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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 27.04.2009

Judgment delivered on: 04.05.2009

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CRL.A. 485/2001

MOHD. RASHID ...Appellant
Through: Mr. Rajesh Mahajan, Advocate

versus

STATE ...Respondent
Through: Mr. Pawan Sharma, Advocate

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CRL.A. 803/2001

SANJAY KUMAR @ MANGAL ...Appellant
Through: Mr. Rajesh Mahajan, Advocate

versus

STATE ...Respondent
Through: Mr. Pawan Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

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.

1. Vide impugned judgment and order dated 31.10.2000, the appellants Mohd. Rashid and Sanjay @ Mangal have been convicted for the offence of having murdered Ashok Singh (hereinafter referred to as the deceased), for which

offence they have been sentenced to undergo imprisonment for life and pay a fine in sum of Rs.4,000/-; in default of payment of fine to undergo rigorous imprisonment for 1 year. Both of them have also been convicted for the offence punishable under Section 201 IPC i.e. destroying evidence for which offence they have been directed to undergo rigorous imprisonment for 5 years and to pay a fine in sum of Rs.2,000/-; in default of payment of fine to undergo rigorous imprisonment for 3 months. Both sentences have been directed to run concurrently.

2. Case of the prosecution is that on 29.1.1996 appellant Sanjay @ Mangal was last seen in the company of the deceased at around 7:30 PM in the office of Delhi Nainital Goods Carrier near Apasara Delhi-UP border, by Manohar Lal PW-6 and Vinod Kumar PW-7 and the two i.e. Sanjay and the deceased left in a TSR bearing No.DL-1RA-1592 belonging to the deceased of which deceased was the driver. Mohd. Rashid and Iqrar Ahmed joined the company of the two i.e. Sanjay and the deceased. Mohd. Rashid, Sanjay, as also the deceased, consumed ganja and liquor. Sanjay removed his belt and with the help of Mohd. Rashid strangled the deceased who died due to asphyxia. Getting scared, Iqrar Ahmed fled. Mohd. Rashid and Sanjay threw the dead body of the deceased in a

drain at Jagat Puri adjoining Parwana Road and took along with them the TSR of the deceased. Mahender Kumar PW-8 saw Sanjay and Mohd. Rashid at around 5:30/6:00 AM on 30.1.1996 at Dadri-Noida Highway as the two flagged him while he was driving a Maruti van and requested him to lend a spanner; telling him that they required the spanner to change the wheel of their TSR which had got punctured; the TSR being the one belonging to the deceased.

3. Needless to state the case of the prosecution hinged upon the veracity and the credibility of the testimony of Iqrar Ahmed PW-2, Manohar Lal PW-6, Vinod Kumar PW-7 and Mahender Kumar PW-8. Of course, the manner in which the investigating officer Inspector S.N.Khan PW-28, who took over the investigation on 26.3.1996, claimed to have achieved the break through and his testimony pertaining to the investigation, also heavily impacts the case of the prosecution.

4. Before discussing the relevant evidence and the attendant circumstances in which the evidence has to be analyzed, we note that the impugned decision is one of the poorest we have come across. The decision spanning 50 pages guides nothing and gives no reason. Till page 43, in a parrot like manner the learned Trial Judge has simply noted the case of the prosecution and the testimony of 29 witnesses

who were examined at the trial. Without any discussion or an analysis of their evidence and completely ignoring the fact that the circumstances of a case are as important as the testimony of the witnesses as also the fact that what is stated by a particular witness needs to be considered with reference to the circumstance of a case, the learned Trial Judge has concluded the decision in para 38 against the accused at page 43 and 44 of the impugned decision. There is no reasoning preceding the conclusions arrived at. It is a strange decision we have seen, where after noting the evidence, straight away conclusions have been arrived at and thereafter in a summary manner, in a single paragraph being paragraph No.39, the contentions urged by the defence counsel and their reply by the learned APP have been noted. Not only that. It neither being the case of the prosecution that past enmity of the accused was the motive for the crime, nor there being any evidence to prove past enmity being the motive, the learned Trial Judge has held that the evidence established that the motive for the crime was past enmity. We simply do not understand as to how the learned Trial Judge has held so. It shows a complete non application of mind by the learned Trial Judge. From the case of the prosecution as noted above, it is apparent that the motive was to rob the deceased of his TSR. We hasten to add that for unexplainable reasons the charge

sheet did not allege the offence of robbery against the appellants.

5. We note para 38 of the impugned decision, which as noted above, has been penned immediately by the learned Trial Judge after noting the deposition of the 29 witnesses examined by the prosecution. It reads as under:-

“38. There is no evidence on behalf of the accused persons in defence. The motive on the part of the accused persons is revealed to be previous enmity and the evidence of the last scene is established sufficiently beyond reasonable doubts by PW-7 Vinod Kumar and PW-6 Manohar Lal. The both accused persons were found by PW-8 Mahender Kumar Sharma with the TSR of deceased immediately after the incident at the same night and both the accused persons have been identified by PW-8 Mahender Kumar Sharma, PW-7 Vinod Kumar. Accused Sanjay has refused to join TIP besides that accused Sanjay was arrested on the identification by Vinod Kumar PW-7 who got prepared his portrait immediately after the incident. The belt used in committing the crime was recovered at the instance of the accused Sanjay and both the accused have made their disclosure statement about the involvements in the crime of this case and they have pointed out the place of commission of crime and the place where the dead body was thorwn by them and the place where the three wheeler was abandoned by them vide pointing out memos and disclosure statements. The PW-7 is a natural witness who has identified the accused Sanjay and his testimony cannot be disbelieved. Similar is the position of testimony of PW-6 Manohar Lal. The testimony of PW-8 Mahender Kumar Sharma cannot be disbelieved only on the ground that he is only chance witness because he had no motive against the accused persons to implicate them falsely in this case and also he was in his ordinary course of his business when going to Surajpur with the spare parts of the truck. On behalf of the accused persons in his cross

examination nothing could be extracted so that his testimony could not be discarded as not genuine.”

