

R-36&37

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

% *Date of Decision : July 17, 2009*

+ **CRL.A.167/2001**

ID MOHD. Appellant
Through: Mr.Bhupesh Narula, Amicus Curiae.

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CRL.A.182/2001

MOHD.IRSHAD Appellant
Through: Mr.Bhupesh Narula, Amicus Curiae.

versus

STATE Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICEINDERMEET 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. The above captioned appeals have reached for hearing today. None appears for the appellants.
2. Noting the perennial problem of lawyers for the appellants choosing not to represent their clients and argue the

appeals as and when the same reach for hearing, the Delhi High Court Legal Services Committee has nominated a lawyer on it's panel, to be attached to the various Courts dealing with criminal jurisdiction in the Delhi High Court. Mr.Bhupesh Narula, Advocate has been nominated by the said Committee to assist this Court in appeals on behalf of such appellants whose lawyers chose to abstain and not argue the appeals as and when the same reach for final hearing.

3. Mr.Bhupesh Narula, learned counsel is present in Court and has assisted us in the appeal.

4. We fix his fee at Rs.3,500/- (one set).

5. Convicting the appellants for the offence of having murdered Raju, the evidence held incriminating against the appellants and the reasoning of the learned Trial Judge is to be found in para 25 of the impugned decision dated 17.1.2001.

6. Para 25 of the impugned decision reads as under:-

“25. Now, coming to the evidence on record, after the incident on 18.11.97 accused Mohd.Irshad remained absent from his factory. After 2 days he was arrested and made a disclosure statement and produced the blood stained clothes which were stained with the same group of blood as that of the deceased. He also led the police party to Tuglakabad fort and from there got recovered a khukhri Ex.P-2 which is also stained with the blood of B group. The cover of the khukhri was recovered from the spot and is also opined to be stained with human blood. To my mind these are the circumstances which are sufficient to warrant an inference that it is the accused who is responsible for committing the murder of the deceased. Similarly, it also stands proved on record that accused Id Mohd.

was arrested and at his instance the handle of the knife was recovered from the bushes in Tuglakabad fort which was stained with the human blood of B group which tallied with the blood group of the deceased. The broken blade of the knife was recovered from near the dead body and the same is opined to be stained with human blood. According to PW-11 Insp.R.S.Dahiya, accused Id Mohd. was having injuries on his person, therefore, he was got medically examined. His medical MLC has not been proved but the evidence of recovery of the blood stained handle with B group blood at the instance of the accused as also recovery of the broken blood stained blade + knife from the spot goes to prove his involvement in causing injuries to the deceased.”

7. Briefly noted, the relevant facts are that on 21.11.1997 information was given to the police control room at around 9:45 AM about a dead body being noticed opposite Gali No.13-B, Tughlakabad Extension. The police reached the spot and found a young man, who appeared to be around 25 years of age, lying dead, surrounded in a pool of blood. The blade of a khukri, stained with blood, was also found at the spot. The body was seized and from the pocket a chit with address of Mangolia Factory was found which was seized vide Ex.PW-10/A. The blade of the khukri was seized vide memo Ex.PW-10/C. Blood sample and control earth was seized from the spot vide memo Ex.PW-10/B.

8. The investigating officer made an endorsement beneath the copy of the DD entry and got registered an FIR for the offence of murder.

9. The chit recovered from the pocket of the deceased gave

a clue to the police. The factory owners viz. Amet Mohd. and Abdul Sattar informed that three tailors viz. the appellants and the deceased had not been coming to the factory since 18.11.1997 and that the three used to work collectively.

10. On the mere fact that the appellants had not been reporting to the factory since 18.11.1997 the police suspected their involvement and went about apprehending them.

11. In the meanwhile, pertaining to the dead body of the deceased who was identified to be Raju, we may note that the body was sent for post-mortem and as per the post-mortem report Ex.PW-1/A, Dr.Lal Rozama PW-1, who conducted the post-mortem noted as many as 29 injuries on the body. The injuries were caused by a sharp edged weapon.

12. As noted by the learned Trial Judge in para 25 of the impugned decision, appellant Mohd.Irshad was arrested two days after the dead body was found and made a disclosure statement pursuant where to he got recovered a khukri Ex.P-2 as also the clothes which he and co-accused Id Mohd., as disclosed to the police were worn by the two at the time of commission of the offence.

