

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

% Date of Order: July 28, 2009

+ **CRL.A. 365/2001**

ASHOK Appellant

Through: Mr.Sumeet Verma, Advocate

versus

STATE Respondent

Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE INDERMEET KAUR

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

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Vide impugned judgment and order dated 10.8.2000, the appellant has been convicted for the offence of having murdered Mithilesh son of Ram Sharma PW-4.

2. Learned Trial Judge has held that the prosecution has successfully established that Mithilesh and the appellant used to sleep in flat No.F-104, Sarita Vihar, New Delhi owned by Ms.Prabha Sood and both of them were doing wood work in the flat and that Mithilesh was assaulted in the said flat either in the night of 8th/9th April, 1998 or early hours of the morning of 9th April 1998. It has been held that the weapon of offence

i.e. a hammer Ex.P-1 and the chisel Ex.P-2 stained with human blood of the same group as that of the deceased have been proved to be recovered pursuant to the disclosure statement of the appellant and that the pant Ex.P-3 found to be stained with human blood of the same group as that of the deceased has also been proved to be recovered pursuant to the disclosure statement of the appellant.

3. Learned Trial Judge has also held that the evidence establishes the presence of the appellant in the flat in question in the intervening night of 8th/9th April, 1998.

4. In a nut-shell, the fact that the deceased and the appellant were last seen together in the flat in which the deceased was found murdered coupled with the recovery of Ex.P-1 and Ex.P-2 pursuant to the disclosure statement of the appellant and the same being found to be stained with human blood of the same group as that of the deceased and were opined to be the possible weapons of offence as also the presence of human blood of the same group as that of the deceased on the pant Ex.P-3 claimed by the appellant to be his pant when the crime was committed have been held to be sufficient circumstantial evidence wherefrom the guilt of the appellant can be sustained.

5. At the hearing of the appeal today, learned counsel for the appellant submits that as admitted by the appellant

when he was examined under Section 313 Cr.P.C. it stands established that the appellant and the deceased were working in the flat F-104, Sarita Vihar, New Delhi. Learned counsel further states that it is not in dispute that Mithilesh was fatally wounded in the flat and in all probability had died in the flat itself. With reference to the testimony of PW-3 Maya Ram, learned counsel concedes that the same established that the appellant and the deceased were working in the flat till the evening of 8.4.1998.

6. But, learned counsel for the appellant urges that the testimony of PW-1 and PW-2 establishes the conduct of the appellant of not being the assassin of the deceased. Counsel urges that the learned Trial Judge has totally ignored the testimony of said witnesses vis-à-vis the inference which was required to be drawn i.e. of the conduct of the appellant being innocent. Counsel urges that there is no evidence that the appellant slept in the flat during the night.

7. As deposed to by Laxman Ahuja PW-1, a resident of Flat No.F-104, Sarita Vihar, the appellant came to his flat at 7.00 AM on 9.4.1998 and requested him to be permitted to make a telephone call to the police. He permitted the appellant to call the police and within 5 minutes a PCR van came.

8. As deposed to by Paramjeet Singh PW-2, the owner

of the Flat No.F-104, Sarita Vihar, namely Mrs.Prabha Sood, had entrusted the possession of the flat to him with a request that he should get carried out woodwork in the flat. He had outsourced the work to various persons including the appellant and the deceased and that in April, the date he did not remember, at about 7.15 AM, he received a call from the appellant that Mithilesh was bleeding and someone had inflicted injuries on him.

9. The fact that the appellant did not evade justice and voluntarily called the police and co-operated in the investigation is certainly suggestive of the appellant being innocent.

10. As deposed to by Inspector Satish Sharma PW-15, the Investigating Officer, the appellant satisfactorily answered all questions put to him and responded to the notices issued under Section 160 Cr.P.C. This was the reason that the appellant was not arrested by the Investigating Officer till 11.4.1998.

11. As deposed to by Inspector Satish Sharma PW-15, the appellant who was residing in a slum cluster called Kusumpur Pahari, continued to live there and the Investigating Officer could successfully contact him in his jhuggi.

12. Under the circumstances the purported confessional-cum-disclosure statement Ex.PW-4/D made by the

appellant on 11.4.1998 gets tainted with suspicion.

13. Surprisingly enough, the witness to the disclosure statement is Ramu Sharma PW-4, the father of the deceased.

14. We do not understand as to why the police chose not to associate an independent public witness who had no interest or stake in the investigation.

15. Disclosure statements and recoveries affected after days of the crime have always been treated by courts as suspected disclosures and recoveries.

16. The reason is obvious. The rule of prudence mitigates against voluntariness of disclosure statements made to the police with a considerable gap of time, for the reason there is every probability of the same being extracted due to undue pressure, threat or the like.

17. Even otherwise, recoveries of common objects have always been held to be weak evidence. We need not make a catalogue of the various authorities on the point save and except to note a recent decision of the Supreme Court reported as Mani Vs. State of Tamil Nadu JT 2008 (1) SC 191 (para 21).

18. We may note that the sole evidence of blood-stained common objects or clothes stained with blood and the group of the blood being the same as that of the deceased, have been held to be insufficient evidence to convict an

accused. The decisions so holding are:-

1. Narsinbhai Haribhai Prajapati v. Chhatrasinh & Ors. AIR 1977 SC 1753;
2. Surjit Singh v. State of Punjab AIR 1994 SC 110;
3. Deva Singh v. State of Rajasthan 1999 CrL.J. 265;
4. Prabhoo v. State of U.P. AIR 1963 SC 1113;

19. The conduct of the appellant renders it highly unlikely that he was the assassin. As deposed to by the Investigating Officer, the appellant was a resident of Kusumpur Pahari and the Investigating Officer could successfully contact him there.

20. As per the prosecution, the appellant and the deceased were workmen engaged, besides other workmen, to complete woodwork in the flat. Just as Maya Ram PW-3, a co-workman, left the flat in the evening and when he did so, he saw the appellant and the deceased working in the flat, there is every possibility that even the appellant left the flat to sleep in his jhuggi in the night.

21. Thus, the factum of the appellant being seen last in the company of the deceased in the flat at 4.30 PM by Maya Ram PW-3, can hardly be an incriminating circumstance against the appellant. We may note that the learned Trial Judge has held that from the testimony of PW-3 it is proved that the appellant slept in the flat where the murder was committed. Said finding is presumptive. PW-3 claims to have

seen the accused in the flat at 4.30 PM.

22. Thus, the only remaining incriminating evidence would be the recovery of Ex.P-1, Ex.P-2 and Ex.P-3, which in view of the afore-noted decisions, would be insufficient evidence.

23. The appeal is allowed.

24. Impugned judgment and order dated 10.8.2000 is set aside.

25. The appellant is acquitted of the charge framed against him.

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

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

JULY 28, 2009
Rk