6. The involvement of the police with the instant case was when between 9:00 AM – 10:00 AM on 30.1.1996 Const.Ashok Kumar PW-14 and HC Rahat Singh PW-25, both posted at PS Suraj Pur spotted TSR No.DL-1RA-1592 near Rubi Chemical Factory at Noida – Dadri Road with the left rear wheel missing. The abandoned scooter was removed by them to PS Suraj Pur. The same day i.e. on 30.1.1996, at around 4:22 PM, DD No.13A was recorded at PS Anand Vihar that a wireless message has been received through the police control room that a dead body was spotted at a drain at Parvana Road, Jagat Puri. A copy of the DD entry was handed over to ASI Ganga Ram who accompanied by Const.Harinder left for the spot. Inspector Mohan Singh PW-20 then posted as the SHO PS Anand Vihar was on patrol duty along with Const.Lokender and Const.Suresh Kumar. Over his wireless set even he was conveyed the information about a dead body being spotted at a drain at Parvana Road, Jagat Puri and accordingly he took the gypsy in which he and the two constables were travelling to the place disclosed to them where the dead body was spotted.

7. At the place where the dead body was found, Inspector Mohan Singh prepared a statement of fact Ex.PW-29/C and handed over the same to Const.Harinder who took the same to the police station at 6:15 PM (as recorded on Ex.PW-29/C). At the police station HC Krishan Kumar PW-29 registered the FIR Ex.PW-29/A under Section 302 IPC.

8. At the spot, Inspector Mohan Singh summoned the crime team and a photographer. The crime team could not lift any clue of substance and hence left. Const.Surender Singh PW-17 took 6 photographs Ex.PX-1 to Ex.PX-6; negatives whereof are Ex.PX-7 to Ex.PX-12. The dead body was sent for post-mortem to the Civil Hospital Subzi Mandi through Const.Satinder PW-13.

9. Though during trial Budh Ram PW-17 did not speak about visiting the police station on 31.1.1996 to inform that his relative Ashok (the deceased) was missing, but as claimed by Inspector Mohan Singh PW-20, Budh Ram had visited the police station since the deceased Ashok had not returned home. Since an unidentified dead body had been found the previous day, it appears that the said fact was disclosed to Budh Ram. This is not a hunch of this Court, but the logical inference which can be drawn from the fact that the next day i.e. 1.2.1996 Budh Ram along with Asha PW-1, the wife of the

deceased, Manohar Lal PW-6, the brother of the deceased and Suresh PW-11, the brother-in-law of the deceased identified the dead body recovered by the police on 30.1.1996 as that of Ashok Singh.

10. At the mortuary, Dr.Ashok Jaiswal PW-21 conducted the post-mortem on 1.2.1996 and penned his report Ex.PW-21/A recording therein the following 10 injuries on the person of the deceased:-

- “1. Lacerated wound on upper lid of left eye 1” x 1/3” x 1/4” with bruising around.
2. Haematoma on left frontal eminence 1½” x 1”.
3. Bruise on dorsum of nose ½” x ¼”, abrasion on tip of nose ¼” x ¼” with fractured nasal bones.
4. Abrasion on left malaregion ¼” x ¼” and ¾” x ¼”.
5. Abrasion on left temporal region ½” x ¼”.
6. Lacerated wound on chin ¾” x 1/4”.
7. Linear scratches on back of left hand 1cm, 1.5cm and .5cm.
8. Crescentric abrasions on back of right index finger and middle finger 3 mm each.
9. Bruise on right ear upper part 1 x ½”.
10. There was a ligature constriction mark present in front of neck almost horizontally and circling middle part of neck over and just below thyroid prominence brownish in colour with abraded and bruise margins with a width varying 1.5 cm x 2 cm, running horizontally place 5 cm below angle of mandible on left side margins abraded and bruise with a width of 1 cm x 1.2 cm to posterior hairline. On right side it was dark brown in colour parchment like with a width

varying from 1.5 cm x 2 cm placed 4.8 cm below angle of mandible to posterior hairline.”

11. He opined that the cause of death was asphyxia consequent to ligature constriction of the neck. The probable time of death was opined to be 2½ days prior to the date when post-mortem was conducted. After the post-mortem, along with the report he handed over the clothes of the deceased and a blood sample to HC Ruda Khan PW-12 who took possession of the same as recorded in the memo Ex.PW-12/A.

12. There is no evidence on record as to how Inspector Mohan Singh PW-20 came to know that the deceased had left his house in his TSR No.DL-1RA-1592, but he did learn said fact from some source, for the reason he flashed a wireless message to all the police stations in Delhi requiring his police station to be informed if the TSR was spotted by any police personnel in Delhi. At this stage we may note that probably the said information was given to him by either the wife or the brother or the brother-in-law or the friend of the deceased i.e. either one of PW-1, PW-6, PW-10 and PW-11. But, we do not find on record or even any reference in the testimony of anyone of said witness or the investigation officer that the statement of anyone of them was recorded in which said fact was told by either one of them to the investigating officer.

13. Since information had been flashed to all police stations to report, if cited, the whereabouts of TSR No.DL-1RA-1592, and since the said TSR had been spotted and removed to PS Suraj Pur on 30.1.1996 by Const.Ashok Kumar and HC Rahat Singh, said information was transmitted to Inspector Mohan Singh who deputed ASI Surender Singh PW-5 and HC Devender Pal PW-15 to take possession of the TSR and accordingly the two took possession of the TSR (Ex.P-8) as recorded in the memo Ex.PW-5/A and deposited the same in the Malkhana of PS Anand Vihar.

