

Delhi High Court

Kishan Tripathi @ Kishan Painter vs The State on 12 February, 2016

Author: Sanjiv Khanna

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRIMINAL APPEAL NO. 108/2013

% Reserved on: 19th October, 2015
Date of Decision: 12th February, 2016

KISHAN TRIPATHI @ KISHAN PAINTERAppellant
Through Mr. Arun Sharma, Advocate.

Versus

THE STATERespondent
Through Mr. Varun Goswami, APP.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.K. GAUBA

SANJIV KHANNA, J.

1. Kishan Tripathi, also known as Kishan painter because of his profession, by the present appeal, questions judgment dated 4th October, 2012, convicting him for murder of Sachidanand Jha in the intervening night between 22nd and 23rd February, 2009. By order on sentence dated 17th October, 2012, Kishan Tripathi has been sentenced to imprisonment for life, fine of Rs.75,000/- and in default of payment of fine, to undergo Simple Imprisonment for a period of two years for the offence under Section 302 of the Indian Penal Code, 1860 (IPC, for short).

2. Conviction of Kishan Tripathi is primarily predicated on the electronic evidence in form of CCTV footage, and therefore we had played the original footage captured and recorded on the hard disk in the court. Before, we elucidate and refer to this percipient and definitive evidence, we would like to refer to the facts in brief.

3. It has been proved beyond doubt and debate from the testimony of Rakesh Bhargava (PW-4), owner of the factory, located at C-59, Okhla Industrial Area-I, New Delhi that Sachidanand Jha was posted as a night duty guard from 8 P.M. to 8 A.M. in the intervening night between 22nd and 23rd February, 2009. 22nd February, 2009, being a Sunday was weekly off day for the workers. 23rd February, 2009 was Maha Shivaratri and therefore, the factory was again closed. In the morning hours of 23rd February, 2009 at about 9 or 9.30 A.M., Rakesh Bhargava (PW-4) had received a call from the workers in his factory that a dead body of a security guard was lying in the factory. PW-4 immediately informed the police on No. 100 from his residence. Dead body of Sachidanand Jha, whom he identified, was lying in the basement. The body had been covered with a compressor. Blood would be seen near the gate leading to the office. Office glass was broken and someone had entered the office and opened the locker. Rs.7,500/- and some documents had been stolen from the locker.

4. Discovery of the dead body of Sachidanand Jha in the early morning hours at about 9.30-10 A.M. on 23rd February, 2009 is also proved and established from the testimonies of Jawahar Singh (PW-3), who was the duty officer at Police Station Okhla Industrial Area and had received a message from the wireless operator regarding murder in the factory at C-59, Okhla Industrial Area-I at about 9.50 A.M. and had recorded DD No. 4A (Exhibit PW-3/C), which was marked to ASI Sakhi Ram (PW-20) through Constable Pawan Kumar. Jawahar Singh (PW-3) had subsequently registered FIR No. 71/2009, under Sections 302/201/460 IPC and made an endorsement Exhibit PW- 3/A on the rukka. The original rukka and the computerized copy was marked Exhibit PW-3/B. Head Constable Rajpal Singh (PW-7) had joined investigation by visiting C-59, Okhla Industrial Area-I, where ASI Sakhi Ram (PW-20) and Rakesh Bhargava (PW-4) were already present. He affirms having noticed blood on the stairs leading towards the basement and on the first floor. In the basement, dead body of a male with papers and an air compressor machine on top, was lying. PW-7 has deposed that the locker (tijori) had been broken. Head Constable Ram Chander (PW-16) testified that on DD No. 4A being marked, he along with ASI Sakhi Ram (PW-20) had reached C-59, Okhla Industrial Area-I and had met Rakesh Bhargava (PW-4). He had seen blood in substantial quantity on the stairs going from ground floor towards the basement giving an impression that the body had been dragged. Loose papers were found lying near the narrow passage in the basement. The deceased was a security guard named Sachidanand Jha and a compressor machine had been put on him. A small chest (tijori) in the premises was found to be damaged. The FIR was registered. Inspector B.S. Rana (PW-18)s testimony is almost identical on aspects like, noticing a dead body in a pool of blood in the basement with a compressor on the top. They had called the crime team with the photographer, who then took pictures from different angles. PW-18 had collected blood samples from the floor in the basement in the form of blood stained earth, and earth control samples etc, which were seized vide memo Exhibit PW-17/B. They had lifted black colour blood stained shoes from the basement, which were seized vide seizure memo Exhibit PW-7/D and the compressor, which had been kept on the dead body was taken into custody vide seizure memo Exhibit PW-7/C. One woolen blood stained cap was taken into possession vide seizure memo Exhibit PW-7/E. On the first floor, window pane of the back door of the office had been removed and was kept on the table. A small chest (tijori) had been broken. They took into possession the glass removed from the door vide seizure memo Exhibit PW-7/F and the small chest vide seizure memo Exhibit PW-7/G. ASI Sakhi Ram (PW-20) has in seriatim affirmed the aforesaid facts. The dead body was first shifted to the mortuary and after it was identified by the relatives of the deceased, namely, Manoj Kumar Jha (PW-6) and Krishan Kant Jha (PW-10), PW-20 had got the post-mortem conducted.

