

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

% *Date of Decision: 18th August, 2009*

+ **CRL.APPEAL NO.160/2001**

MAHESH CHAND Appellant
Through: Mr.M.L.Yadav, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

PRADEEP NANDRAJOG, J. (ORAL)

1. Summarizing the incriminating circumstances against the appellant, the learned Trial Judge has held as under:-

“15. So far as Mahesh is concerned I find overwhelming evidence to convict him for the offence of murder. In the first place his clothes were stained with the blood of the deceased of Group ‘B’. He got recovered the knife which he had hidden under the table in factory at 16, Satnam Park in which he was working as Chowkidar. The blood stains on the knife matched with that of the deceased. He also got recovered the pair of shoes belonging to the deceased which was thrown on to the roof. He also identified the place where the dead body was thrown and the place where the murder was committed. The cot

which the accused Mahesh got recovered had stains of blood which he identified by the CFSL Laboratory as that of 'B' group which is that of the deceased. In my opinion, this circumstantial evidence is entirely inconsistent with innocence. In my opinion, further, the evidence collected and proved is sufficient to convict accused Mahesh for murder. I, therefore, find him guilty of the offence punishable under Section 302 of the Indian Penal Code. There is no evidence of conspiracy. He is acquitted of the offence of 120-B of the Indian Penal Code."

2. Vide impugned judgment and order dated 20.1.2001, concluding in para 15 as afore-noted, the appellant has been convicted for the offence of having murdered the deceased Nand Lal. Co-accused Raj Rani and Radhey Shyam have been acquitted.

3. It all commenced when on 5.12.1990 information was received at the local police station that a gunny bag was lying on a service lane near house No.26/1, Ram Nagar Extension, Delhi. The information was noted vide DD No.26-A.

4. SI Amar Singh PW-14 accompanied by two police constables reached the spot and on opening the gunny bag found the dead body of a male which was wrapped in a sheet. He seized the sheet and the gunny bag as recorded in the memo Ex.PW-1/A and immediately sent the information at the local police station. This information was conveyed by SI Amar Singh by making an endorsement Ex.PW-14/A beneath copy of DD No.26-A. FIR Ex.PW-11/B

was registered and Inspector Mahender Singh PW-17, the SHO at the police station proceeded to the spot.

5. Local people which included the co-accused Raj Rani had gathered and Raj Rani identified the dead body as that of her husband Nand Lal. Inspector Mahender Singh went to the house of Raj Rani the same day i.e. on 5.12.1990. As deposed to by him, Inspector Mahender Singh was told by the minor children of Nand Lal that blood stained pant Ex.P-15 and shirt Ex.P-16 belonged to appellant Mahesh. These clothes were kept for washing. This aroused his suspicion. He interrogated Raj Rani who broke down and confessed to have conspired along with the appellant and co-accused Radhey Shyam to murder her husband. She confessed of having illicit relations with the appellant. She apparently told about the involvement of co-accused Radhey Shyam. The appellant and co-accused Radhey Shyam were apprehended and appellant made a disclosure statement Ex.PW-7/B admitting his guilt and stated that the deceased was killed when he was lying on a cot in factory of Harbans Lal PW-5 which was at 16 Satnam Park, Krishan Nagar. He disclosed that he had hidden the knife with which the deceased was killed in the said factory and volunteered to get recovered the knife used by him to kill Nand Lal. He disclosed that the shoes of Nand Lal were

thrown by him at the roof of factory of Harbans Lal PW-5. He led the investigating officer to the factory of PW-5 i.e. at 16 Satnam Park, Krishan Nagar and from under the table of the press man, hidden beneath a blanket, got recovered a spring operated knife Ex.P-19 in respect whereof the pointing out-cum-seizure memo Ex.PW-5/A was drawn. He pointed out the cot Ex.P-22 on which the deceased was stated to have been killed which was found to be stained with blood and was seized. The pointing out-cum-seizure memo Ex.PW-5/C was drawn pertaining to the cot. The pair of shoes Ex.P-2 were got recovered from the roof and seized as per seizure memo Ex.PW-5/D.

6. The knife, cot, shoes got recovered by the appellant as also the clothes which were seized from the house of Raj Rani were opined to be stained with human blood of group 'B' i.e. the blood group of the deceased as per report Ex.PW-17/B of the serologist.

7. This then is the complete evidence against the appellant. We note that Raj Rani has been acquitted on the ground that the prosecution has not proved any affair between her and the appellant. The only incriminating evidence against her being the recovery of the pant and the shirt of the appellant from her house which were stained with human blood of group 'B' i.e. the blood group of the

deceased was held to be insufficient evidence to hold that she was a conspirator.

8. Co-accused Radhey Shyam has been acquitted because a watch got recovered by him and alleged to be belonging to the deceased was opined to be a watch of ordinary make and nobody proved at the trial that the said watch belonged to Radhey Shyam.

