

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

% Date of Decision: 06.11.2009

+ **CRL. A. No.698/2001**

IMRAN @ PAPPU & ANR. Appellants
Through: Mr.Sumit Verma, Advocate.
versus

STATE Respondent
Through: Mr.M.N.Dudeja, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (ORAL)

1. Charge sheet was filed in the Court against six persons; namely, Mahender @ Lambu, Imran @ Pappu, Pahlad, Jitender, Vijender @ Lala and Man Singh. They were put up for trial for the offence punishable under Sections 302/324/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC'), pertaining to a stabbing incident which took place on a bus No. DL-1P-3370 enroute from Peeragarhi to Daya Basti on 25.03.1999 at around 10.00 PM. In the incident in question,

the deceased Radhey Shyam was murdered and three others; namely, Kuldeep, Naresh and Laxman were injured.

2. Two of the six accused, namely, Vijender @ Lala and Man Singh were discharged vide order dated 06.11.1999. Thus, four remained at the trial to defend themselves.

3. Vide the impugned judgment and order dated 15.09.2001, Pahlad and Jitender have been acquitted in the absence of any incriminating evidence against them. Appellants Mahender and Imran have been convicted for the offence of murder relatable to the death of Radhey Shyam. They have been acquitted for the offence punishable under Section 324 IPC. Both have been convicted for the offence punishable under Section 25 of the Arms Act, 1959; substratum of which offence was the recovery of a button operated knife when appellant Imran was apprehended and a knife which was got recovered by appellant Mahender pursuant to his disclosure statement.

4. We may note that all eye-witnesses including the three persons who received injuries on 25.03.1999 did not support the case of the prosecution as regards the identity of the persons who had inflicted injuries to Kuldeep, Naresh and Laxman as also who stabbed the deceased.

5. From a perusal of the impugned decision, it is apparent that the learned trial Judge has convicted appellants Mahender and Imran for the reason from Imran a button actuated knife was recovered at the time of his arrest as recorded in the memo Ex.PW-13/M; which knife, as per the FSL Report Ex.PY, was found to be contaminated with human blood, group whereof could not be ascertained. The other incriminating circumstance used against Imran of his refusing to participate in the test identification proceedings. Qua appellant Mahender, the recovery of the knife pursuant to his disclosure statement Ex.PW-13/A; as reflected in the memo Ex.PW-13/K, which knife was also found to be contaminated with human blood, group whereof could not be ascertained as per FSL Report Ex.PY and Mahender's refusal to participate in the TIP has been used as incriminating evidence.

6. We may note that the two knives, as per the doctor who conducted the post-mortem on the deceased, were opined to be the possible weapons of offence.

7. Surprisingly enough, with respect to the recovery of the two knives, the entire confessional statement by the two appellants pertaining to their participation in the offence has been used by the learned trial Judge in returning a finding of

guilt.

8. Suffice would it be to state that confessional statement made to the police is wholly inadmissible in evidence, save and except what is protected and made admissible under Section 27 of the Indian Evidence Act, 1872.

9. Pursuant to an object recovered on the disclosure statement of an accused, the relatable discovery of a fact and no more, becomes admissible under Section 27 of the Indian Evidence Act, 1872. Other linkages of the case have to be proved by evidence allundi. Surely not by placing any reliance on the confessional/disclosure statement.

10. With respect to the apprehension of the appellants and the recovery of a button actuated knife from the possession of Imran and the recovery of a knife pursuant to the disclosure statement of Mahender, it may be noted that the two alongwith other two co-accused, who have been acquitted, were apprehended on 23.04.1999. As noted above, the date of the incident is 25.03.1999.

11. It is surprising that a knife in the pocket of appellant Imran which was recovered on 23.04.1999 i.e. after 29 days of the offence was still stained with human blood.

12. Pertaining to the knife which was recovered

pursuant to the disclosure statement Ex.PW-13/A by Mahender, we note that in the disclosure statement he has stated that the knife used by him in the commission of crime was handed over to him by one Rakesh to whom the knife belonged. Surprisingly enough, the recovery memo Ex.PW-13/K records that Mahender voluntarily and happily led the police to H.No.A-4/237, Ground Floor, Sultanpuri and got recovered the knife from a lot.

13. We find that neither was Rakesh made an accused nor was any attempt made as to how the knife which was ostensibly handed over to Rakesh reached the place wherefrom Mahender got it recovered.

14. Recoveries of common objects have been held to be a very weak piece of evidence. It was so held in the decisions reported as *JT 2008 (1) SC 191 Mani Vs. State of Tamil Nadu*, 1999 Cri.L.J. 265 *Deva Singh Vs. State of Rajasthan*, AIR 1994 SC 110 *Surjit Singh Vs. State of Punjab* AIR 1977 SC 1753, *Narsinbhai Haribhai Prajapati Vs. Chhatrasinh & Ors.*, and AIR 1963 SC 1113 *Prabhoo Vs. State of U.P.*,

15. As noted above, only two pieces of admissible incriminating evidence against the appellants exist. The first is the recovery of the knife from Imran when he was

apprehended after 29 days of the incident, and the recovery of the knife pursuant to the disclosure statement of Mahender. The two knives, being contaminated with human blood, group whereof could not be discovered. The second of the two not participating at the TIP.

17. The taint in the presence of the blood in the two knives as also the recovery of the knife at the instance of Mahender has been noted by us hereinabove.

18. The second piece of incriminating evidence is the appellant's refusal to participate in the test identification proceedings.

19. Treating the two to be incriminating evidence, the incriminating nature of the two being weak; noting that no eye-witness has identified the appellants as the boys who had assaulted the passengers in the bus, we are left with no option but to hold that the chain of incriminating circumstances established against the appellants is too weak to sustain their conviction.

20. The appeal filed by the appellants pertaining to their conviction for the offence of murder is accordingly allowed.

21. Pertaining to the offence under the Arms Act by appellant Mahender at whose instance a knife was got

recovered, noting the taint in the manner in which the recovery has been effected, the appeal filed by him pertaining to his conviction for the offence punishable under Section 25 of the Arms Act, 1959 is also allowed.

22. The appeal filed by appellant Imran pertaining to his conviction for the offence punishable under Section 25 of the Arms Act, 1959 is rejected.

26. Noting that for the offence punishable under Section 25 of the Arms Act, 1959, Imran has been sentenced to undergo imprisonment for one year, which period of imprisonment he has already undergone; noting further that both appellants are on bail, we dispose of the appeals discharging the bail bonds and surety bonds furnished by the appellants.

**PRADEEP NANDRAJOG
(JUDGE)**

**SURESH KAIT
(JUDGE)**

**NOVEMBER 06, 2009
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