; the accused and the deceased were on opposite sides and ultimately the accused along with 4-5 other persons had been dismissed from service. It had further been noted that the accused had admitted that on 20.9.1997 at about 8.00 PM he had had liquor with Ram Kesar at his residence and thereafter when deceased came down he started breathing fast and froth was coming out from his mouth; on seeing his condition the deceased was removed to the hospital where he was declared brought dead. In his statement u/s 313 Cr. P.C. the accused had also admitted that he had been arrested on the following day i.e. 21.9.1997 from the house of his employer PW-12 and he was medically examined vide memo Ex.PW-20/A which had opined that the accused had consumed alcohol in the preceding night.

11. Trial Judge had held that all these facts cumulatively make out a chain wherfrom the guilt of the accused is conclusively established.

12. On behalf of the appellant, it has been argued that the judgment of the trial Court is based on conjectures and surmises and the trial Court had failed to appreciate that this could well be a case where the wife herself was the culprit and responsible for the crime; the version of the prosecution is that the accused had come down after consuming liquor and thereafter his wife had noted froth coming out from his mouth; the time has not been mentioned in the version of PW-13 and if this was because of cyanide poisoning as has been the case set up by the prosecution; it would not have been possible for the deceased to have climbed down the stairs from the first floor; he would have succumbed to his death forthwith. The prosecution has failed to nail the accused with any motive; in fact version of PW-4 evidences that PW-13 was an immoral lady and was living with one Purnamasi and this was probably the reason why she wanted to kill her husband; it is argued that suspicion cannot take the place of proof; the accused only has to

establish a probable defence unlike the prosecution who has to set up foolproof case; Shubhan Ali PW-5 who had witnessed the liquor drinking session between the accused and the deceased could also well have been the culprit; the prosecution has failed to show as wherefrom the cyanide was procured by the accused. The viscera had been sent to CFSL for examination after one and half month of the incident i.e. 3.11.197 which casts doubt on the veracity of this exhibit as it is not the case of the prosecution that the seal had been handed over to any independent person in this intervening period; possibility of the tampering of the viscera cannot be excluded. Benefit of doubt has to be extended to the accused for all the aforesaid reasons and accused is entitled to an acquittal.

13. Record has been perused. PW-13 is the widow of the deceased. She has on oath deposed that she is living in the ground floor of the Jhuggi since the last eight years; the accused was living on the first floor since last about one and a half years as their tenant. Her deceased husband was working in Mayapuri where the accused was also working. Disputes had arisen between the labour and the owner of the factory. The accused was involved in the union activities and because of this reason his services had been terminated but Hardev Dev Prasad used to think that her deceased husband was responsible for his termination. At that time he had threatened to kill her husband; because of this reason relations between her deceased husband and the accused were strained. On 20.9.1997, the accused invited her deceased husband to join him to consume liquor; Shubhan Ali a friend of the accused was also present at that time. The accused insisted that her husband should join him for a drink; they had drinks together. She has further deposed that the accused had mixed some poisonous substance in the liquor. Her husband came down and at that time he was breathing very fast and froth was coming out from his mouth. She called her neighbour who advised her to throw water on her husband to subdue the influence of liquor. The accused advised her not to take her husband to the hospital as he would become alright shortly. She removed her husband to the hospital with the help of her neighbour. In her cross-examination, she has admitted that services of the accused had been terminated about six months prior to this incident. She reiterated that the accused had invited her husband to his Jhuggi to consume liquor and Shubhan Ali was also present with them. She had been married to her husband about 18-19 years ago and they had three children. She denied the suggestion that she knew any person by the name of Puranmasi who used to visit her house or with whom she had relations or that this was a cause of dispute pursuant to which a Panchayat had been held. She denied the suggestion that she did not have the cordial relations with her husband.

14. PW-5 Shubhan Ali was occupying the first floor of the Jhuggi alongwith the accused. He was present on the day of the incident and this has come in his version on oath. He deposed that on the fateful day at about 8.00 PM, accused brought some fish and one pouch of liquor. The father of Sarabjit was invited for a drink and both the accused and the father of Sarabjit started consuming liquor. Thereafter

father of Sarabjit went down to his Jhuggi and his wife raised alarm. She i.e. PW-13 queried him i.e. PW-5 as to what had happened to her husband to which he replied that he did not know. Froth was coming out from the mouth of father of Sarabjit. Seeing his condition he was given a bath. He was thereafter removed to the hospital where he was declared brought dead. In his cross-examination, PW-5 had admitted that he was also working in Luthra Industries where the accused and the deceased were working. He has categorically stated that father of Sarabjit went down stairs immediately after drinking liquor.

