

R-75

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

% *Date of Decision: 26th August, 2009*

+ **CRL.A. 407/2001**

KISHAN LAL Appellant
Through: Ms. Charu 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 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. Charged with the offence of having trespassed into flat No.X-41/C DDA Colony, New Ranjit Nagar after making preparations for causing hurt to the deceased Tilak Raj, and for the offence of having murdered Tilak Raj, the appellant stands convicted vide judgment and order dated 22.11.2002.

2. For the offence punishable under Section 452 IPC, the appellant has been sentenced to undergo RI for three years and pay a fine in sum of Rs.300/-. In default of payment

of fine he has been sentenced to undergo further imprisonment for 20 days. For the offence of murder the appellant has been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.500; in default of payment of fine to undergo further imprisonment for one month.

3. To sustain the conviction against the appellant, the learned Trial Judge has held that the testimony of Budho Devi PW-1, the mother of the deceased and Puran PW-2, the brother of the deceased, as also the testimony of a public witness; namely, Hari Singh PW-8, inspires confidence and establishes that with the intention of killing the deceased the appellant entered flat No.X-41/C where the deceased resided with his mother and his brother; the appellant was armed with an iron pipe Ex.P-1 and a knife Ex.P-3. Both were used as weapon of offence. A blow was inflicted on the head of the deceased with the iron pipe and two stab wounds were inflicted in the chest with the knife. The injuries caused with the knife cut through the fourth inter-costal space, piercing the left lung at two places, as a result the left lung collapsed triggering the death due to haemorrhagic shock. That the appellant was apprehended at the spot while fleeing and was beaten by the public.

4. The learned Trial Judge has also held that the

prosecution has successfully established that pursuant to the disclosure statement Ex.PW-1/G made by the appellant to the investigating officer, the blood stained knife Ex.P-3 was recovered from the roof of flat bearing No.X-44/C which is in the vicinity of the flat where the crime was committed, as recorded in the seizure memo Ex.PW-1/C. Lastly, it has been held that a pair of chappal recovered from the spot where the crime was committed, as noted in the seizure memo Ex.PW-1/A, was proved to be those of the appellant.

5. Machinery of law was set into motion, when at 9:13 PM, DD Entry No.26A, Ex.PW-8/C, was recorded by the duty officer at PS Patel Nagar that a quarrel had taken place near a drain at Ranjit Nagar, X Block and police be sent.

6. ASI Satyavir Singh PW-10 accompanied by Const.Randhir Singh PW-4 proceeded to the spot. Const.Faruq PW-5 on beat duty also proceeded to the spot as some public person told him of a quarrel in House No.X-41/C, DDA Colony, Ranjit Nagar. In this manner, three police officers reached flat No.X-41/C, DDA Colony, Ranjit Nagar. They learnt that the injured named Tilak Raj had been removed to RML Hospital. ASI Satyavir Singh proceeded to the hospital i.e. RML Hospital and found that Tilak Raj son of Tara Chand had been admitted at the hospital at 9:45 PM by his brother Puran PW-2.

7. He obtained a copy of the MLC Ex.PW-12/A of Tilak Raj as per which Tilak Raj was unconscious and unfit for making any statement.

8. Returning to the flat where the offence was committed ASI Satyavir Singh recorded the statement Ex.PW-1/A of Budho Devi PW-1, the mother of Tilak Raj as per which statement, her son Tilak Raj was taking dinner while sitting on a charpai at 9:00 PM when appellant, who resides in flat No.D-25 and was known to her from before as he used to frequently visit her house, came with an iron pipe in his hand and without any cause hit her son on the head with the iron rod saying that he would teach him a lesson. The assault on the head was followed by the appellant inflicting knife blows on the chest of her son. Her younger son Puran and she pounced upon the appellant. They raised a noise at which people gathered and caught the appellant before he could flee. Her son was removed to the hospital.

9. An endorsement Ex.PW-9/A was made under the statement aforesaid by ASI Satyavir Singh and dispatched to the police station for FIR to be registered at 11:30 PM, the time noted in the endorsement Ex.PW-9/A. The FIR was registered at the police station at 11:45 PM. In the endorsement Ex.PW-9/A it has been noted that the appellant was apprehended by

the neighbours and was beaten.

10. From the spot the iron pipe Ex.P-1 was seized and noted in the seizure memo Ex.PW-1/B. A pair of chappals Ex.P-5 and Ex.P-6 stained with blood were seized as noted in the memo Ex.PW-1/E. Blood was lifted from the floor on a piece of cotton as recorded in the memo Ex.PW-1/D. A photographer Const.Naresh PW-14 was summoned who took three photographs, Ex.PW-14/1 to Ex.PW-14/3 of the place of crime.