5. Dr. Susheel Sharma (PW-1) had conducted the post-mortem on the dead body of Sachidanand Jha on 24th February, 2009 vide report marked Exhibit PW-1/A. In the post-mortem report and the oral testimony, Dr. Susheel Sharma (PW-1) has referred to the following ante mortem injuries:-

" 1. A stab wound size 2x.4 cm cavity deep was present over right middle aspect of back situated 21 cm below to right shoulder tip, 123 cm above to right heel and 6 cm right ward to midline. Stab wound was obliquely placed inner margin downward. Both angle sharp, spindle shape and associated with oozing of blood. On dissection a track is established directed forward, outward and downward passing through wound muscle of back and passing through posterior chest wall at 7 intercostal muscles and

pleura and terminate in 3 cm depth of lower lobe of right lung associated with haematoma and haemothorax about 1.5 liter of blood.

2. Abrasion 10x10 cm area at right lower back.
3. Abrasion 15x10 cm area at middle of upper back.
4. Abrasion 5x4 cm area at right shoulder tip area.
5. A stab wound 4x1.5 cm muscle deep, irregular in shape was present at right aspect of neck, situated 2 cm rightward and inward to right mastoid tip, associated with haematoma. On dissection track is muscle deep, passing through wound through muscle of neck perforate right jugular vein. Trachea oesophagus and common carotid artery found intact. Direction of track is forward, downward and inward.
6. A stab wound 2x4 cm muscle deep was present at posterior triangle of right side of neck situated 10 cm rightward from midline, 8 cm above from right middle of clavicle, 10 cm downward to right mastoid tip associated with haematoma. On dissection track is directed downward and inward and associated with haematoma.
7. Abrasion 10x6 cm area at right cheek, in front of right tragus.
8. Incised wound .2x.5 cm at right angle of mouth.
9. Laceration 3x1.5cmx.5 cm at right eyebrow 4.5 cm leftward to midline.
10. Laceration 6x.5x.5 cm irregular in shape was present at left frontal aspect of scalp 2.5 cm leftward from midline associated with haematoma.
11. Laceration 5x.5cmx.5 cm was present at frontal aspect of scalp of midline.
12. Abrasion 4x5 cm area at lower aspect of right axilla.

The time since death was about one to two days."

The cause of death, it was opined, was a result of haemorrhagic shock consequent upon multiple ante-mortem injuries. Injury No. 1 caused by a pointed sharp edged weapon was individually sufficient to cause death in the ordinary course of nature. Injury Nos. 5, 6 and 8 were caused by a sharp weapon, whereas injury Nos. 2, 3, 4, 7, 9, 10, 11 and 12 were caused by a blunt force object impact. These injuries were also collectively sufficient to cause death in the ordinary course of nature. PW-1 had subsequently on 25th June, 2009 examined a knife and had opined that injury Nos. 1, 5, 6 and 8 mentioned in the post-mortem report Exhibit PW-1/A were possibly through this exhibit. He identified the knife without handle as Exhibit P-1 and his second opinion in respect of the knife was marked Exhibit PW- 1/B.

6. In addition to the aforesaid evidence, we have the testimony of Constable Anand (PW-11), who has deposed that on 23rd February, 2009, he was posted with the crime team as a photographer and had visited C-59, Okhla Industrial Area-I where he had seen a dead body of a male smeared with blood. Blood could be seen lying there and on the stairs. He had taken 47 photographs, which were marked Exhibit PW-11/A-1 to A-47 and negatives Exhibit PW-11/B-1 to B-

32. The other 15 negatives could not be produced as they were not traceable.

7. This brings us to the core of the prosecution case, i.e., the CCTV footage, which was the basis to identify the culprit, i.e., Kishan Tripathi.