14. It remained a blind murder. Inspector Mohan Singh PW-20, the investigating officer could make no headway.

15. Inspector S.N.Khan PW-28 in the District Crime Cell was handed over with the investigation on 26.3.1996. On the same day he recorded the statement Ex.PW-1/DA under Section 161 of Smt. Asha PW-1, the wife of the deceased and the statement Ex.PW-7/DA of Vinod Kumar PW-7, the employee of the brother of the deceased. Whereas, Smt. Asha stated that her husband was the owner of the TSR in question and on 29.1.1996 had left from the house with the TSR at 6:30 PM informing her that he was going to meet his brother Manohar Singh; Vinod Kumar stated that on 29.1.1996 at around 7:30 PM the deceased had come to the office of Delhi Nainital

Transport Co. where his brother was employed and that he was accompanied by another boy aged about 24-25 years.

16. On 29.3.1996 Inspector S.N.Khan recorded the statement of Manohar Lal PW-6, the brother of the deceased, and the proprietor of Delhi Nainital Transport Co. who also stated that at around 7:30 PM on 29.1.1996, his brother i.e. the deceased had met him in his office and that he had seen a boy in the TSR along with his brother. On the same day i.e. 29.3.1996 Inspector S.N.Khan recorded the statement of Mahender Kumar PW-8 to the effect that he had come to the police station to give some relevant information as he had seen a poster published by the police at Pehlwan Dhaba, Noida. He informed that at around 5:30/6:00 AM on 30.1.1996 when he was driving on the Dadri – Noida Highway in his Maruti van and had reached near Ruchi Chemical Industries he saw two boys waving and he stopped his van. The two boys requested him to lend a spanner telling him that they needed the same to change the wheel of their TSR as the same had got punctured. He drove off telling them that the spanner used in a Maruti van is unfit to be used in a TSR and that he saw the TSR No.DL-1RA-1592 which was parked on the other side of the road. That the poster which he had seen was that

of one of the two boys he had seen in the wee hours of 30.1.1996.

17. The appellants were apprehended on 30.3.1996. Inspector S.N.Khan interrogated them and recorded their statements, which we note are nothing but confessional statements and hence completely inadmissible in evidence, save and except the disclosure of Sanjay, pursuant where to he led Inspector S.N.Khan to a spot and pointed out a place wherefrom a belt was recovered. In his statement Ex.PW-7/A Sanjay disclosed that the belt used to strangle the deceased was kept by him in the house of his in-laws and that he could get the same recovered. Thereafter, he led Inspector S.N.Khan to the house of his in-laws in Gali No.9, Bihari Colony and from a room adjoining the kitchen pointed out towards a hanger on which was placed a leather belt which was seized vide seizure memo Ex.PW-7/C.

18. On 3.4.1996, Inspector S.N.Khan recorded the statement of Iqrar Ahmed PW-2, as per which on 29.1.1996 he i.e. Iqrar Ahmed was a good friend of Mohd. Rashid and both of them used to consume Ganja. That at 6:00 PM on 29.1.1996 Rashid met him and enquired whether he i.e. Iqrar Ahmed had taken Ganja to which he replied that he had not taken Ganja. At the instance of Rashid both boarded a bus from Jafrabad for

Kodi Colony and on reaching there Rashid called Sanjay @ Mangal. The two i.e. Rashid and Sanjay left leaving him at a tea stall and returned after sometime having consumed Ganja. The three came out of the colony and saw Ashok Singh, a scooter driver, standing at the corner of the street. Rashid and Sanjay had a talk with Ashok. They had some talk. Sanjay told that he would drive the scooter as Ashok was drunk. Whilst Sanjay drove the scooter the three i.e. Rashid, Ashok and he i.e. Iqrar Ahmed sat in the rear seat and reached Apsara Border. Rashid purchased two pouches of liquor. Sanjay and Rashid consumed the liquor and Ashok consumed Ganja. They sat there for about 2 hours. Even he i.e. Iqrar Ahmed smoked Ganja. Thereafter all left the spot with Sanjay driving the scooter and after crossing a railway bridge nearby, Sanjay stopped the scooter and he i.e. Sanjay and Rashid brought out Ashok from the vehicle who was completely intoxicated. Sanjay handed over his belt to Rashid who used the same to form a noose around the neck of Ashok. Thereafter both Sanjay and Rashid strangulated Ashok. He i.e. Iqrar Ahmed cried due to fear. Sanjay and Rashid threatened to kill him if he discloses anything to anybody and that due to fear he sat down silently. Thereafter Sanjay and Rashid put the body of Ashok in the TSR and even he sat in the TSR which was driven by Sanjay towards Vivek Vihar and on the way next to a nala

opposite Jagat Puri the two dumped the body in a pit as their attempt to throw the same in the nala failed. He was once again threatened to keep his mouth shut. That he was volunteering the information as he no longer feared because he had learnt that the accused were arrested.