15. PW-4 Om Prakash was the neighbour who was called by the son of the deceased as his mother had raised alarm. PW-4 has deposed on oath that when he went to the Jhuggi of Ram Kesar he saw that Ram Kesar was lying on the ground and there was water on his body; on touching his body it was cold. Neighbours had been called to the spot and one of them had gone to call rickshaw. The deceased was removed to the hospital along with his wife by PW-4. In his cross- examination this witness has stated that the character of PW- 13 was not good and she was living with another man. He admitted that the relations between Ram Ashre brother of the deceased and PW-13 were strained because of this reason.

16. From the aforenoted versions, it has been borne out that on the fateful evening, the accused and the deceased had a liquor session on the first floor of the Jhuggi which was under the occupation of the accused; PW-5 had also joined them. After consuming liquor the deceased had gone down to his Jhuggi where PW-13 and PW-5 both noted that froth was coming out from his mouth and he was breathing very fast; on the advice of the neighbours he was given a bath; the body of the deceased had already turned cold; he was removed to the hospital.

17. Medical and the scientific evidence i.e. the MLC and the post mortem report of the deceased coupled with the report of the CFSL, establish that the deceased had been declared dead at 10.30 PM and it was a case of cyanide poisoning. All these facts also stand admitted by the accused in his statement u/s 313 Cr.P.C. and have been noted by the trial Judge.

18. The query to be answered by this Court is as to who was the perpetrator of the crime. Could it be PW-13 or PW-5 as is the defence raised by the accused?

19. PW-13 the widow of the deceased had immediately raised alarm when her husband came down after consuming liquor and she noted his irregular breathing and froth coming out from his mouth; had it been a case where she herself had committed the crime, she would not have raised alarm to collect the neighbourhood. It is relevant to state that no suggestion to this effect has also been given to PW-13 that she could have been the culprit. In her cross-examination, it has been suggested that she was having illicit relations with one Puranmasi, which she has denied, but the cross-examination has not proceeded any further to build up the defence which is now sought to be projected; other prosecution witnesses

including the Investigating Officer have also not been assailed on this count. PW-4 had also deposed about strained relations of PW-13 with her brother-in-law PW-3; nowhere establishing any discord between PW-3 and her deceased husband.

20. PW-5 had been living with the accused since last one and a half month; he did not even know the deceased and in his entire testimony he had referred to the deceased as the father of Sarabjit. This version of PW-5 is unchallenged. PW-5 has also not been cross-examined that he could have been the perpetrator of the crime. This defence at this stage, apart from being an afterthought is even otherwise totally unconvincing.

21. In our view the motive of the accused to commit the offence can be gathered from the testimony of PW-13 and PW-10. PW-13 has deposed that the accused and deceased were both working in the same factory; they were on warring sides and inspite of pressure by the accused upon the deceased to join his union, the deceased had not succumbed; ultimately the accused and his associates had been dismissed from service and this was the grouse which has been nursed by the accused against the deceased. This also finds corroboration in the version of PW-10 who was the erstwhile employer of the accused and the deceased. PW-10 is an independent witness and there is no reason as to why he would try to insinuate anything false against the accused.

22. The accused was also absconding after the incident. He was not available for interrogation. He was arrested on the following day i.e. on 21.9.1997 from the house of his second employer i.e. PW-12. PW-12 is also an independent witness and no ulterior motive has been attributed to him as to why he would make a wrong statement on oath in Court. It was in his presence that after the arrest of the accused, the accused had got recovered a lump from his house which had tested positive for cyanide. PW-12 has further deposed that cyanide is used in their factory for electroplating and the accused had committed theft of this chemical from his factory. This version remained unchallenged.

23. PW-17 was working as the Mohorar Malkhana on 21.9.1997 when the exhibits of this case duly sealed, had been deposited with him by PW-22; he has proved the relevant entry in Register No. 19. PW-17 had deposed that on 3.11.1997 the said exhibits had been sent through PW-1 vide Road Certificate No. 121/21 to the office of CFSL and as long as the case property remained with him it was not tampered. Seal after use had been handed over to PW-19 which finds corroboration in his testimony.

24. These versions of PW-17, PW-1 and PW-19 exclude the possibility of the tampering of the case property.

25. The cumulative effect of the evidence collected and proved in Court establish that it was the accused Hardev Prasad who had committed the murder of deceased Ram Kesar. All the links in the chain point fingers of guilt towards the accused; he

cannot escape from his fate.

26. There is no merit in the appeal. It is dismissed. The accused is reported to be on bail. His bail bond and surety bond are cancelled. He shall surrender forthwith to suffer the remaining sentence.