8. Rakesh Bhargava (PW-4) has testified about the two cameras installed in his factory; camera 1 (channel 1) near the main gate and camera 2 (channel 2) in the basement. He along with the police had examined and thereupon PW-4 had identified the culprit, who could be seen in the footage inflicting injuries on the guard Sachidanand Jha, as Kishan Tripathi. At about 4.45 P.M. on 22nd February, 2009, the day time guard Mahesh Kumar had allowed Kishan Tripathi to enter the factory. Kishan Tripathi was wearing a sleeveless whiter colour sweater. At about 4:30 A.M. (sic. should be 4:20 A.M.) in the intervening night of 22/23.02.2009, the CCTV footage showed that Kishan Tripathi had dragged Sachidanand Jha to the basement. Appellant had given kick blows and had put the heavy air compressor on the dead body of the guard at about 4:20 A.M (sic. should be 4:22 A.M.). At about 4.23 A.M. on 23.02.2009, the appellant returned to give kick blows and had inflicted injuries with the knife which he had taken out from his pocket. After about one minute at 4.24 A.M., the appellant came back and had put printing paper on Sachidanand Jha. The appellant was also seen cleaning his spectacles. At 4.26 A.M., the appellant could be seen picking up a T-iron rod and giving blows to Sachidanand Jha. Between 4.30 A.M. and 6 A.M., Kishan Tripathi had checked and ascertained whether Sachidanand Jha was still alive or breathing. The appellant had changed his wearing apparel in the factory and had put on clothes of the workers, which were kept in the factory. The appellant left the factory at about 6-6.04 A.M. after opening the main gate. The appellant had taken out the keys of the main gate from the pocket of Sachidanand Jha.

9. The original CCTV footage, recorded on the hard disc which was taken into the custody and seized, was played in the trial court when Rakesh Bhargava (PW-4) was under examination. At that time, one Ram Milan private operator, who had subsequently deposed as PW- 15 had operated the hard disc and played the same. In his cross- examination, PW-4 testified that he had arranged for an operator, who had come after an hour and thereafter the CCTV footage was played in the factory on 23rd February, 2009 in the computer room in his presence and in the presence of two-three policemen. Others, including his brother and two-three workers were also present. It took about 2 ½ hours to watch the CCTV footage. PW-4 after seeing the CCTV footage was categorical, that Kishan Tripathi could be seen entering the factory, then dragging Sachidanand Jha and hitting and assaulting him. Lastly, the appellant was seen leaving the factory. Head Constable Rajpal Singh (PW-7) affirms that they had seen the CCTV footage and one person who was wearing spectacles had committed the offence. PW-7 then identified Kishan Tripathi, who was present in the court, as the said person. In his cross-examination, PW-7 affirmed that two CCTV cameras; one at the main gate and the other in the basement, were installed in the factory and that the factory owner had identified

the culprit in the CCTV footage. PW-7 confirmed that the accused was seen dragging the deceased to the basement, repeatedly giving him kick blows and inflicting injuries with some instrument. Inspector B.S. Rana (PW-

18) similarly proves this version narrated by HC Rajpal Singh (PW-

7) and Rakesh Bhargava (PW-4) that the CCTV cameras were installed in the factory, an operator was called and the CCTV recording was played, whereupon Rakesh Bhargava (PW-4) had identified the perpetrator as Kishan Tripathi. This person was visible and could be seen hitting Sachidanand Jha. PW-18 had then removed the hard disc from the computer system with the help of Ram Milan (PW-15) and sealed the same and they took the hard disc into possession vide seizure memo Exhibit PW7/H.

10. This brings us to the important testimony of Ram Milan (PW-15), who has equally affirmatively deposed that on 23rd February, 2009, on request, he had visited factory No. C-59, Okhla Industrial Area-I and had played a CCTV footage. In the said CCTV footage, they could see one person dragging and killing another person. PW-15 identified the appellant who was seen dragging Sachidanand Jha, and whose name he came to know after watching the CCTV footage. PW-15 had taken out the hard disc out from the assembled computer and the IO had seized the same vide seizure memo Exhibit PW-7/H. PW-15 affirmed that he had earlier come to the court and had played the CCTV footage in the court on 2-3 days. In his cross- examination, PW-15 confirmed that two cameras were installed in the factory.

11. Kishan Tripathi was known to Rakesh Bhargava (PW-4) as he used to work as a painter in his house, nearby houses and his factory. PW-4 has deposed that a month prior to the incident, Kishan Tripathi had worked in his factory. Two days prior, he had seen Kishan Tripathi standing outside the factory at 8.30 P.M., when PW-4 was going home. Sushila (PW-13), a tea vendor has also deposed that she knew the appellant, who was a painter and used to do white washing and painting work.

