

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

% Date of Judgment: 11th August, 2009.

+ **CRL.A.370/2001**

MOHD. BHURE ...Appellant
Through: Mr. Bhupesh Narula, Advocate.

Versus

STATE ...Respondent
Through: Mr.Pawan Sharma, 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. Vide impugned judgment and order dated 10.11.2000 the appellant and the co-accused Riaz Ahmed have been convicted for the offence punishable under Section 302/34 IPC.
2. Vide order dated 13.11.2000 both have been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.5000/-. In default of payment of fine, both have been directed to undergo simple imprisonment for six months.

3. Appellant Mohd.Bhure has filed the instant appeal. Co-accused Riaz Ahmed challenged his conviction vide Crl.A.No.406/2001.

4. In his appeal, Riaz Ahmed took a plea of being juvenile as on the date when the crime was committed. His plea succeeded.

5. Vide order dated 7.5.2004, the appeal filed by Riaz Ahmed was disposed of noting that he had already undergone a sentence of more than five years which was more than the prescribed period for which a juvenile can be kept in detention. The result was a direction that Riaz Ahmed be set free forthwith.

6. At the outset, we may note that while disposing of Crl.A.No.406/2001, the conviction of Riaz Ahmed has been recorded as having been sustained. We find that on merits the court did not consider the correctness of the view taken by the learned Trial Judge. The judgment and order dated 7.5.2004 shows that the court disposed of the appeal with reference to the issue whether Riaz Ahmed was a juvenile on the date when the crime was committed.

7. Thus, we have considered the merits of the appeal pertaining to the challenge raised by Mohd.Bhure to the impugned judgment and order dated 10.11.2000.

8. A perusal of the impugned decision shows that the learned Trial Judge has held as under:

(a) The testimonies of PW-1, PW-12 and PW-15 establish that the appellant and his co-accused were apprehended when they

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were moving suspiciously in the night. Co-accused Riaz Ahmed was armed with a danda Ex.P-7 which was stained with blood. The shirt and the pant Ex.P-2 and Ex.P-3 worn by the appellant were blood stained. The shirt and the pant Ex.P-5 and Ex.P-6 worn by co-accused Riaz Ahmed were also stained with blood. PW-1, PW-12 and PW-15 were police officers on patrol duty and they immediately reported the factum of apprehension of the accused which was noted at police station Trilok Puri vide DD no.29-A Ex.PW-6/C.

(b) SI Sanjay Gupta PW-18 accompanied by Const.Prakash and Const.Satbir went to the place with PW-1, PW-12 and PW-15 had apprehended the accused.

(c) The accused made confessional statement which was recorded by SI Sanjay Gupta. They informed of having killed Nasir. Pursuant to the disclosure statements made by the accused they led the police to Sanjay Jheel and pointed out the place where they had assaulted the deceased. A quilt was pointed out. Under the quilt the body of the deceased was seized. To put it pithily, the incriminating circumstance held established against the accused is the recovery of the body of the deceased at the instance of the accused.

(d) The blood stained clothes of the accused as per the report of the serologist i.e. Ex.PY, established that human blood of group B was present on Ex.P-2, P-3, P-5 and P-6. The blood group of the deceased was also B.

(e) PW-9 Akbar had established the motive which was an act of extortion by the deceased. The victim of the extortion/demand being co-accused Riaz. As per the learned Trial Judge, the testimony of PW-9 shows that Riaz and the appellant took revenge against the deceased.

(f) The apprehension of the appellants at the spot finds corroborative proof in the rukka Ex.PW-1/A and the endorsement Ex.PW-18/A. The rukka has been dispatched from the spot at 2:40 AM. The information pertaining to the apprehension of the accused was recorded at the police station at around midnight.

(g) PW-1, PW-12 and PW-15 were at patrol duty in their PCR van and each of them have deposed that when they saw the appellant and his co-accused moving in the night in suspicious circumstances, they accosted the accused noticing that the clothes of the accused were stained with blood and co-accused Riaz Ahmed had a danda which was stained with blood. They informed the police station. The three witnesses deposed that the I.O. PW-18 reached the place where they had apprehended the accused who made disclosure statements and led the police personnel to Sanjay Jheel where body of the deceased, covered with quilt, was recovered. The rukka records the aforesaid facts.