11. Since the appellant was apprehended at the spot his custody was taken over by ASI Satyavir Singh who formally arrested him and recorded his disclosure statement Ex.PW-1/G. By the time the disclosure statement was recorded, the next day had commenced i.e. 8.2.1996 and hence the disclosure statement records that it was recorded on 8th February, 1996.

12. In the disclosure statement the appellant not only confessed to the crime but stated that the knife with which he had inflicted injuries on the deceased could be got recovered by him from the roof of the flat where he had thrown the same. Thereafter, the appellant led the investigating officer to flat No.X-44/C and from the roof thereof got recovered a knife.

13. Since the appellant was injured he was taken to the hospital where he was given medical treatment and his MLC

Ex.PW-15/A was obtained which notes injuries on the person of the appellant.

14. Unfortunately, the injured could not be survived for long and died at around 11:15 PM on the following day i.e. 8.2.1996. Information of the death was transmitted by the duty officer at the hospital to the police station and said information was recorded vide DD No.90-B, Mark A, at 11:15 PM in the hospital.

15. The body of the deceased was seized and sent to the mortuary where post-mortem was conducted by Dr.L.T.Ramani PW-20. The post-mortem report Ex.PW-20/A was prepared by him recording that there were three injuries on the person of the deceased. The first was on the skull. The second and third were incised wounds in the chest cavity. He further opined that injury No.1 was caused by a blunt weapon and injury No.2 and 3 were caused by a sharp edged weapon and were sufficient to cause death for the reason the left lung had been cut at two places; one each being the resultant internal injury pertaining to external injury No.2 and 3. That the left lung partially collapsed triggering haemorrhagic shock occasioned by blood loss.

16. The iron pipe Ex.P-1 which was seized from the flat where the deceased reside and where the assault took place

along with the knife recovered pursuant to the disclosure statement of the appellant as also the clothes of the appellant and other blood smeared articles lifted from the place where the crime was committed, upon serological examination resulted in a report of blood being detected on the knife and a pair of chappals stated to be that of the appellant recovered from the scene of the crime. It was further opined that the blood was of group 'A' i.e. the blood group of the deceased.

17. We eschew reference to the disclosure statement of the appellant and the recovery of the blood stained knife pursuant thereto for the reason the appellant, as would be noted hereinafter, was apprehended at the spot itself. There was no occasion for him to go about secreting the weapon of offence.

18. What has happened is clear. The flat of the deceased is on the 4th floor as clarified by PW-1 during her cross examination. The roof of the flat wherefrom the knife was recovered is the roof of a flat in the vicinity owned by Hari Singh PW-8. It is apparent that after the knife was used it was flung outside either through the window or the door and hence landed on the roof of a flat in the vicinity. We would only wish to state that it is advisable for the investigating officers to record the facts as truthfully as they ought to be recorded, for

the reason twisted statements of fact tend to cloud the truth and give an impression of fabrication. There is no law that each and every recovery must be pursuant to a disclosure statement. When an accused, as in the instant case, is apprehended at the spot and the weapon of offence is thrown nearby, it would inspire equal confidence if evidence of its recovery is led by speaking the truth i.e. by stating that a blood stained knife was seen lying nearby and commonsense guided the investigating officer that in all probability the same was the weapon of offence and hence he seized the same. Or, where a witness points towards the weapon of offence used by the accused, which, keeping in view human conduct, we presume would be the natural conduct of a witness, the investigating officer should truthfully record said fact.

19. Be that as it may, we proceed to consider the testimony of Budho Devi, her son Puran Singh and Hari Singh the neighbour.

20. Budho Devi deposed the facts which we have noted hereinabove while noting the contents of her statement Ex.PW-1/A pursuant where to the FIR has been registered. She deposed that the statement Ex.PW-1/A bears the thumb impression of her right thumb at point 'A'. She deposed that the iron pipe Ex.P-1 was recovered from her flat i.e. flat No.X-

41/C DDA Colony Near Ranjit Nagar in her presence and the seizure memo Ex.PW-1/B pertaining thereto was witnessed by her and her thumb impression is at point 'Y'. She deposed that the chappals of the accused Ex.P-5 and Ex.P-6 were seized in her presence as noted in the seizure memo Ex.PW-1/E and her right thumb impression was at point 'R'. She deposed that blood was lifted from within her flat as recorded in the memo Ex.PW-1/D which bears her right thumb impression at point 'P'.

21. Eschewing reference to her testimony pertaining to the recovery of the knife, qua her cross-examination, suffice would it be to note that no suggestion has been given to her that the blood shown as lifted in the memo Ex.PW-1/D was not lifted from within her flat or that the iron pipe Ex.P-1 or the chappals Ex.P-5 and Ex.P-6 were not lifted from within her flat.