12. Pertinently, in order to re-assure and verify, we had called for the original hard disc from the malkhana. The same was produced in a sealed cover with court seals. The said seals were inspected by the counsel for the appellant-Kishan Tripathi. This hard disc was attached to a computer by one Neeraj and CCTV footage was played in the Court for our examination and visual viewing. Counsels were also allowed to watch and see the relevant portions of the video files. Files from the said hard disc were copied in two pen drives of 8 GB each marked Exhibits HC-1 and HC-2. Thereafter, the original hard disc was detached and re-sealed in the presence of the Court Master and returned to the Additional Public Prosecutor to be deposited in the malkhana. We had also played the two CDs available on the trial court record on the laptop.

13. The CCTV footage, which was directly and immediately stored in the hard drive of the computer is the original media, that was self generated and created without any human intervention. This CCTV footage is not secondary evidence and does not require certification under Section 65B of the Evidence Act. This issue is no longer res integra and is settled in the decision of the Supreme Court in Anwar P.V. (S) versus P.K. Basir, (2014) 10 SCC 473, which hold:-

"24. The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made there from which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65-B of the Evidence Act are not satisfied. It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."

The aforesaid paragraph elucidates difference between primary and secondary evidence. When primary or direct evidence in form of original data be it a CD, hard drive or any other electronic record is produced, the same is admissible and taken on record. This takes care of the contention of the appellant that the CCTV footage should be discarded and not read in evidence in the absence of a certificate under Section 65B of the Evidence Act.

14. The CCTV footage is captured by the cameras and can be stored in the computer where files are created with serial numbers, date, time and identification marks. These identification marks/ details are self generated and recorded, as a result of pre-existing software commands. The capture of visual images on the hard disc is automatic in the sense that the video images get stored and recorded suo-moto when the CCTV camera is on and is properly connected with the hard disc installed in the computer. It is apparent in the present case from the evidence led that no one was watching the CCTV footage when it was being stored and recorded. The recording was as a result of commands or instructions, which had already been given and programmed. The original hard disc, therefore, could be the primary and the direct evidence. Such primary or direct evidence would enjoy a unique position for anyone who watches the said evidence would be directly viewing the primary evidence. Section 60 of the Evidence Act states that oral evidence must be direct, i.e., with reference to the fact which can be seen, it must be the evidence of the witness, who had seen it, with reference to the fact, which could be heard, it must be evidence of the witness, who had heard it and if it relates to the fact, which could be perceived by any other sense or any other manner, then it must be the evidence of the witness, who says who had perceived it by that sense or by that manner. Read in this light, when we see the CCTV footage, we are in the same position as that of a witness, who had seen the occurrence, though crime had not occurred at that time when the recording was played, but earlier.

15. HG wells in his book "The Time Machine" had said "Now I want you clearly to understand that this lever, being pressed over, sends the machine gliding into the future, and this other reverses the motion. This saddle represents the seat of a time traveler. Presently I am going to press the lever,

and off the machine will go. It will vanish, pass into future Time, and disappear. Have a good look at the thing. Look at the table too, and satisfy yourselves there is no trickery." Time machine is friction, albeit seeing the CCTV footage with your own eyes as a judge gives you an insight into the real world in the past. In the present case, the court has itself seen the CCTV footage, and has travelled back in time to the time when the occurrence took place and thereby has seen the occurrence in the same position as that of a witness, who would have seen the occurrence, if he was present. There cannot be a more direct evidence. This video recording which captures the occurrence, would be per se and mostly discerningly reliable and compellingly conclusive evidence, unless its authenticity and genuineness is in question.