19. On 10.4.1996, Iqrar Ahmed was produced before the learned Metropolitan Magistrate Sh.Alok Aggarwal PW-23 and his statement Ex.PW-2/A under Section 164 Cr.P.C. was recorded, in which Iqrar Ahmed stated as under:-

"I reside at 241, Block 22, Welcome, Delhi and drive a scooter (TSR). I was introduced to Mohd. Rashid through one of my friend Sajid. He also drive a scooter. I develop friendship with Mohd. Rashid. On 29.1.1996 at about 6:00 PM Rashid met me and asked me whether I had Ganja with me or not. We both sometimes used to smoke Ganja together. I told him that I do not have Ganja with me. At his instance, both of us boarded a bus from Jafrabad for Kodhi Colony. On reaching there one Mangal @ Sanjay Kumar called out Rashid. Both of them, making me to sit at a tea stall, came back within 5-10 minutes after taking Ganja. Then all the three of us started coming out of Kodhi Colony, one Ashok was standing at a corner of the gali. He was also a scooter driver. Rashid and Mangal after having some talks with each other, called out Ashok. He came to us taking his vehicle (TSR No.DL-IR-1592). After exchanging greetings with each other, Mangal told Ashok that he would drive the vehicle as Ashok was under the influence of liquor. Now said, Rashid had said that he would drive the vehicle. Then Rashid drove the vehicle and all the three of us sat on the rear seat. Rashid took the vehicle to Apsara Border. From there Rashid took two pouches of liquor and Mangal and Rashid consumed liquor. The offered "Ganja" and got the same smoke to Ashok. We remained sitting there for two/two and a half hours there. I also smoke

Ganja there. Thereafter Mangal drove the vehicle and he took the same to railway bridge. After crossing the bridge, Mangal stopped the vehicle at some distance. Mangal and Rashid brought Ashok out of the vehicle. Ashok was under the state of complete intoxication. Mangal handed over his belt to Rashid and Rashid put a noose of the belt around the neck of Ashok and then both of them pulled the same. Ashok fell down after the noose of the belt was pulled for about 5-7 minutes. When I cried out, both of them threatened me that in case I uttered anything, I would be killed, as they were very much infuriated so I sat down silently out of fear. Both of them made Ashok to sit down in a side in the TSR and Rashid sat down while holding him. I had sat down on the other side of Rashid till then Ashok had died. Mangal brought the vehicle towards Vivek Vihar. Then he, passing opposite Karkardooma Court stopped the vehicle near the nala opposite Jagat Puri. Then Rashid and Mangal dragged out the dead body of Ashok from the vehicle and standing by the side of a wall, threw the dead body in a pit by the side of the wall. They had tried to throw the dead body in the nala but the same could not fall in the nala. Mangal again threatened me and they dropped me at Welcome by that very vehicle and then both of them left by the same vehicle.

Two/three days thereafter Rashid met me and he again threatened me that in case I disclose anything to anyone, I will be done to death. Due to fear I did not disclose anything to anyone. Then I came to know that Rashid and Mangal have been arrested, so I went to Inspector Noor Khan and disclosed everything to him. I still apprehend danger from Rashid and Mangal.”

20. On 8.4.1996, the appellants were taken for test identification proceedings which were supervised by Sh.Alok Aggarwal PW-23 the learned Metropolitan Magistrate.

Whereas Sanjay refused to join the TIP, Rashid was duly identified by Mahender Kumar PW-8.

21. Needless to state the appellants were sent to trial with the charge of having murdered Ashok Kumar and destroying evidence. As noted above, for the reasons recorded in para 38 of the impugned decision, with reference to the testimony of PW-6 and PW-7 i.e. the deceased being last seen as claimed by them in the company of Sanjay as also with reference to the testimony of PW-8 who claimed to have seen both appellants near the TSR in the morning of 30.1.1996, further noting that whereas Sanjay refused to join TIP and Rashid was identified by Mahender Kumar at the TIP, the learned Trial Judge has convicted the appellants.

22. It is apparent that while considering the contentions of learned counsel for the parties, in appeal, the testimony of PW-6, PW-7 and PW-8 as also the testimony of Inspector Mohan Singh PW-20 and the testimony of Inspector S.N.Khan PW-28 would be crucial and hence we would be noting the testimony of said witnesses in a little detail. We eschew reference to the testimony of other witnesses of the prosecution for the reason all are formal witnesses. We would also be, briefly noting the testimony of Iqrar Ahmed PW-2 who turned hostile and would be considering his statement

recorded before the learned Metropolitan Magistrate under Section 164 Cr.P.C., contents whereof have been noted in para 19 above.

23. Manohar Lal PW-6 deposed that he was a transporter by profession carrying on business under the name and style 'Delhi-Nainital Good Carrier' having office near Telephone Exchange at Delhi – UP Border. That he was sitting in his office on 29.1.1996 and at about 7:30 PM his brother Ashok came to his office to meet him after parking his TSR No.DL-1RA-1592 outside as he had to discuss a domestic problem pertaining to an operation of their father who was residing in Punjab. That Ashok stayed with him for about 15 minutes during which period they held discussions and when he came out of the office along with Ashok he saw a boy sitting in the TSR. (The boy was pointed out to be Sanjay in doc identification). He enquired from Sanjay about the destination who told him that he was to go towards Welcome. He enquired so as he had noted that his brother Ashok has consumed alcohol. He requested Sanjay to take care of Ashok who was intoxicated and that Sanjay assured him that he would take Ashok to his house safely. Thereafter both left the place in the TSR together and he boarded a bus for Punjab at 10:30 PM. He reached Punjab the next morning on 30.1.1996

and on 31.1.1996 received a telephone call from his employee Satyawan informing that his brother Ashok had been murdered. He immediately returned to Delhi by bus and went to the mortuary on 1.2.1996 where he identified the dead body of his brother in the presence of wife of his brother, pertaining whereeto, statement Ex.PW-6/A bearing his signatures at point 'A' was recorded. After the post-mortem he received the dead body as recorded in the memo Ex.PW-6/B which bore his signatures at point 'B' and took the dead body to Punjab for cremation. That on 29.3.1996 the police met him at around 5:30 PM in his office and recorded his statement. On 7.4.1996 he was informed to reach Tihar Jail on 8.4.1996 in order to identify the culprits. He reached Tihar Jail and was informed that the accused had refused to take part in the TIP and hence he returned.

