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IN THE HIGH COURT OF DELHI

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Date of Decision : February 06, 2009

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CRL.A.234/2005

RANA PARTAP Appellant
Through: Mr.Kamlesh Kumar, 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?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J. (Oral)

1. The appellant along with co-accused Raj Virender Singh, Raj Kumar and Deepak Kumar faced trial for the charge of having entered into a conspiracy to murder Rajesh and in furtherance thereof having murdered Rajesh on the intervening night of 22-23rd December, 1996. Raj Kumar was declared a proclaimed offender and hence, against him, proceedings were kept in abeyance.

2. Vide impugned judgment and order dated 06.01.2005, co-

accused Raj Virender and Deepak Kumar have been acquitted. Rana Partap has been convicted for the offence of murder as also conspiracy. He has been sentenced to undergo imprisonment for life for the offence punishable under Section 120-B IPC. He has been sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC and to pay a fine of Rs.1,000/-; in default to undergo RI for a period of one year.

3. At the outset, we are a little surprised at the appellant being convicted for the offence of conspiracy inasmuch as two co-accused have been acquitted. Qua the third accused, proceedings were kept in abeyance as he was declared a proclaimed offender and hence there are no findings against him. There is no finding that there is evidence of Rana Pratap being helped in the commission of the crime by any unknown person or Raj Kumar who was declared as a proclaimed offender. There is no finding that evidence establishes that Rana Pratap had conspired with a third person.

4. The case of the prosecution was that Rana Pratap had a grudge against the family of the deceased Rajesh because his sister Suman was married to Rajesh and she died an unnatural

death and that Raj Virender Singh, Deepak Kumar and Raj Kumar hatched a conspiracy along with Rana Pratap to murder Rajesh and in furtherance thereof went to the house of Rajesh at around 9.30 PM on 22.12.1996. Rana Pratap called Rajesh who went along with all and that they murdered him by taking him to a secluded spot. The weapon of offence was a country made pistol which was recovered at the instance of Raj Virender. The prosecution sought to establish the case by attempting to prove motive on the part of the appellant and the deceased being last seen with the accused persons at 9.30 PM by the mother of the deceased coupled with the recovery of the weapon of offence i.e. a country made pistol. We note that the deceased died due to a bullet injury fired from a pistol.

5. We note that co-accused Raj Virender was acquitted on account of the fact that the weapon of offence recovered at his instance turned out not to be the weapon of offence and Raj Virender being last seen in the company of the deceased has been disbelieved by the Learned Trial Judge. Similarly, co-accused Deepak Kumar has been acquitted because the evidence against him of being last seen in the company of the deceased has not been believed. We note that the mother of

the deceased Krishna Devi PW-4 has been disbelieved insofar she has deposed that she had seen Raj Virender, Deepak Kumar and Raj Kumar along with the appellant when he came to her house and took along her son at around 9.30 PM on 22.12.1996.

6. Against the appellant Rana Partap, the Learned Trial Judge has relied upon the following evidence:-

A. Testimony of Krishna Devi PW-4, the mother of the deceased, who claimed to have seen the appellant leave her house along with her son at 9:30 P.M on 22.12.1996.

B. The post-mortem report Ex.PW-2/A pertaining to the post-mortem of the deceased which was conducted at 12:00 noon on 24.12.1996 recording the opinion that the deceased Rajesh had died about 36 hours back; meaning thereby that the approximate time of the death of the deceased was 12:00 midnight of the intervening night of 22.12.1996 and 23.12.1996.

C. Motive. The motive was that Suman, sister of Rana Partap was married to the deceased Rajesh and had died an unnatural death; being burnt, within two years of her marriage and hence, Rana Partap had a grudge against Rajesh; a fact proved by the mother of the deceased Smt.Krishna Devi.

7. Needless to state, the learned Trial Judge has based the

decision on the fact that the deceased was last seen alive in the company of the appellant at 9:30 P.M and as per post-mortem report, he died within about three hours thereof i.e. around 12:00 mid-night and that there was a motive for the appellant to kill the deceased and hence the last seen evidence coupled with motive was sufficient to hold that the appellant was guilty of the offence.

8. It is not in dispute that the dead body of Rajesh was found by somebody in the morning of 23.12.1996 who gave a telephonic information of the said fact to the police, which was recorded at the Police Station vide DD No.9-A Ex.PW-2/B, at around 9:00 A.M. on 23.12.1996. Pursuant thereto, ASI Jitender Pal PW-13, Inspector Rai Singh PW-17 and Inspector Gaj Raj Singh PW-9 reached the spot where the dead body was disclosed to be lying; and recovered the same. A used cartridge and a bullet was recovered from the spot.

9. The prosecution claims that they were on the look out of the appellant and unknown co-accused because mother of the deceased has told them of the past enmity and the appellant taking her son from his house in the company of three or four other boys and that the appellant and the co-accused were

apprehended by the police in another case being FIR No.66/1997. According to the prosecution co-accused Raj Virender got recovered the weapon of offence. As noted above the same was opined not to be the weapon of offence by the ballistic expert, an evidence which has resulted in the acquittal of Raj Virender.

