

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

% *Judgment Reserved on: 13th November, 2009*
Judgment Delivered on: 23rd November, 2009

+ **CRL A 293/2008**

DHIRENDER SINGH TOMAR Appellant
Through: Ms.Purnima Sethi, 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? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 15.9.2007, the learned Trial Judge has convicted Dhirender Singh Tomar (hereinafter referred to as the appellant) for the offences punishable under Section 302/307/392/120-B IPC. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life and to pay a fine in sum of Rs.3,000/-. For the offence of attempt to murder, he has been sentenced to undergo rigorous imprisonment for a period of 7 years and to pay a fine in sum of Rs.2,000/-. For the offence of

robbery, he has been sentenced to undergo rigorous imprisonment for 7 years and to pay a fine in sum of Rs.1,000/-. All sentences have been directed to run concurrently.

2. Briefly stated, the case of the prosecution is that appellant Dhirender and his three associates namely; Dheeraj, Bahadur Singh Negi and Ajay Kumar (Proclaimed Offenders) hired a commercial vehicle bearing No.RJ 14 5C 1853 from Raj Kumar PW-6 the proprietor of Gangawat Travels; the vehicle being registered in the name of Chottu Ram Meena but possession thereof entrusted to Banwari Lal PW-5. While hiring the vehicle the four told Raj Kumar that they had to carry goods to Delhi. At the time of hire, the driver of the vehicle was Banwari Lal Vyas (the deceased). When the accused loaded the goods i.e. 4 drums, at the request of Banwari Lal Vyas, Munna Lal PW-2 accompanied all in the vehicle which reached Delhi at late night. Two out of the four drums were left in the house of Sanjay Verma PW-4, the cousin brother-in-law of the appellant. Thereafter, all the accused along with the deceased and Munna Lal PW-2 took food which was purchased en-route by accused Dheeraj (Proclaimed Offender) and was laced with a stupefying drug and as a result the deceased and Munna Lal PW-2 lost conscious. Both of them were strangled and thrown in a garbage dump. Whereas Munna Lal PW-2 did not die, the deceased did. The vehicle took on hire was stolen and could not

be recovered till date. The two drums which were left at the residence of PW-4 were recovered.

3. Process of law was set into motion, when at about 9.00 AM on 17.3.2001, two bodies were found lying at a garbage dump at C-1, DDA Market Flat, Mayur Vihar, Phase-III. Liyakat Ali PW-1 who was running a shop nearby, informed the police control room about the same. ASI Jawahar Singh PW-10 who was posted in a PCR van stationed near the place of occurrence, reached the spot and found one dead body and one injured person lying there. He removed the injured person to Lal Bahadur Shastri Hospital. In the meantime, information was conveyed to PS New Ashok Nagar, where DD No.12-A, Ex.PW-16/A, was recorded. SI Sanjay PW-18 was entrusted the investigation of said DD and accompanied by Const.Bale Ram PW-14, he reached the said spot. On learning that an injured had been shifted to Lal Bahadur Shastri Hospital he went to said hospital and collected the MLC Ex.PW-7/A of an injured unknown person. Since the patient was not fit for making any statement, SI Sanjay made an endorsement Ex.PW-18/B on the copy of DD No.12-A and sent it for registration of an FIR. After the registration of the FIR Ex.PW-16/B, the investigation was transferred to Insp.Ashwani Kumar PW-23. Insp.Ashwani Kumar got photographed the spot where the bodies were noted and lifted blood stained control earth from the spot. He seized the

dead body of an unknown person and prepared the inquest papers and forwarded the body and the papers to the mortuary at Lal Bahadur Shastri Hospital with a request that the body be preserved for 72 hours as it was unidentified.

4. No progress could be made for the next 3 days as the police got no clue. On 21.3.2001, the injured who was admitted in Lal Bahadur Shastri Hospital, was declared fit to make a statement. Insp.Ashwani Kumar recorded his statement wherein he disclosed that his name was Munna Lal and that on 16.3.2001 one Dheeraj @ Chhotu and his 3 other associates hired a white coloured Mahindra Marshal Vehicle bearing No. RJ 14 5C 1853 from Gangawat Travels to take 4 drums containing chemicals from Jaipur to Delhi. That the said vehicle was given on rent by the agency, only at the guarantee of one Kamal. The vehicle was driven by Banwari Lal Vyas, and at the request of Dheeraj, he also accompanied them to Delhi. At about 12:30 AM in the intervening night of 16/17.3.2001 they reached Kondli and visited the house of a brother-in-law (jija) of Dheeraj. They were carrying packed dinner with them, which they ate outside the said house and before continuing with their journey, left two of the four drums at the house of the brother-in-law of Dheeraj. After that he became unconscious and regained consciousness only when he was in the hospital.