24. Manohar Lal was cross examined and in cross examination stated that he never went to the police station for any purpose regarding the case and that the first time the police contacted him regarding the case was on 29.3.1996 when the police came to his office at Delhi – UP Border. With reference to his testimony in examination in chief of having seen Sanjay as claimed by him on 29.1.1996 he answered: *'during the visit of my brother in my office no other person was*

there except Vinod sitting outside the verandah..... I went with my brother from the office up to the three wheeler. My brother himself started three wheeler and driver away himself. When my brother came to three wheeler to take away three wheeler at that very time a boy came and sat down in the three wheeler. Before 29.3.1996 I did not tell this thing that a boy was sitting in the three wheeler when my brother went from my office after visiting me.' (Aforenoted is a verbatim reproduction of the relevant extracts from the cross examination and hence the grammatical errors have been noted as occurring in the original text)

25. Vinod Kumar PW-7 deposed that on 29.1.1996 he was present in the office of Delhi – Nainital Transport Co. owned by Manohar Lal and at around 7:30 PM in the company of Sanjay, Ashok Singh the younger brother of Manohar Lal, came to the office in his TSR to meet Manohar Lal. Whereas Sanjay sat with him, Ashok Singh had discussions with his brother for about 15 minutes and thereafter both left in the TSR with Ashok driving the same and Sanjay on the passenger seat. That on 30.1.1996 wife of Ashok Singh came to their office and enquired about Ashok Singh informing him that Ashok Singh had left the house in the TSR the previous day but had not returned home. He informed the wife of Ashok Singh

the facts which he had deposed to in Court. That on 31.1.1996 some police personnel came from PS Anand Vihar asking him to summon Manohar Lal from Punjab, informing him that Ashok Singh had been murdered. Satyawar a co-employee contacted Manohar Lal who returned to Delhi the next day. That on 2.2.1996 a police inspector from PS Anand Vihar came to the office and he accompanied the police officer to the headquarter of Delhi Police to help prepare a portrait of the person who had accompanied Ashok Kumar to their office on 29.1.1996. The portrait was prepared and thereafter he returned to the office. That on 26.3.1996 Inspector Khan visited their office at around 5:00 PM and recorded his statement. That the accused were apprehended in his presence and Sanjay's disclosure statement Ex.PW-7/A which bore his signatures at point 'A' was recorded in his presence and that thereafter Sanjay led the police to the house of his in-laws i.e. House No.4/2376, Gali No.9, Bihari Colony and from a room adjoining the kitchen produced a belt Ex.P-1 which was seized by Inspector Khan as recorded in the memo Ex.PW-7/C which bore his signatures at point A.

26. Mahender Kumar PW-8 deposed that on 30.1.1996 at about 5:30 AM while he was going to Surajpur via Dadri in his Maruti van and had reached near Ruchi Chemicals he was

signaled to stop by the accused and he saw TSR No.DL-1RA-1592 parked on the opposite side of the road. When he stopped the van one of them asked him to supply a pana (spanner) for repairing a punctured wheel of the TSR. He told him that a pana used in a van is useless for a TSR and thereafter he left for Surajpur. That on 22 or 23.3.1996 while on the way to Surajpur he stopped at Pahlwan Dhaba for tea and saw the poster with photograph of one of the accused present in Court and recollected the same. He went to PS Anand Vihar and was informed that the case had been transferred to the District Crime Cell where he contacted Mr. Khan who recorded his statement and that he was called to Tihar Jail on 8.4.1996 where he identified accused Mohd. Rashid before a learned Metropolitan Magistrate.

27. On being cross examined he stated that his statement was recorded by Inspector Khan on 29.3.1996. Being relevant for consideration of the submissions made in appeal we note that on being specifically questioned as to whose photograph he had seen in the poster as claimed by him, he replied: *'I do not remember whose face was shown in said poster out of two accused present in Court today.'* It is also relevant to note that during cross examination Mahender Sharma admitted that he was in transport business. He

further admitted that he had not noted down the registration number of the TSR when he saw the same in the morning of 30.1.1996, but volunteered that he had remembered the number. It would be interesting to note that the counsel for the accused questioned the witness as to how he had come to the Court to which he replied that he had reached the Court on his two wheeler scooter and to the question where he had parked the same, he responded that he had parked the same in the scooter stand. When questioned whether he could give the number of the scooter parked next to his scooter at the parking lot, the witness replied that he did not remember the number.

28. Inspector Mohan Singh PW-20 deposed that on 30.1.1996 he was posted as SHO PS Anand Vihar and at 4:30 PM received a wireless message that a dead body was found near Jagat Puri, Parwana Road, Ganda Nala, and he reached the spot where ASI Ganga Ram, Const.Harinder, Const.Kanwar Pal and Const.Satinder were present. He summoned the crime team and a photographer. From various angles the body was photographed. He sent the body after seizing the same for post-mortem through Const.Satinder and Const.Kanwar Pal. He noted the label of Weeksons Tailor on the shirt of the deceased and located the whereabouts of Weeksons Tailor and

interrogated one Vinod a tailor in the shop but got no clues regarding the identity of the deceased. He went to PS Gandhi Nagar where he met Budh Ram who had come to the police station to enquire about his missing relatives named Ashok. He produced the photograph of the dead body recovered and Budh Ram identified it to be the body of Ashok. He met Budh Ram, Asha, wife of the deceased and Manohar Lal the brother of the deceased at the mortuary of Subzi Mandi on 1.2.1996 where they identified the dead body and after the post-mortem the body was handed over to the relatives. That on 1.2.1996 he flashed a wireless message regarding the missing TSR number DL-1RA-1592 and on 2.1.1996 (appears to be a typographic error and should read 2.2.1996), with the help of Vinod PW-7 got prepared a portrait of the suspect in the crime. That on 3.2.1996 he learnt that the TSR had been traced by the police of PS Surajpur and he sent ASI Surender Singh and HC Devender Prasad who took possession of the TSR as recorded in the memo Ex.PW-5/A.