22. Puran PW-2 the son of PW-1, deposed that he was resting in a room in flat No.X-41/C at 9:00 PM on 7.2.1996. His elder brother Tilak Raj, the deceased, was sitting on a cot with his son Tarun and was taking meals. He heard: "I will not leave you alive". Upon hearing this, he came out and saw Kishan Lal with an iron pipe in his hand which he struck on the head of his brother who started bleeding. Kishan Lal took out a knife and stabbed his brother. He intervened and with the

help of his mother over-powered Kishan Lal. Public people gathered and gave a beating to him. Somebody informed the police. The police came and the custody of Tilak Raj was handed over to the police.

23. Hari Singh PW-8 deposed that he was present in his flat No.X-44/C DDA Colony New Ranjit Nagar, New Delhi and saw appellant enter the house of the deceased. He heard alarm sounds “Mar diya – Mar diya, Bachao – Bachao”. He saw the accused coming out of the house of accused Kallu and was under the grip of the mother and brother of Kallu. (We note that the witness is referring to the deceased Tilak Raj as Kallu). He i.e. Hari Singh intervened and apprehended the accused.

24. We may note the testimony of two more witnesses namely Const.Naresh PW-14 who took three photographs Ex.PW-14/1 to Ex.PW-14/3 of the place of the crime. He deposed that in the intervening night of 7th and 8th February 1996 he was summoned by the investigating officer at around 12:00 night and took photographs of the spot i.e. the flat No.X-41/C DDA Colony, New Ranjit Nagar, New Delhi. We note that Naresh Kumar was not subjected to any cross examination.

25. Lastly we note the testimony of ASI Satyavir Singh PW-10 who proved the various seizure memos referred to in the testimony of PW-1 and also proved having recorded the

statement Ex.PW-1/A of Budho Devi. He deposed that the seizures shown as recorded in the various memos prepared were from the scene of the crime i.e. flat No.X-41/C.

26. Conscious of the fact that there was overwhelming evidence against him as he was apprehended at the spot itself, when he was examined under Section 313 Cr.P.C. the appellant tried to explain the death of the deceased and injuries on him, which as per the prosecution were the result of the public beating him, when he was apprehended at the spot. He claimed that the deceased and he were known to each other and the deceased was a bad character of the area. They used to smoke smack in a park in Ranjit Nagar colony. On the day when the deceased died and he received injuries, Hari Singh PW-8 saw them smoking smack. Puran PW-2 was also present in the park. Both started beating him and Tilak Raj. Relatives of the deceased and members of his community came and started giving beating to Tilak Raj and him, with whatever articles were lying in the park. He received injuries on the forehead. Tilak Raj received grievous injuries and was removed to his house. He was then taken to the hospital where he died.

27. It is apparent that as per the appellant, the deceased was injured at the park.

28. The defence of the appellant is clearly false for the reason no witness of the prosecution, who has proved lifting of blood of the deceased and other blood stained articles from flat No.X-41/C, has been given even a suggestion that the said blood stained articles were actually lifted from a park. The photographer i.e. PW-14 who deposed that he took the photographs of the scene of the crime from within flat No.X-41/C has not even been cross examined.

29. It is apparent that the place where the crime took place is the residence of the deceased i.e. flat No.X-41/C DDA Colony, New Ranjit Nagar, New Delhi.

30. The only blemish in the evidence led by the prosecution pertains to the recovery of the weapon of offence i.e. the knife Ex.P-1, in respect whereof we have already penned our thoughts hereinabove.

31. Apart from the blemish in the recovery of the knife, learned counsel urges that the testimony of PW-1 to the effect that her son i.e. the deceased was taking meals is false for the reason the post-mortem report Ex.PW-20/A categorically records that the food taken by the deceased was digested.

32. The argument has to be noted and rejected for the simple reason, the deceased was taking food at 9:00 PM on 7.2.1996 when he was attacked and died the next day at

11:15 PM. It is obvious that the food taken by the deceased was digested in the next 26 hours.

33. Learned counsel also submits that there are injuries on the person of the accused as noted in his MLC Ex.PW-15/A.

34. The prosecution has explained the injuries on the accused through the testimony of PW-2 who has deposed that when the appellant was apprehended by the residents of the colony they gave him beating. We note that the said fact has been noted at the first instance i.e. in the endorsement Ex.PW-9/A made by ASI Satyavir Singh.

35. In view of the eye witness account namely the testimony of PW-1, PW-2 and PW-8 who have successfully withstood the test of cross examination we concur with the reasons and the conclusion arrived at by the learned Trial Judge.

36. The appeal is dismissed.

37. The appellant has been admitted to bail. The bail bond and surety bonds are cancelled. The appellant is directed to surrender and suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

INDERMEET KAUR, J.

AUGUST 26, 2009 / mm