10. Since the appellant has been convicted on the testimony of his mother-in-law i.e. PW-4 as per which it has been held that motive for the crime and being last seen with the deceased has been established, we need to note the deposition of PW-4 in detail.

11. In her deposition in Court, PW-4 deposed that her son Rajesh was married to Suman, the sister of accused Rana Partap about four years prior to the date of incident. Suman died after two years of her marriage. She was blessed with a girl child. The child was 11 months old when Suman died. The family of Rana Partap made a complaint against her and she remained behind bars in said complaint. Mother of Rana Pratap told her son Rajesh that she sensed danger to his life from Rana Partap and that he should go away from the locality. Her son informed her about the threat and she tried to sell her house so that they

could shift to some other place. That on 22.12.1996 at about 9:30 P.M, accused Rana Partap came to her house along with three-four boys. While the boys were standing outside, Rana Partap called Rajesh from outside. Rajesh accompanied Rana Partap. She followed her son up to the door. He did not care to listen to her. She saw three boys standing outside her house and Rajesh left with Rana Partap and the other boys. (She identified the three accused persons in Court being the same persons who visited her house along with Rana Partap on that day). She went on to depose that her son did not return till 12:00 mid-night, at which, her husband visited the house of Rana Partap and disclosed to his mother that their son Rajesh had left with Rana Partap, at which mother of Rana Partap asked her husband, as to why, did they allow Rajesh to accompany Rana Partap and that the mother of Rana Partap started weeping. She deposed that when her husband came back and informed her regarding his conversation with the mother of Rana Pratap, even she started weeping. She deposed that on the next day i.e. 23.12.1996, in the morning, she received a telephonic call from the police regarding her son lying unconscious in a jungle. She deposed that the police requested

them to identify the dead body. She along with Babloo reached a deserted area of Sultan Puri and identified her son lying on the ground. She deposed that the complaint Ex.PW-4/A bears her signatures at Point A.

12. The complaint Ex.PW-4/A is the rukka on basis of which the FIR was registered. Since the said statement made by PW-4 to the police is at the very first opportunity available to her, we deem it prudent to note the same in its entirety. It reads as follows:-

“Statement of Smt. Krishna W/o Sh. Deshraj, R/o R-471, Mangol Puri, Delhi, aged about 47 years.

It is stated that I reside at the above mentioned address. Quarter to four years ago, my son Rajesh got married with Suman. Suman was resident of village Rithala, P.S. Mangol Puri. After the marriage, Rajesh was blessed with a son. Suman died due to burn injuries. Suman's mother had lodged a complaint against us, as a result, I had to go to jail. Due to this the relations between Suman's family and our family became stained. After a few days, Rana Partap and my son Rajesh started visiting each other's house and Rajesh use to take his son to their house. One day, on return from the house of Rana Partap, my son Rajesh told me that they should leave their house and go to live elsewhere because he fears danger from Rana Partap. After hearing Rajesh, I spoke to people regarding the sale of our house. Yesterday, on 22.12.1996 at about 9:30 P.M, I was sleeping on the upper floor when Rajesh came to me and told me that Rana Partap had come to call him for certain work and that he will come back by 12:00 night. I tried to stop Rajesh, but he went along with Rana Partap without paying any heed to me. I told this to Rajesh's

father, we waited for Rajesh till 12:00 mid-night and when he did not return, Rajesh's father accompanied by Viresh @Babloo went to Rana Partap's house at Rithala at 2:00 A.M. Rana Partap and Rajesh were not available at his house. After returning home, my husband went in search of Rajesh. On receiving information from the police I have come to the site. I have seen the dead body of my son Rajesh. I am sure that in his death, Rana Partap @Babloo and his associates have full involvement."

13. With reference to the statement Ex.PW-4/A and the deposition of Krishna Devi in Court, it becomes apparent that in her statement Ex.PW-4/A, Krishna Devi did not state to the police that Rana Partap was accompanied by three or four boys when he came to her house. Further, she did not tell the police that she had walked up to the door and thereupon, had seen other persons with him. We note that since Krishna Devi had identified the co-accused in Court for the first time; since she had not disclosed to the police at the first instance that Rana Partap was accompanied by other persons, the learned Trial Judge has held that Krishna Devi has improved upon her earlier statement, to implicate the co-accused; and for said reason has given the benefit of doubt to the co-accused.

14. From the statement of Krishna Devi recorded in the Court and with reference to her statement Ex.PW-4/A, it becomes necessary to note certain statements of fact disclosed by her,

which in our opinion, are relevant to determine the truthfulness of what was stated by Krishna Devi.

15. Reason why we do so, is that, admittedly all was not well between the two families. Krishna Devi was sent to jail on a complaint made by the family members of Rana Partap. There is thus a possibility of her deposing falsely, to take revenge.

16. From the deposition of Krishna Devi PW-4 made in Court, we note the following statements made by her:-

“(i) The mother of Rana Partap made a complaint against me and I remained behind bars in that case.

(ii) Then mother of Suman told my son that there is danger to his life from Rana Partap and he should go away from there.