29. During cross examination he admitted that the investigation remained with him till 20.2.1996. He further stated during cross examination: *'The person who identified the dead body are Manohar, Suresh, Budh Lal and one more person i.e. Smt.Asha the wife of the deceased. I have*

examined all the above said persons on 1.2.1996. On 1.2.1996 the accused persons did not raise any suspicion on any person and also do not made any allegation on a particular person.' (Since it is a verbatim reproduction from the testimony, we have noted the same as recorded, and hence, the grammatical and syntax errors. It is apparent that the reference to 'accused persons' is a typing error and the same should read 'said persons'. Otherwise the sentence would suffer from absurdity). During further cross examination he admitted that he never recorded the statement of Vinod PW-7 till the investigation remained with him. We quote from his cross examination: *'I did not recorded the statement of Manohar Lal and Vinod PW-7 during the period of 1.2.1996 to 20.2.1996.'*

30. As noted by us hereinabove, most unfortunately, the learned Trial Judge has just not bothered to discuss the testimony of the witnesses of the prosecution and has arrived at conclusions in para 38 of the decision, without any appraisal of the creditworthiness of the testimony of the prosecution witnesses. Certain very critical and relevant questions which arise were neither posed, much less answered.

31. The circumstances found incriminating by the learned Trial Judge may be summarized as under:-

- (i). Previous enmity with the deceased was the motive for the crime.
- (ii). Testimony of PW-6 and PW-7 established that the deceased was last seen in the company of Sanjay, soon before his dead body was found wherefrom an inference of guilt could be drawn.
- (iii). Within a short span of the deceased being last seen alive, the accused were seen by PW-8 with the TSR of the deceased.
- (iv). Portrait of accused Sanjay was drawn before he was arrested at the instance of Vinod Kumar PW-7.
- (v). The belt used in commission of the crime was recovered at the instance of Sanjay.
- (vi). The disclosure statements of the accused were corroborated by their acts of identifying the place where the crime was committed; the place where the dead body was thrown and the place where the TSR of the deceased was recovered.
- (vii). Whereas Mohd. Rashid was identified by Mahender Kumar Sharma at the TIP conducted on 8.4.1996 and said fact was incriminating against him; Sanjay refused to join in the TIP and said conduct was incriminating against him.

32. We are surprised at the finding of motive i.e. past enmity held to be proved by the learned Trial Judge. Not a single witness of the prosecution had deposed that the accused had any enmity with the deceased. Indeed, the learned Trial Judge appears to have parroted whatever the learned Additional Public Prosecutor argued. The learned Trial Judge has not just applied his mind to the fact that neither the charge sheet alleged enmity as the motive and no witness deposed that the deceased and the accused had past enmity. Thus, the first circumstance held incriminating by the learned Trial Judge is no more than a ghost created by the learned Trial Judge himself.

33. Did PW-6 and PW-7 actually see Sanjay with the deceased as claimed by them at 7:30 PM on 29.1.1996 in the office of PW-6? Did Vinod Kumar PW-7 assist in preparation of a portrait of Sanjay as claimed by him i.e. Vinod Kumar and Inspector Mohan Singh PW-20?

34. These two questions are at the core of the issue. It may be stated at the forefront that no portrait of accused Sanjay allegedly prepared with the help of Vinod Kumar PW-7 has been proved at the trial. The person who allegedly prepared the portrait has also not been examined. What we have on record are the bald statements of Vinod Kumar PW-7

and Inspector Mohan Singh PW-20 that on 2.2.1996, with the help of Vinod Kumar a portrait of the accused was prepared. If this be so, obviously Sanjay was a suspect known to the police i.e. Inspector Mohan Singh at least on 2.2.1996. That Vinod Kumar was the person whose help was taken to prepare the portrait leads to the inference that Vinod had disclosed to Inspector Mohan Singh that he had seen the deceased in the company of Sanjay the previous evening. If this be so, the statement of Vinod recorded by Inspector Mohan Singh had to be proved. None has been proved. Inspector Mohan Singh has not deposed that he recorded any statement made by Vinod till he remained the Investigating Officer. As noted in para 29 above Inspector Mohan Singh has admitted during cross examination that he never recorded the statements of Manohar Lal and Vinod PW-7. As noted in para 29 above, Inspector Mohan Singh deposed that the dead body of the deceased was identified by Manohar, Suresh, Budh Lal and Asha at the mortuary on 1.2.1996 and that said persons never raised any suspicion on any person. The absence of any statement recorded by Inspector Mohan Singh coupled with the fact that no portrait prepared at the instance of Vinod Kumar has been proved and the so-called author of the portrait has not been examined by the prosecution gives rise to a strong suspicion that no portrait was ever prepared and

that Vinod never disclosed to Inspector Mohan Singh that he had last seen the deceased in the company of Sanjay at 7:30 PM on 29.1.1996 in the office of Manohar Lal PW-6.