16. Per force, we must rule out any possibility of manipulation, fabrication or tampering. The hard-disk CCTV footage must pass the integrity test. It is a two fold test, system integrity and record integrity. It is with this over cautious and pensive approach, that we have proceeded and have bestowed our consideration. We would accept the genuineness and authenticity of the CCTV footage played before us, for good and sound reasons. System integrity test is satisfied by ocular testimonies of Rakesh Bhargawa (PW-4), Ram Milan (PW-15) and police officers H.C. Rajpal Singh (PW-7) and Inspt. B.S. Rana (PW-18). System was working and contemporaneously storing data. They had viewed the data. On record integrity, i.e., contents of the record have remained unchanged, we were anxious as it was noticed that the list of documents at Sr. No. 27, filed with the charge-sheet, mentions compact disc (CD) indicative that the hard drive had been examined and secondary evidence was created. Examination of the police case file had revealed that the CD was created at the behest of the public prosecutor, before the charge-sheet was filed. This was certainly a lapse and the hard disc sealed and deposited in the malkhana should not have been opened, even for the purpose of making copies of the video files. However, in the facts of the present case, this transgression and deviation would not unsettle and nullify the authenticity of the CCTV footage for there is no evidence or even a suggestion that the appellant Kishan Tripathi was at any time under compulsion or force, was asked to enact the crime at the place of occurrence. Moreover, the CCTV footage was seen on 23rd February, 2009 by Rakesh Bhargava (PW-4) and the police officers HC Rajpal Singh (PW-7), Insp. B.S. Rana (PW-18) and Ram Milan (PW-15) who had operated and played the CCTV footage. We are satisfied that the recorded CCTV footage has not been interpolated or tampered in the light of the original hard drive, which has been played before us. The footage recorded consists of 405 files starting from 2:06 P.M. on 21.02.2009 till 2:14 P.M. on 23.02.2009, with self generated numbers. Time and date are mentioned on the files and the video. These are not one, two or three files, but more than 400 files, created over a span of several hours. This "internal evidence" establishes its genuineness. Hard disk in the present case is not only a physical object, but a document within the meaning of section 3 of the Evidence Act [See Shamsheer Singh Verma Vs. State of Haryana, 2015 (12) Scale 597]. The Supreme Court in Mobarik Ali Ahmed Vs. State of Bombay, AIR 1957 SC 857, has held that execution of a document can also be proved by the "internal evidence" contained in the contents of the document. The circumstantial evidence enforces our belief that the original document, i.e. hard drive, is original and authentic.

17. In these circumstances, we would like to reproduce the snap shots from HC-1 and HC-2 in this judgment, which would foreclose all arguments as to the identity of the perpetrator, i.e., Kishan Tripathi. Thus, there cannot be any doubt at all as to the identity of the appellant Kishan Tripathi,

who is guilty for murder of Sachidanand Jha in the intervening night between 22nd and 23rd February, 2009 at C-59, Okhla Industrial Area-I, New Delhi.

Entry in the factory at 4:45 PM on 22.02.2009 At the basement from 4:20 AM to 4:30 AM in the intervening night of 22/23.2.2009 Leaving the factory at 6-6:04 AM on 23/02/2009

18. The snap shots re-produced do not include the close-ups of the appellant Kishan Tripathi, who was present in person in the court during the course of hearing of his appeal. We accept that the pixels of the CCTV footage were not very high, albeit, the presence of the appellant and that he was the perpetrator can be established and ascertained from the CCTV footage.

19. Prosecution has also relied upon the statement of Sub Inspector Avdesh Kumar (PW-8), finger print expert, who had stated that the chance print marked Q2 lifted from the spot was identical to the left thumb impression of the appellant and accordingly he had given his report Exhibit PW-8/A. We would, however, not rely upon the said report as the person who had lifted the chance print from the spot did not testify and depose as a witness.

20. As per the police version, Kishan Tripathi was arrested on 27.02.2009 at 3:30 P.M. by the police near an orphanage at Sarita Vihar, New Delhi vide arrest memo Exhibit PW-14/A. Rakesh Bhargava (PW-4) has deposed that he came to know about Kishan Tripathi's arrest on 27.02.2009. He has also deposed that a knife was recovered at the behest of the appellant from the basement. The knife was hidden in the bundle of papers wrapped in a jute tat. A T- iron rod was also recovered at the behest of the appellant-Kishan Tripathi. The knife was identified as P-1 and T-iron rod as P-6. The two objects were seized vide Exhibit PW-14/I and 14/J. Recovery is also deposed to and affirmed by Constable Harender (PW-12/14). The latter has testified about the disclosure statement made by Kishan Tripathi marked Exhibit PW-14/C. The said statement was recorded by SI Girjesh Singh (PW-19). Constable Harender (PW- 12/14) has deposed about the recovery of blood stained pant (Ex. P-

3) from bushes behind Anaath Ashram, which was seized vide seizure memo Exhibit PW-14/E and recovery of black shoes and one pair of blood stained socks (Ex. P-4, collectively) from the bedding lying on the floor, which were seized and taken into possession vide seizure memo Exhibit PW-14/F. A shirt with stripes, which the appellant was wearing at the time of offence and had been washed was also seized along with the cream colour sweater (Ex. P-5, collectively) and taken into possession vide seizure memo Exhibit PW-14/G. The said recoveries of the pant, shirt, socks and shoes was also deposed by and affirmed by SI Girjesh Singh (PW-19).