(iii) My son returned to home and informed me regarding this threat. I tried to sell house so that I can vacate the said premises.

(iv) On 22.12.1996 at about 9:30 P.M, accused Rana Partap reached at my house along with three-four boys.

(v) I followed my son up to the door. He did not care to listen to me.

(vi) My son did not return till 12:00 mid-night. My husband visited the house of accused Rana Partap and my husband disclosed the facts to the mother of Rana Partap. Mother of Rana Partap asked my husband why we allowed Rajesh to accompany with Rana Partap.

(vii) Then, my husband came back to home. My husband informed me regarding the version of Rana Partap's

mother. Then, I also started weeping.

(viii) On the next date i.e. 23.12.1996 in the morning, we received a telephone call from the police regarding lying of my son in unconscious condition in the jungle.”

17. If we analyze the aforesaid statements of Krishna Devi, it becomes apparent that the level of alarm set in the family of Krishna Devi was so high that they feared danger to their lives from Rana Partap and had even taken a decision to sell their house in the locality and move elsewhere. The level of alarm from the family of Rana Partap is further evidenced from the statement of Krishna Devi that she had cautioned her son not to leave with Rana Pratap on 22.12.1996.

18. We note that the month of December is peak winter in Delhi and by the 22nd day of the month the sun sets at around 5:30 P.M. The city is asleep by 9:30 P.M. There is hardly any movement of citizens in the streets in Delhi at 9:30 P.M. This is the reason why Krishna Devi was alarmed if her son was leaving in the company of Rana Pratap from whom they feared for their lives.

19. We note that Krishna Devi stated that when her son did not return till 12:00 mid-night her husband visited the house of Rana Partap and had a dialogue with the mother of Rana Partap who

questioned her husband, as to why, they had allowed Rajesh to leave in the company of Rana Partap. This obviously means that the mother of Rana Partap expressed surprise over the fact that the family members of Rajesh permitted him to accompany Rana Partap who had already evidenced his intention to cause harm to the family members of Rajesh. Not only that, the troubled mind and the fear of the unknown lurking in the mind of Krishna Devi is evidenced from her statement when she stated that when her husband disclosed his conversation with the mother of Rana Partap she started weeping. This shows that at late night she got enough feelers showing concern for her son.

20. What would be conduct of the mother in these circumstances?

21. The answer is obvious. To try and rescue her son. The natural conduct would be to go to the police station and inform that her son is missing and so is Rana Pratap and that Rana Pratap could kill her son; meaning thereby the police should do something.

22. PW-4 did nothing of that sort.

23. Circumstances of a case play a very important role in

appreciating evidence.

24. In the instant case, it has to be noted that if there is a motive for Rana Partap to kill the deceased, there is an equal motive for the family members of Rajesh to falsely implicate Rana Partap and in particular Krishna Devi to do so as she had been sent to jail on a complaint by the family members of Rana Pratap.

25. That PW-4 has tried to inculcate the co-accused requires that the testimony of PW-4 should be taken with a pinch of salt and analyzed carefully to separate the grain from the chaff.

26. The reason why PW-4 falsely implicated the co-accused can be gathered by us from the fact that Rana Partap and the co-accused were caught by the police in another case being FIR No.66/1997, P.S. Jahangir Puri. PW-4 who had not disclosed the presence of anyone else in her first statement, probably implicated them, because she had learnt that Rana Partap was found in the company of some other persons when FIR No. 66/1997 was registered.

27. As noted above, the only evidence against Rana Partap was of his being last seen in the company of the deceased at 9:30 P.M as claimed by PW-4 and the motive.

28. We have found the conduct of PW-4 to be unnatural, given the circumstance under which she was, if indeed what she deposed was correct. If indeed she had seen her son leave with Rana Pratap in the night at 9.30 PM, on his not returning till 12.00 midnight, in view of the past enmity between the two families her natural conduct would have been to go to the police and in particular if she was true to her statement that when her husband went to the house of Rana Pratap, mother of Rana Pratap expressed surprise as to why they had allowed Rajesh to go with Rana Pratap. Her statement that she started crying shows that in view of the past threat from Rana Pratap, she feared the worst for her son. If true, it was all the more reason for her to have gone to the police.

29. It appears to be a case where when she learnt that her son had been shot dead, not knowing the offender, the obvious thing done by PW-4 was to think as to who could have done the terrible act. When a person so thinks, the mind itself focuses on all such persons who could be a possible threat. Obviously, the name of Rana Pratap surfaced.

30. The circumstances of the case and the conduct of PW-4 leaves a lurking doubt in our mind to the truthfulness of the

deposition of PW-4. The appellant is entitled to the benefit of the doubt.

31. The appellant is acquitted of the charge of having murdered Rajesh as also of the charge of having entered into a conspiracy to murder Rajesh. The impugned judgment and order dated 6.1.2005 is set aside. The sentence imposed upon the appellant is set-aside.

32. If not required in any other case, the appellant is directed to be set free forthwith.

33. A copy of this order be given dasti to the Superintendent, Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 06, 2009
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