35. Even Manohar Lal the brother of the deceased appears to have been brought in as a planted witness evidenced by the fact that he had met Inspector Mohan Singh at the mortuary on 1.2.1996 when he identified the dead body of his brother and his statement pertaining to his pointing out the dead body of his brother was recorded by Inspector Mohan Singh on 1.2.1996. Had he i.e. Manohar Lal actually seen his brother with Sanjay at 7:30 PM on 29.1.1996, he would have certainly told said fact to Inspector Mohan Singh. That he did not do so requires a reasonable inference to be drawn that he never saw the deceased in the company of Sanjay as claimed by him for the first time before Inspector S.N.Khan PW-28 on 29.3.1996.

36. With the belief that it stood proved that immediately after the incident the police prepared a sketch of the accused with the help of Vinod, a belief which has no foundation for the reason the bald statements of Vinod and Inspector Mohan Singh are rested on quick sand, the learned Trial Judge has gullibly believed that PW-6 and PW-7 are truthful witnesses to prove that the deceased was last seen

with accused Sanjay. Thus, the finding returned by the learned Trial Judge that the evidence establishes that the deceased was last seen in the company of Sanjay by PW-6 and PW-7 is faulty inasmuch as the aforementioned features have been ignored by the learned Trial Judge. Not only that. On being cross examined Manohar Lal stated that after he went up to the three wheeler from his office with his brother and his brother started the three wheeler to drive the same himself, at that time a boy came and sat in the three wheeler. The said statement in cross examination completely demolishes his testimony in examination-in-chief that when he came out of the office along with his brother he saw a boy sitting in the TSR; the boy being Sanjay from whom he enquired their destination as his brother Ashok had consumed alcohol and he requested Sanjay to take care of Ashok and Sanjay assured him that he would take Ashok to his house safely. It is apparent that Manohar Lal falsely deposed during examination in chief about his dialog with Sanjay, probably for the reason, he was instructed to say so to form a foundation to justify Manohar Lal being able to identify Sanjay. We need not note various judicial decisions where Courts have cast a doubt on the identification of an accused by a witness who has but a fleeting glance of the accused and that too in a chance meeting during night or twilight time. We further note that

Manohar Lal has admitted during cross examination that before 29.3.1996 he did not tell anybody about a boy sitting in the three wheeler when his brother visited him. Was it not a relevant fact, relevant even to a layman, to tell the police that the brother was seen in the company of another person soon before the offence of murder was committed! We feel it is. The absence of Manohar Lal ever speaking on said line prior to 29.3.1996 is a relevant circumstance and cannot be ignored.

37. We hold that the testimony of PW-6 and PW-7 of having last seen the deceased in the company of Sanjay at 7:30 PM on 29.1.1996 does not inspire any confidence and hence the second circumstance found incriminating by the learned Trial Judge is faulty.

38. The third circumstance found incriminating by the learned Trial Judge is that the accused were seen by Mahender Kumar PW-8 with the TSR of the deceased at around 5:30/6:00 AM on 30.1.1996. The learned Judge has held so by simple believing and gullibly accepting whatever was spoken to by PW-8.

39. As noted above PW-8 surfaced for the first time on 29.3.1996. He claims to have surfaced as he saw a poster of an accused at Pehlwan Dhaba and he remembered the face of the person whom he had seen in the wee hours of the morning

on 30.1.1996. Now, as noted above, we have no evidence of any portrait of any accused being prepared and much less posters being printed on the basis of any such portrait. The very introduction of PW-8 in the course of investigation is highly suspicious. PW-8 admitted being a transporter. The brother of the deceased admitted being a transporter. Thus, there is every possibility that PW-8 volunteered to be a witness at the asking of PW-6. That apart, the testimony of PW-8 inspires no confidence for the reason in Court he could not remember the face of the person seen in the poster by him. He claimed to have remembered with reference to his memory the number of the TSR. He admitted that he never noted the number of the TSR which he saw on 30.1.1996. His testimony shows that, if at all, he had a very brief conversation with the two boys in the morning of 30.1.1996; the conversation being the boys asking him for a spanner to remove the wheel of a TSR and he informing them that the spanner of a van is of no use on a TSR and thereafter he moving away from the place. Unless one is a wizard with numbers or has an elephantine memory it is against human conduct for a person who chances upon to see a particular vehicle, remembering the number thereof after nearly two months. We note that PW-8 made his statement as recorded by Inspector S.N.Khan on 29.3.1996 which is exactly 58 days after 30.1.1996. That PW-8 is not a

wizard with numbers nor possesses an elephantine memory is established by the fact that he was cross examined whether he remembered the number of the two wheeler scooter parked next to his scooter in the parking lot when he came to the Court and he replied that he did not. Obviously, PW-8 has not revealed a distinctive and a peculiar trait of a person, gifted by God, to remember numbers. It is not insignificant to note that the registration number of the TSR is not a simple two or three digit number. The number is also not such which has a characteristic of easy remembrance for example a number '007', '1234', '4321' or '2222', '3333' or '1222', '2111' etc. The number is fairly complex and non-sequential: 'DL-1RA-1592'. Further, in the Northern part of this country, in which zone the city of Delhi is situate, the sun does not rise by 5:30/6:00 AM on 30.1.1996. Even the dawn does not break by said time. It is dark at said time. It is just not possible for PW-8 to have noted the number of the TSR, which according to him was parked on the opposite side of the road; the obvious reason being that it was dark. In any case, no lasting impression of an impregnable nature could have been imprinted in the memory of PW-8 to have remembered the number by heart, with reference to his memory, to so disclose the same after 58 days.

40. The learned Trial Judge has acted with material irregularity and has completely abdicated his judicial duty by just not analyzing the testimony of PW-8 with reference to the circumstances of the case. It is settled law that a circumstance of a case is as important a facet as is the testimony of eye witnesses and cannot be ignored. More often than not, the veracity of an eye witness account can be tested only with reference to the circumstances surrounding the place, the time and the manner in which the eye witness claims to be present and with reference to his presence, deposes facts seen by him.