21. The trial court has taken on record the forensic science laboratory report dated 12th June, 2009, which shows presence of human blood of group B on the knife and the pant. Human blood could also be detected on the T-rod, but the blood group could not be ascertained. The impugned judgment refers and rejects the argument that the knife and the T-rod could have been recovered earlier or were planted. We observe that the said recoveries and report is only a corroborative or supplementary evidence. The primary and core evidence in the present case would be the CCTV footage.

22. Appellant Kishan Tripathi in his statement under Section 313 of the Code of Criminal Procedure, 1973 has accepted that he knew Rakesh Bhargava (PW-4) and had undertaken painting work in his house and factory about 10-15 days prior to the occurrence. However, appellant claimed that he was not shown the CCTV footage and has denied several suggestions given as incorrect/I do not know, and claimed he had visited the house of Rakesh Bhargava (PW-4) on Saturday where pooja was going on. Wife of Rakesh Bhargava (PW-4) had asked him to reach the factory. He had accordingly proceeded to the factory and reached there at about 4-4.30 P.M. At that time, Rakesh Bhargava (PW-4) had threatened and warned the appellant not to demand money or otherwise he would be implicated in a false case. On Sunday at 10 A.M., the appellant had visited the house of Rakesh Bhargava (PW-4) and had demanded money. Rakesh Bhargava (PW-4) had asked him to come to the factory about 4-5 P.M. on Sunday as he would also be reaching there. Appellant had reached the factory as asked, but Rakesh Bhargava did not come. Appellant was not allowed to enter the factory by the guard, even though his goods were lying outside. The guard had asked him to procure/ bring some goods for him and had given him money. Appellant had bought the goods for the guard and had proceeded to Noida where he was doing painting work. Thereafter, the appellant had gone to Jahangirpuri, where he came to know that police was searching for him. He was arrested at 8/9 P.M. at Jahangir Puri. He was then taken to the factory and was made to put his palm on various articles and then brought to the chowki and kept there for the entire night. Next day he was taken to his room at Madanpur Khadar and thereafter sent to jail.

23. The appellant had led defence evidence. Ravinder Pandey (DW-1) has testified that on 26th February, 2009 at about 8 P.M. police officers had come to his house and had taken Kishan Tripathi into custody. They had left DW-1 at about 10-11 A.M. on 27th February, 2009. In his cross-examination DW-1 has accepted that he had not apprised the local police or higher police officers that Kishan Tripathi was arrested or detained by the police in his presence. DW-1 expressed ignorance whether information regarding arrest of Kishan Tripathi was given to Satish Singh son of Ram Sharan Tripathi on 27th February, 2009. Head Constable Om Prakash (DW-

2) has testified that DD No. 3B was recorded on 27th February, 2009 at 00.30 hours (Exhibit DW-2/A). Thereafter, another DD No. 34B was recorded at 9.25 A.M. (Exhibit DW-2/B). These, DD entries mention the name of Ravinder Pandey, which indicates reference to DW-1. At best, these witnesses would show that Kishan Tripathi was possibly detained in the intervening night between 26th and 27th February, 2009. However, this would not make any difference. Dr. Kamlesh (DW-3), the third defence witness is a Director (Professor) at the Gurunanak Eye Hospital. The appellant was diagnosed with alternate convergent squint and was admitted for treatment on 9th February, 2010. The appellant was using myopic glasses and had aided vision of 6/18 in both eyes. He had undergone surgery on 11th February, 2010 and the squint was fully corrected and the patient was discharged on 12th February, 2010. In his cross-examination, DW-3 clarified that the appellant did not have any problem in seeing at night and was not diagnosed to be suffering from night blindness. These depositions, do not show that the appellant is innocent or the prosecution evidence in the form of CCTV footage is of doubtful integrity and fabricated. The core evidence i.e. CCTV footage nails the appellant, Kishan Tripathi.

24. In view of the aforesaid findings, we do not find any merit in the present appeal. We uphold the conviction of the appellant Kishan Tripathi for having committed murder of Sachidanand Jha. We also do not see any reason to interfere with the order of sentence. The appeal is accordingly dismissed.

-sd-

(SANJIV KHANNA) JUDGE

-sd-

(R.K. GAUBA) JUDGE FEBRUARY 12, 2016 VKR/ssn