

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Criminal Appeal No. 83/2001**

% Date of Order : February, 18, 2009

SARFARAZ HUSSAIN Appellant
Through : Mr. Anil Soni, Advocate.

VERSUS

STATE Respondent
Through : Ms. Richa Kapoor, APP.

CORAM :-

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper 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. During the course of arguments we find that PW-8 Roop Singh who was partially examined, never returned for further examination. The result is PW-8 was not cross-examined.
2. The weapon of offence is purported to have been recovered pursuant to the purported disclosure statement of the appellant.
3. PW-8 Roop Singh is a Senior Scientific Officer (Ballistics) CFSL, New Delhi. It is obvious that his evidence would be crucial to the case. Indeed, the impugned decision shows that the learned trial Judge has referred to the opinion of PW-8.

4. We note that the original reports prepared by PW-8 were not filed and do not form part of the trial court record. We note that when PW-8 was partially examined, the said reports were marked P-A to P-D.

5. We note that according to PW-8 he was the author of only one report marked P-A.

6. Learned counsel of the appellant points out that only one report marked P-A was found to be relevant as per the impugned judgment.

7. Learned counsel for the State submits that all the reports are relevant for the reasons the one relating to presence of blood of the group thereof are also relevant.

8. Be that as it may, it is apparent that a valuable right of the appellant has been adversely affected in the form of use of the testimony of PW-8 without subjecting the witness to cross examination.

9. Learned counsel for the appellant urges that the right of the appellant to cross-examine the witness with respect to the purity of the seals being intact when the packets/pullandahs containing the items therein were sent to CFSL has been affected.

10. With consent of learned counsel for the parties, we dispose of the appeal setting aside the impugned judgement dated 22.01.2001 as also the order on sentence dated 27.01.2001.

11. The matter is remanded back to the trial court for fresh

adjudication. Needless to state, the correction shall be effected in the defective procedure followed, in that, PW-8 would be re-summoned. His examination-in-chief would be completed followed by his cross-examination.

12. Since the original reports are not on record, the prosecution may take such steps as are advised in law to prove photocopies of the four reports.

13. The appellant is on bail. He shall continue to remain on bail on the existing terms till the matter is decided afresh by the learned trial Judge.

14. TCR be returned forthwith.

15. The learned APP for the State and the accused i.e. the appellant shall appear before the learned Sessions Judge Delhi on 2nd April, 2009.

16. Attested copy of the order be sent to the concerned trial court as well as to the State.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

February 18, 2009
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