41. The fourth circumstance found incriminating by the learned Trial Judge of Vinod getting prepared the portrait of the accused Sanjay immediately after the incident is also, accordingly held to be, a finding without any substantive evidence. The bald statements of Vinod Kumar and Inspector Mohan Singh inspire no confidence.

42. The sixth circumstance found incriminating by the learned Trial Judge is that pursuant to their disclosure statements the accused took the police to the place where the crime was committed as also the place where the dead body was thrown and the place where the TSR of the deceased was recovered.

43. It is settled law that all statements made to the police by an accused are inadmissible in evidence save and except such statements which are made admissible by Section 27 of the Evidence Act. The sine qua non for the applicability of Section 27 of the Evidence Act is that the police must discover a fact for the first time, hitherto fore not in the knowledge of the police, after the accused has told a fact to the police. In the instant case the place where the dead body was found was already in the knowledge of the police as early as on 30.1.1996 and the knowledge of the place where the scooter was found was with the police of PS Anand Vihar on 3.2.1996 when ASI Surender Singh PW-5 and HC Davinder Pal PW-15 took possession of the TSR from their counterparts at PS Surajpur UP as recorded in the memo Ex.PW-5/A. Thus, said statements of the accused pertaining to the place where the dead body was recovered and the place where the scooter was recovered are inadmissible in evidence and have no evidentiary value. We are surprised at the finding returned by the learned Trial Judge that the accused pointed out the place where the deceased was murdered. The police can show any spot as the place of murder if the same is alleged by the police not to be the one where the dead body was recovered. Unless there is something to show that a crime was committed at a particular spot, which normally would be in the form of seizure

of some relevant object establishing the commission of a crime at a particular spot, mere statements of an accused and leading the police to any spot and the two being held to be incriminating evidence would be nothing but a travesty of justice.

44. Thus, the sixth circumstance found incriminating by the learned Trial Judge is completely illegal, being contrary to the known and recognized principles of law.

45. That leaves only one circumstance to be discussed namely circumstance five listed by the learned Trial Judge i.e. the recovery of the belt used in the commission of the crime at the instance of Sanjay.

46. Unlike a firearm, a belt would at best be a possible weapon of offence where death is attributed to strangulation in a manner ligature marks are left on the neck, as is in the instant case. Thus, nothing much turns on the recovery of the belt Ex.P-1. Assuming something turns thereon, this and the fact that accused Sanjay refused to join in the TIP and accused Mohd.Rashid was identified by Mahender Kumar Sharma at the TIP conducted on 8.4.1996 are the only piece of evidence which are left as incriminating evidence, and by no stretch of imagination are sufficient to form a complete chain of

circumstances wherefrom the only inference which is possible, is the guilt of the accused.

47. Though, the learned Trial Judge has ignored the testimony of Iqrar Ahmed PW-2 as he turned hostile because he deposed that Inspector S.N.Khan threatened him with dire consequences unless he stated false facts, which he did, and as recorded in his statement Ex.PW-2/A before the learned Metropolitan Magistrate, but it would not be out of place to note the utter inconsistency with the case projected at the trial if one takes into account the statement Ex.PW-2/A. If the facts stated therein are taken to be the touchstone of truth, it is apparent that after Rashid and Iqrar Ahmed met Sanjay at Kodi Colony and thereafter Ashok joined them, they never parted company with each other and made merry at Apsara Border by consuming liquor and Ganja and thereafter proceeding towards Vivek Vihar and on the way, the appellants throttling Ashok and thereafter dumping his body. Where was the occasion for PW-6 and PW-7 to have seen the deceased in the company of Sanjay at 7:30 PM, as claimed by them.

48. It is evident that Inspector S.N.Khan has went about introducing planted witnesses to break the deadlock. It is not out of place to note that the previous investigating officer achieved no breakthrough and as admitted by Inspector

S.N.Khan, the investigation of the case was entrusted to him on 26.3.1996. Surprisingly enough, on the very first day of investigation being entrusted to him, Inspector S.N.Khan managed a breakthrough. Being in the special crime team, it was obviously a matter of prestige for Inspector S.N.Khan. His reputation was at stake. He had a motive to introduce planted witnesses so that he could claim credit for cracking a blind murder. As noted above, he did so by introducing a story that when he got the file he saw a portrait of a suspect, a fact not proved by the evidence on record. He brought in PW-8 as a planted witness with reference to a non-existent portrait and a non-existent poster. He introduced PW-6 and PW-7 as witnesses and made them speak having last seen the deceased in the company of accused Sanjay. For obvious reasons and as noted above, the introduction of the said witnesses with reference to their testimony is highly suspicious. He picked up Iqrar Ahmed PW-2, who is a near vagabond himself and hence susceptible to police pressures and compelled PW-2 to falsely testify before a Metropolitan Magistrate, ignoring that what he i.e. Inspector S.N.Khan wanted to be spoken by PW-6 and PW-7 would just not fit into the theory of the crime sought to be projected through the motivated and false statement procured by him through the mouth of PW-2.

49. Individually, and cumulatively, the inescapable conclusion is that if not a clean acquittal on merits, at least with the aid of the benefit of doubt, the appellants are entitled to be acquitted from the charge framed against them.

50. The appeals are allowed. Impugned judgment and order dated 31.10.2000 and the order of sentence dated 6.11.2000 is also set aside. The appellants are acquitted of the charge framed against them.

51. The appellants are on bail. Their bail bonds and surety bonds are discharged.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

May 04, 2009
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