

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

% *Judgment Delivered on: 30.10.2009*

+ **CRL.A.No.979/2005**

RAJ KUMAR @ RAJU Appellant
Through: Mr.Rajesh Mahajan, Advocate.

versus

THE STATE (G.N.C.T. of Delhi) Respondent

Through: Ms. Richa Kapoor, 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? No.
2. To be referred to the Reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

PRADEEP NANDRAJOG, J. (ORAL)

1. Jagdish Prasad Aggarwal was admittedly murdered in the intervening night of 31.12.2002 and 01.01.2003. The motive was robbery, as cash and gold ornaments in the house of the deceased were found missing.

2. Appellant Raj Kumar @ Raju and two other persons; namely, Bhagwan Dass and Shiv Charan were accused of committing the robbery and murdering Jagdish Prasad Aggarwal.

3. When the Investigating Officer SI Narsi Lal PW-17 reached the house of the deceased in the morning of 01.01.2003 he recovered two mixer grinder jugs, Ex.P-1 and Ex.P-2 from the house as recorded in the seizure memo Ex.PW-1/A, on which HC Sher Pal Singh PW-7 lifted a chance fingerprint from the jug Ex.P-1.

4. The appellant was arrested on 26.02.2003 and on the same date a wrist watch was got recovered from him. His disclosure statement Ex.PW-14/F was recorded as per which he informed that a television belonging to the deceased had been stolen by all three accused and that the same was taken by Bhagwan Dass to his house and that later on he got it transported to the house of Rajori at Faridabad. The television set Ex.P-4 is shown to have been recovered at the instance of the appellant from a house in Badarpur as recorded in the seizure memo Ex.PW-20/A.

5. A test identification of the wrist watch got recovered by the appellant and the television got recovered by the appellant was conducted on 22.05.2003 before Shri.S.S.Rathi PW-6, then functioning as a Metropolitan Magistrate, New Delhi. Ramanand PW-3 was the witness at the TIP and as recorded in

the record of the proceedings Ex.PW-6/B, correctly identified the wrist watch and the television.

6. There exists a report Ex.PW-11/A prepared by Shri R.N.Rawat PW-11, Senior Fingerprint Expert, opining that the sample fingerprints of the appellant matched the chance prints developed on the jug Ex.P-1 which was seized at the spot where the crime was committed.

7. Eschewing reference to the evidence against the co-accused who have been acquitted and in respect of whom the acquittal has attained finality, suffice would it be to record that the incriminating evidence held proved by the learned trial Judge against the appellant is that on the jug Ex.P-1, his fingerprint being found evidence the presence of the appellant in the house of the deceased. That the appellant was found in possession of the wrist watch Ex.P-3 of the deceased and pursuant to his disclosure statement got recovered the T.V. Set Ex.P-4 evidenced the appellant being in possession of the fruit of the crime. The twin, have been held to be a complete chain of circumstances wherefrom the guilt of the appellant can be inferred.

8. Pertaining to the evidence that on the jug Ex.P-1, the chance fingerprint lifted was that of the appellant, we note that the only evidence is the report Ex.PW-11/A and the testimony of PW-11 that the sample fingerprint of the appellant sent to him matched the fingerprint on the jug Ex.P-1. But, we find no evidence through the testimony of any prosecution witness that the sample fingerprint (S) of the appellant were obtained after following the procedure prescribed under the Identification of Prisoners Act, 1920.

9. As held in the decisions reported as AIR 1980 SC 791 State of UP Vs. Ram Babu Mishra and 1994 (5) SCC 152 Sukhvinder Singh Vs. State of Punjab where the provisions of the Identification of Prisoners Act, 1920 are violated, specimen samples pertaining to the fingerprints, handwriting etc. of an accused and reports relatable thereto are inadmissible evidence. We may additionally note that there is no evidence on record that the jugs Ex.P-1 and P-2 were sealed at the spot or soon thereafter. We note that the seizure memo Ex.PW-1/A pertaining to the recovery of the two jugs does not record that the jugs were sealed at the spot and the seals were handed over by the Investigating Officer to the witness to the recovery.

10. Thus, the incriminating evidence emanating from the report Ex.PW-11/A is inadmissible in evidence and hence has to be excluded while considering the circumstantial evidence against the appellant.

11. The wrist watch Ex.P-3 has been claimed to be recovered on 26.02.2003 i.e. the day when the appellant was arrested. Surprisingly, evidenced by the Malkhana Register Ex.PW-23/A duly proved by HC Surya Prakash PW-23, the Malkhana Incharge, the wrist watch has been deposited in the Malkhana on 20.05.2003 i.e. after 2 months and 25 days of the same being recovered. Thus, the recovery of the wrist watch is tainted.

12. Pertaining to the T.V. Set Ex.P-4, as noted above, as per the disclosure statement of the appellant the same was in the house of Rajori at Faridabad, but the recovery thereof has been shown from a room in a house in Badarpur. No witness of the prosecution has clarified as to how the disclosure statement relates to one place and the recovery has been effected from the other.

13. That apart, pertaining to the wrist watch and the television, we find two serious infirmities in the case of the

prosecution. Firstly, neither Rajender Kumar PW-2 nor Ramanand PW-3, the two sons of the deceased who were examined as witnesses of the prosecution deposed that a television and/or a wrist watch belonging to their father was stolen. No doubt, PW-3 has stated that the wrist watch and the T.V. Set belonged to his father. Well, is there not a possibility that the deceased had sold them during his life time?

14. The second infirmity lies in the weakness of the character of evidence pertaining to the test identification of the two items as recorded in the record of proceedings Ex.PW-6/B.

15. The said record of proceedings notes that the T.V. Set was of BPL make and the wrist watch was of HMT make. As recorded in Ex.PW-6/B, the T.V. Set was mixed up with three television sets of the make Videocon, Salora and Phillips. The wrist watch was mixed up with two watches of Titan make, a wrist watch of Citizen make, a wrist watch of Calvin Klein make and a wrist watch of Eden make. It is apparent that no attempt was made to camouflage the T.V. Set in question and the wrist watch in question. The two were mixed up with ostensibly similar objects but with prominent difference

pertaining to the make of the two items, rendering worthless the test identification conducted.

16. The cumulative reasons aforementioned compel us to give the benefit of doubt to the appellant.

17. The appeal is allowed. The impugned judgment and order dated 23.09.2004 convicting the appellant of the offence of murder and robbery is set aside. The order on conviction dated 27.09.2004 is also set aside. The appellant is acquitted of the charge framed against him.

18. The appellant is in jail. He is directed to be set free if not required in custody in any other proceedings.

19. Copy of this order be sent to the Superintendent, Central Jail, Tihar for being made available to the appellant and for compliance.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

October 30, 2009
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