

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

% Date of Judgment: 10th September, 2009.

+ **CRL.A.628/2001**

AAS MOHD alias JAVED alias BIRJU Appellant
Through: Mr.Sumeet Verma, Adv.

versus

STATE N.C.T. OF DELHI Respondent
Through: Mr.M.N.Dudeja, 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. Bus No.DL-1P-9753 driven by Joginder Singh PW-4 was assigned Route No.GL-23 from I.S.B.T. to Anand Vihar bus stand. Prem Chand PW-5 was the conductor of the bus. On 7.1.1999, the bus commenced its journey from I.S.B.T. and when it reached near Jagatpuri at around 7.30 AM there was a sudden commotion in the bus. Joginder Singh felt that a knife was placed over his neck and

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the person standing behind directed him to keep on driving the bus. Somebody shouted in the bus that a passenger has been stabbed. At Karkari Mod four boys having knives in their hands alighted from the front gate and threatened Joginder Singh that if he informed the police he would face the consequences. Joginder Singh continued driving the bus and after covering some distance made all the passengers deboarded at Patparganj Depot. He informed the police. A passenger was found in the bus bleeding profusely and was removed to S.D.N. hospital where he was declared 'brought dead'.

2. It was a case of no clues available to the police for the reason no passenger travelling in the bus came forward to provide any meaningful information. The driver and the conductor of the bus made statements which were recorded by the Investigating Officer but without any sufficient clues pertaining to the identity or the physical features of the accused.

3. Seven persons, one of whom is the appellant Aas Mohd., were apprehended at different points of time. How they became suspects remains a mystery.

4. No recoveries of any kind being effected from six out of the seven accused and a sum of Rs.13800/- along with a policy Ex.P-3 issued by the LIC in the name of the deceased bearing No.330147024, being recoveries attributable pursuant to the

statement of the appellant, and a knife Ex.P-6 recovered from the appellant when he was arrested; which knife was found to be stained with human blood of group 'A' on that the blood group of the deceased has resulted in the impugned decision dated 13.7.2001 being passed. Needless to state, six co-accused have been acquitted for the reason no incriminating evidence surfaced against them. The appellant has been convicted.

5. The driver and the conductor of the bus claimed not to have seen the face of the boy who stabbed the deceased. The appellant was not identified by the driver and the conductor when Test Identification Proceedings were held soon after his arrest. The driver and the conductor who appeared as PW-4 and PW-5 respectively did not identify the appellant as a passenger in the bus, much less one out of the four boys who boarded the bus at Karkari Mod.

6. The learned Trial Judge has held that the recovery of the knife Ex.P-6 when the appellant was arrested coupled with the report of the Serologist Ex.PX1 and Ex.PX2 which shows that human blood of group 'A' was detected on the knife and that the blood group of the deceased was also of group 'A' evidences that the knife in possession of the appellant when he was arrested was a possible weapon of offence; finding being with reference to the opinion Ex.PW-8/A1 of the doctor who conducted the post-mortem on the

deceased opining that the stab injury on the deceased could be possibly caused by the knife Ex.P-6. With reference to the recovery of the LIC policy Ex.P-3 the learned Trial Judge has opined that an article belonging to the deceased being recovered pursuant to the disclosure statement of the appellant and on the appellant leading the police to the place wherefrom the policy was recovered show that a fruit of the crime was in possession of the appellant. Recovery of Rs.13800/- pursuant to the disclosure statement of the appellant was also held to be a recovery of the fruits of the crime from the appellant.

7. Thus, the appellant has been convicted on the aforesaid three evidences; namely, recovery of the blood stained knife Ex.P-6 having blood of the same group as of the deceased thereon, recovery of the policy Ex.P-3 and recovery of Rs.13800/-.

8. Pertaining to the recovery of Rs.13800/-, suffice it would be to state that no witness of the prosecution has deposed that the deceased was carrying with him a sum in excess of Rs.13803/-; which sum was recovered from the personal search of the deceased. Thus, we have no evidence on record that the sum of Rs.13800/- recovered at the instance of the appellant belonged to the deceased.

9. We wonder as to what was the need for the appellant to keep with him the policy Ex.P-3. We wonder as to what was the deceased doing when he was travelling in a bus with the LIC policy Ex.P-3. Certificates of insurance issued by LIC popularly known as LIC policies are normally kept by the assured in safe custody for the reason the same has to be presented when the policy matures. Nobody moves around with a LIC policy.

10. Be that as it may, as held in the decision reported as JT 2008 1 SC 191 Mani vs. State of T.N (para 21) recoveries of ordinary articles are always treated as weak piece of evidence.

11. In our opinion, recovery of the knife Ex.P-6 stained with human blood of the group of the deceased without any further scientific evidence to link the said blood as positively that of deceased as also the recovery of Ex.P-3 are insufficient circumstances wherefrom the guilt of the accused for the crime of murdering the deceased can be inferred.

12. Before concluding, we would also note that as per the post-mortem report the deceased had four injuries. Injury No.1, 2 and 3 are bruise marks on the cheek, nose and the upper eye. Injury No.4 was an incised wound on the right thigh at its anterior surface 12.2 cm below from midinguinal point obliquely placed.

13. The injury on the thigh ruptured a major blood vessel resulting in excessive blood loss and the consequence was death due to haemorrhagic shock. With reference to the injury No.4, which proved to be fatal, keeping in view that the blow was directed at a non-vital part of the body, we are doubtful whether an intention to cause the murder of the deceased or the intention to cause an injury which was sufficient in the ordinary course of nature to cause death or the knowledge that the act done was so immensely dangerous that in all probabilities it cause death, can be inferred. Under the circumstances, an offence punishable under Section 302 IPC is not made out even otherwise.

14. If at all the assailant is ascertainable; from the act done, at best, offence which would be made out would be of causing grievous injury with the use of a sharp edged weapon i.e. an offence punishable under Section 326 IPC.

15. We note that when the appellant was admitted to bail by this court pending hearing of the appeal, the appellant had already undergone the actual sentence of six years and one month.

16. In view of our reasoning above pertaining to the nature of recoveries effected from the appellant, we are of the opinion that there is insufficient evidence wherefrom the chain of circumstance is complete to draw an inference of guilt against the appellant. 17.

The appeal is allowed. Impugned judgment and order dated 13.7.2001 is set aside. The appellant is acquitted of the charges framed against him. The appellant is on bail. The bail bond and the surety bonds are discharged.

(PRADEEP NANDRAJOG)
JUDGE

(INDERMEET KAUR)
JUDGE

September 10, 2009
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