

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

% *Date of Decision : 14th January, 2009*

+ **CRL.A. 142/2007**

SHAKEEL@ BHURA Appellant

Through: Mr.Javed Alvi, Advocate.

versus

STATE Respondent

Through: Ms.Richa Kapoor, 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.** (Oral)

Crl.M.B.94/2008

Learned counsel for the appellant and the State jointly state that the main appeal may be heard today itself. The application is dismissed as infructuous since we are hearing arguments in the main appeal.

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1. The case of the prosecution is that Const.Gajender

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Singh, PW-2, while on patrol duty at 10:00 PM on 18.10.2002 found a person in an injured condition on Thekewala Road near Sulabh Sauchalya, Metro Apartments, Jahangir Puri, murmuring in pain, that he had been stabbed. Const.Gajender took the injured on a rickshaw to BJRM Hospital and claims that on the way to the hospital the injured informed him that Bhura i.e. the appellant was the assailant. Const.Gajender claimed that on the way to the hospital, wife of the deceased, PW-1, Sangeeta had incidentally met him and had disclosed the name of the injured, introducing herself as the wife of the injured.

2. As per MLC, Ex.PW-13/A, the injured was declared dead when he was brought to the casualty of the hospital at 10.15 P.M.

3. FIR No.699/02, Ex.PW-9/A was registered by PW-9, ASI Zahur Singh at PS Jahangir Puri.

4. As per the prosecution, the accused made a disclosure statement in the presence of HC Jogi Ram, PW-7, pursuant where to the weapon of offence, a knife was recovered at the instance of the appellant who pointed out the place where

the knife was ostensibly hidden by him after committing the crime.

5. It is not in dispute that another FIR, being FIR No.698/02, under Section 25 of the Arms Act was registered on 18.10.2002 at the same police station i.e. PS Jahangir Puri against the appellant, as according to the police he was found in possession of a knife. It is not in dispute that in FIR No.698/02, PS Jahangir Puri, the appellant was arrested by the police at 7.30 PM and continued to be in the custody of the police till he was produced before a Magistrate the next day.

6. At the trial, PW-1, the wife of the deceased did not support the case of the prosecution inasmuch as she deposed that on the day of the occurrence i.e. 18.10.2002 she received an information by a neighbour at 11.30 PM that her husband was lying near a liquor shop at Jahangir Puri. She reached the liquor shop and found that her husband was lying cold having injuries on the stomach and that a crowd had collected at the spot. She stated that the police had reached there. She stated that the police took her husband to the hospital where she

identified the dead body of her husband and thereafter her statement, Ex.PW-1/B, was recorded. She stated that she was not aware as to how her husband was killed.

7. A two-fold contention was urged before the learned Trial Judge during arguments. Firstly, that PW-1 had contradicted PW-2 with respect to PW-2 having met her and she having told him that the injured person he was taking to the hospital was her husband Gurudev. It is urged that the testimony of Const.Gajender, PW-2 was thus suspect.

8. A more forceful submission has been made. It is urged that as per the record of the police station pertaining to FIR No.698/02, the appellant was arrested at 7.30 PM. Where was the occasion for him to have inflicted the injuries on the person of the deceased at around 10.00 P.M? Learned counsel urges that PW-2 has falsely deposed of the deceased having made a dying declaration to him.

9. We find from the impugned judgment that the learned Trial Judge has brushed aside both submissions. Though, the same have been noted as the contentions urged by

the defence.

10. The conviction of the appellant has been sustained on the basis of the purported oral dying declaration made by the deceased to Const.Gajender, PW-2. The learned Trial Judge has found support in the case of the prosecution with reference to the disclosure statement of the appellant and the recovery of a knife at the instance of the appellant to hold that the charge has been established against the appellant.

11. With respect to the appellant being in custody of the police at 7.30 PM on 18.10.2002, learned counsel for the State does not dispute the said fact; as indeed the police record pertaining to FIR No.698/02 PS Jahangir Puri shows that the appellant was arrested at 7.30 P.M on 18.10.2002 and remained in police custody thereafter throughout the night.

12. Learned counsel for the State urges that as per the disclosure statement of the appellant in FIR No.698/02, Ex.PW-7/C, he admitted having stabbed the deceased at around 7.00 PM and made a further disclosure qua the place where he could get the weapon of offence i.e. the knife recovered. Counsel

further urges that thereafter the appellant took the police to the spot where from the weapon of offence i.e. the knife was recovered. Counsel urges that it is within the realm of possibility that the injured who was stabbed at 7.00 PM remained unnoticed till 10.00 PM when he was found in an injured condition by Const.Gajender.

13. To appreciate the contention urged by learned counsel for the State pertaining to the deceased being injured at 7.00 PM and not being found by the side of the road till 10.00 PM, two facts are important. The same de-probabilize the projected plea of learned counsel for the State.

14. The first is the fact that at 10.15 P.M, as recorded in the MLC, Ex.PW-13/A, the deceased was declared dead when brought to the hospital. This shows the extreme fragile condition of the deceased. Obviously, the deceased died within 15 minutes after 10:00 P.M.

15. The second fact of importance is that the place where Const.Gajender found the deceased is a public place. The road in question passes through a crowded locality. The place at

which the deceased was found by Const.Gajender is next to the Shulabh Sauchalya. It is difficult to believe that the injured was lying on the road from 7.00 PM till 10.00 PM without any person noticing him.

16. The aforesaid facts are sufficient to cast a cloud on the version of the prosecution, more so for the reason as per the report of the forensic science laboratory, the knife which was ostensibly recovered at the disclosure statement made by the appellant did not contain any blood.

17. The appeal is accordingly allowed. Impugned judgment and order dated 16.1.2007 convicting the appellant for the offence under Section 302 IPC is set aside. The sentence imposed upon the appellant vide order dated 16.1.2007 is set aside.

18. If not in detention in any other case the appellant is directed to be released forthwith.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 14, 2009/dk

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