9. We concur with the view taken by the learned Trial Judge that the dead body of the deceased was recovered from the spot which was in the knowledge of the appellant and his co-accused and that by virtue of Section 27 of the Evidence Act, said part of the confessional statement which has resulted in the

recovery of a dead body is admissible evidence. The fact which has been discovered is the knowledge of the appellant and his co-accused that Nasir was dead as also the knowledge of the place where the body of Nasir could be found. The authorship of concealing the body under the quilt can also be safely ascribed as admissible evidence against the appellant and his co-accused. The report of the serologist Ex.PY adds a further link in the evidence against the appellant and his co-accused inasmuch as the pant and shirt worn by them were stained with human blood of the same blood as that of the deceased.

10. The appellant and his co-accused have rendered no satisfactory explanation as to how their clothes got stained with human blood.

11. As regards the danda Ex.P-7, only blood could be detected thereon. The specie as also the group could not be determined as the blood was disintegrated. Thus, nothing incriminating against the appellant can be found qua the danda.

12. Akbar PW-9 has deposed that at 8.45 PM on 14.3.1999 which happened to be the date of the crime, he and Riaz were standing when Nasir demanded money from him. He i.e. Akbar had Rs.4/- with him which he offered to the deceased. Riaz refused to give any money. Deceased struck the head of Riaz against the wall. They grappled with each other. He separated them. The deceased left. Riaz told him that the deceased would be done away with in the night. He left for his house and next day morning learnt about the deceased being killed.

13. Truthfulness qua the testimony of Akbar can be found with reference to MLC Ex.PW-16/A of Riaz Ahmed who was got medically examined at SDN hospital on 15.3.1999 at 8.30 AM. The doctor has noted swelling on the occipital region of the skull of Riaz Ahmed.

14. The view taken by the learned Trial Judge that the evidence establishes the death of the deceased at the hand of the appellant and his co-accused is fully correct.

15. But the question which needed to be further considered is, whether it is a case of murder or homicide simplicitor.

16. The testimony of PW-9 establishes that the deceased was a extortionist and had not only extorted Rs.4/- from Akbar but had thrashed co-accused Riaz for not succumbing to his extortionist demand and had, in fact, even struck the head of Riaz against a wall causing simple injury to Riaz.

17. It is apparent that Riaz Ahmed and the appellant were good friends and struck back against the deceased. They did so after some time. They did not do so at the heat of the moment. They have acted with premeditation. But, what they have done?

18. They have not gone armed with a deadly weapon. They took with them a danda. They gave beatings to the deceased with a danda, with one blow falling on the head of the deceased.

19. Evidence probablize that the appellant and his co-accused had wanted not to cause the death of the deceased but had desired to inflict injuries on him.

20. Since co-accused Riaz Ahmed was inflicted with an injury on his head by the deceased, it appears to be a case where the single assault on the head of the deceased was to take revenge for the head injury caused on Riaz.

21. The MLC does not show that the assault on the head of the deceased was ferocious; the brain matter was not oozing out. No doubt, the blow has been struck with considerable force evidenced by the fact that the deceased suffered cranium damage.

22. We are of the opinion that the acts of the appellant and his co-accused attract punishment not under Section 302 IPC but under Section 304 Part I IPC for the reason the offence committed by them is falling under Section 304 Part I IPC.

23. The appeal stands disposed of partially allowing the same. The conviction of the appellant for the offence of having murdered Nasir is modified. It is held that the evidence on record establishes the commission of offence punishable under Section 304 Part I IPC. We convict the appellant for said offence.

24. We sentence the appellant to undergo rigorous imprisonment for ten years. Needless to state, the appellant would be entitled to benefit of Section 428 Cr.PC.

25. The appellant has been released on bail vide order dated 21.5.2005. The nominal roll of the appellant shows that by the said date he had undergone imprisonment for a little less than six years.

26. We direct the appellant to surrender and undergo the remaining sentence. The bail bond and the surety bond furnished by the appellant are hereby cancelled.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

August 11, 2009
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