13. Likewise, when appellant Id Mohd. was arrested and was interrogated he made a disclosure statement pursuant where to he led the police to a place where from the handle of a knife was recovered which was stained with blood.

14. As per the report of the serologist human blood of group 'B' was detected on the handle, the khukri and the clothes got recovered by the appellant which happened to be the blood group of the deceased.

15. This then is the entire evidence against the appellants i.e. of not reporting to the factory since 18.11.1997 and of making disclosure statements i.e. giving information to the police resulting in recovery of a khukri, the handle of the khukri and clothes stained with human blood of the same group as that of the deceased.

16. It is urged by learned counsel for the appellants, that as held by the Supreme Court in the decisions reported as AIR 1963 SC 1113 Prabhoo vs. State of U.P., 1998 SC 1189 Prem Prakash Mundra vs. State of Rajasthan and JT 1998 (3) SC 466 State of Maharashtra vs Madhukar Govind Pakhare the sole evidence of recovery of the alleged weapons of offence which are common objects like knives or clothes stained with human blood of the same group as of the deceased are insufficient and inconclusive evidence wherefrom it can be said that the chain of circumstances is complete to draw the conclusion that the finger of suspicion unerringly points towards the guilt of the accused and attains the status of conclusive proof.

17. Learned counsel urges that the dead body was noted opposite a public street on 21.11.1997 and as per the post-

mortem report Ex.PW-1/A it is recorded that the post-mortem was conducted on 29.11.1997 and the opinion is that the likely time of death is around 20.11.1997. Counsel urges that it is apparent that the deceased was killed in the darkness of the intervening night of 20th and 21st November 1997 and the next morning the body was discovered. Counsel urges that the place wherefrom the body was recovered is a public street and it is just not possible that the body was lying at the spot for a couple of days. Taking the argument further, learned counsel urges that as per the testimony of the employer, the appellants and Raju had stopped reporting to work from 18.11.1997. Thus, it is not a case where the appellants started absconding after the date when the crime was committed. Thus, counsel urges that the so called evidence of absconding is no evidence at all.

18. Learned counsel for the State urges that the twin circumstances noted by the learned Trial Judge have correctly been opined to be a complete chain of circumstances wherefrom an inference of guilt can be drawn against the appellants. More so, for the reason, the blade of a khukri recovered from the scene of the crime was relatable to the handle recovered pursuant to the disclosure statement of appellant Id Mohd.

19. Pertaining to the submission made by learned counsel for

the State we note that there is no evidence of any expert that he has carried out the exercise of joining or matching the handle and the blade and thus we hold that it cannot be said that the handle got recovered pursuant to the disclosure statement of Id Mohd. is connected with the blade which was recovered from the spot where the dead body was found by the police.

20. We concur with the submissions made by learned counsel for the appellant that the testimony of the employers of the appellants and the deceased establishes that the appellants and the deceased stopped reporting for work two days prior to the date when the crime was committed. As urged by learned counsel for the appellant it is apparent that the deceased was killed on the street in the intervening night of 20th and 21st November 1997.

21. Thus, the appellants not reporting for work with their employer with effect from 18.11.1997 is meaningless; in any case, no inference of absconding can be drawn from said evidence.

22. Pertaining to the recoveries, indeed, in the afore-noted three decisions, cited by learned counsel for the appellants, it has been held that evidence of recovery of a knife or a common object which can at best be the weapon of offence and cannot acquire the status of being 'the weapon of

offence'; as in the case of firearms which have distinct characteristics, as also the recovery of blood stained clothes forming the solitary circumstance/evidence; a finding of guilt cannot be returned, much less sustained.

23. The appeals are allowed. Impugned judgment and order dated 17.1.2001 convicting the appellants is set aside. Consequentially, the order dated 18.1.2001 imposing the sentence of imprisonment for life is also set aside.

24. The appellants are acquitted of the charge of having murdered the deceased. The appellants are also acquitted of the charge of having committed an offence under Section 27 of the Arms Act.

25. The appellants are on bail. Their bail bond and surety bond are discharged.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

July 17, 2009
Dharmender