9. The incriminating evidence against the appellant, listed in para 15 of the impugned decision are five in number, being:-

- (i) The pant Ex.P-15 and the shirt Ex.P-16 belonging to the appellant were stained with the blood of the deceased.
- (ii) The knife Ex.P-15 got recovered by the appellant was stained with the blood of the deceased.
- (iii) The pair of shoes Ex.P-2 belonging to the deceased got recovered by the appellant were stained with the blood of the deceased.
- (iv) The appellant identified the place where the dead body of the deceased was thrown.
- (v) The appellant identified the place where the deceased was killed and from said place the cot Ex.P-22 was recovered and was stained with the blood of the deceased.

10. The first incriminating circumstance found by the learned Trial Judge is on the belief that the shirt Ex.P-16 and the pant Ex.P-15 recovered by the investigating officer from the house of Raj Rani belonged to the appellant. We have repeatedly asked the learned counsel for the State as to whether there is any evidence to prove that the shirt and the pant belonged to the appellant for the reason the two were not recovered pursuant to any disclosure statement made by the appellant nor was the recovery at the instance of the appellant. Learned counsel could point out to us the testimony of the investigating officer who deposed that children of Raj Rani told her that the shirt and the pant belonged to the appellant. The children of Raj Rani have not been examined as witnesses. Obviously, the investigating officer has deposed a fact told to him by somebody else and thus said evidence is hearsay. It is inadmissible evidence. Thus, the first incriminating evidence held established by the learned Trial Judge is on a misappreciation of evidence.

11. The fourth incriminating circumstance held established by the learned Trial Judge i.e. the appellant identifying the place where the dead body of the deceased was thrown, is based on the ignorance of the fact that the dead body of the deceased was recovered much prior to the

arrest of the appellant and the place where it was thrown was thus obviously known to the police. The police taking the appellant to the same spot is neither admissible in evidence under Section 27 of the Evidence Act as no new fact got discovered. It is also not a relevant fact under Section 8 of the Evidence Act for the reason the alleged pointing out by the appellant cannot relate to conduct as there is no guarantee that the police, which knew the spot where the dead body was recovered, itself took the appellant to the said spot.

12. That leaves two incriminating circumstances i.e. recovery of the knife, the cot and the shoes of the deceased at the instance of the appellant and all three being found to be stained with human blood of group 'B' i.e. the blood group of the deceased.

13. Pertaining to the shoes, there is no evidence that the same belonged to the deceased. The confessional statement of the appellant made to the police pertaining to the shoes as those of the deceased are not saved by Section 27 of the Evidence Act.

14. Is the chain of circumstances complete with reference to the recovery of the knife and the cot at the instance of the appellant to sustain a finding of guilt?

15. It is settled law that in a case of circumstantial evidence the chain of circumstances found incriminating should be complete where from a rational mind would unhesitatingly reach the conclusion that the accused is guilty and the possibility of his being innocent is ruled out.

16. As held in the decision reported as JT 2008 (1) SC 191 Mani vs State of Tamil Nadu (para 21) discovery of common objects is a weak kind of evidence and conviction in a serious matter like murder cannot be based solely upon the discovery of common objects. The common objects referred to by the Supreme Court were blood-stained clothes and blood-stained weapon of offence i.e. a koduval recovered at the instance of the accused.

17. In the decision reported as Narsinbhai Haribhai Prajapati v Chhatrasinh & Ors AIR 1977 SC 1753 the Supreme Court had held that in the absence of any other evidence the circumstances of seizure of blood stained shirt and dhoti from the person of an accused and dharias from the houses of the accused are wholly insufficient to sustain the charge of murder against the accused.

18. In the decision reported as Surjit Singh v State of Punjab AIR 1994 SC 110 a watch belonging to the deceased and one dagger which was found to be stained with human blood were recovered at the instance of the accused. It was

held by the Supreme Court that said recovery by itself, does not connect the accused person with the murder of the deceased. It was further held that said circumstance may create some suspicion but the same cannot take the place of proof.

19. In the decision reported as Deva Singh v State of Rajasthan 1999 CriLJ 265 Supreme Court had held that merely because a knife is alleged to have been recovered at the instance of the accused would not lead to a conclusion that the accused was the perpetrator of the crime of the murder.

20. In the decision reported as Prabhoo v State of U.P. AIR 1963 SC 1113 a kulhari, a shirt and a dhoti which were found to be stained with human blood were recovered from the house of the accused, at his instance. Holding that it is well settled that circumstantial evidence must be such as to lead to a conclusion which on any reasonable hypothesis is consistent only with the guilt of the accused and not with his innocence and that from the mere production of the blood stained articles by the accused, one cannot come to the conclusion that the accused committed the murder inasmuch as the fact of production cannot be said to be consistent only with guilt of the accused and inconsistent with his innocence, for the reason it is quite

possible that someone else committed the murder and kept the blood stained articles in the house of the accused and that the accused might have produced the said articles when interrogated by the police, the Supreme Court acquitted the accused. We conclude by holding, taking guidance from the afore-noted decisions of the Supreme Court, that the chain of incriminating circumstances is not complete wherefrom the guilt of the appellant can be inferred.

21. The appeal is allowed. Impugned judgment and order dated 20.1.2001 convicting the appellant is set aside. The appellant is acquitted from the charge of having murdered Nand Lal.

22. The appellant is on bail. The bail bond and the surety bond furnished by the appellant are discharged.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

AUGUST 18, 2009
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