5. Since on the basis of the said statement of Munna Lal, Insp.Ashwani Kumar learnt the name of the deceased and his being a resident of Jaipur, information was conveyed at the office of Gangawat Travels, Jaipur about the incident and as a result two relatives of the deceased came to Delhi and identified the dead body as that of Banwari Lal Vyas. After the dead body was identified on 21.3.2001 itself, Dr.L.C.Gupta PW-17, conducted the post-mortem on the body and prepared his report Ex.PW-17/B. He opined that the death was homicidal and that the cause of death was asphyxia resulting from sustained and forceful constriction of the neck with the help of ligature material, which was sufficient in the ordinary course to cause death. He recorded the existence of ligature marks on the neck of the dead body.

6. Munna Lal led the police team to Kondli and from the house of Sanjay Verma PW-4, got recovered the two drums left at the house of PW-4 by the accused persons, as recorded in the seizure memo Ex.PW-4/A. Statement of Sanjay Verma under Section 161 Cr.P.C. was recorded as per which Chottu (Dheeraj) was a neighbour of his father-in-law. He disclosed that Chottu and his brother Kala (the appellant), along with two other persons had come to his house at late night in the intervening night of 16th and 17th March 2001 and after

unloading two drums sat outside his house and took meals and thereafter left.

7. It is apparent that the appellant, his brother Dheeraj, Bahadur Singh Negi and Ajay Kumar were the persons whose involvement in the crime has surfaced as per the statement of Munna Lal.

8. On 24.3.2001, Insp.Ashwani Kumar arrested Dhirender Singh Tomar i.e. the appellant who confessed to the crime. Since nothing incriminating has been recovered from the appellant or pursuant to his statement Ex.PW-18/G, we need not note further because the statement being a confession to the police is inadmissible in evidence.

9. The other three co-accused could not be apprehended and were declared proclaimed offenders.

10. The appellant was put to trial and the prosecution examined 25 witnesses. Since the case of the prosecution is based on the last seen evidence given by PW-2 and PW-4, we note only their testimonies for the reason in convicting the appellant the learned Trial Judge has held that the testimony of PW-2 establishes that the appellant along with his three associates took on hire from Raj Kumar PW-6 vehicle bearing registration No.RJ 14 5C 1853 which was driven by the deceased and the journey commenced from Jaipur. The appellant and his

associates travelled in the vehicle to Delhi, in which vehicle PW-2 was a co-passenger. On reaching Delhi the vehicle parked outside the house of PW-4 where the appellant and his associates took food along with the deceased and PW-2, before that 2 out of 4 drums which were being transported were kept in the house of PW-4. The food being laced with some stupefying drug, PW-2 and the deceased lost consciousness. Both were strangled and thinking that both were dead, their bodies were thrown in a garbage dump nearby the house of PW-4. The motive for the crime was to rob the vehicle, which indeed was robbed and could not be recovered.

11. At the trial Raj Kumar PW-6 the proprietor of Gangawat Travels deposed that the vehicle was with him through Banwari Lal PW-5 and that on 16.3.2001 he let on hire the vehicle to Dheeraj on the guarantee of one Kamal, a driver. He was told that some goods had to be transported to Delhi. He deposed that the vehicle was being driven by the deceased Banwari Lal Vyas. Banwari Lal PW-5 deposed that the vehicle in question was registered in the name of Chottu Ram Meena but he was the owner thereof. The driver of the vehicle was Banwari Lal Vyas. On 16.3.2001 his vehicle was hired by someone through Munna Lal but the vehicle never returned. We may note that both the witnesses were not cross examined.

12. Munna Lal PW-2 deposed that accused Dheeraj was known to him since a year prior to the incident. On 16.3.2001 accused Dheeraj and his three friends visited him and asked him to arrange for a vehicle to carry drums to Delhi. Appellant Dhirender was one of the three associates of Dheeraj. He took them to Gangawat Travels, where on an assurance given by a driver Kamal, Gangawat Travels agreed to provide them with a vehicle. The vehicle assigned to them was a Mahindra Marshall bearing registration No.RJ 14 5C 1853 and it was to be driven by Banwari Lal. On the request of Dheeraj, he i.e. Munna Lal also agreed to go to Delhi with them. Dheeraj and his associates loaded four drums in said vehicle. At around midnight, they reached Kondli and visited the house of a brother-in-law of Dheeraj. The accused persons were carrying packed food with them, which they ate outside the house of the brother-in-law of Dheeraj. After eating, he i.e. PW-2 became unconscious and regained consciousness only at the hospital where he learnt that the driver Banwari Lal had died.

13. Sanjay Verma PW-4 deposed that he knew appellant Dhirender @ Kala and his brother Chhotu as they were distant relatives of his wife Poonam. At around 12.30 midnight in the intervening night of 16/17.3.2001, Chhotu and Kala visited him at his residence in Kondli with 2/3 other persons. They left two drums of pesticide at his house, which drums, after 2/3 days

were handed over by him to the police when police visited his house for investigation of the present case.

14. The post-mortem report of the deceased was proved through the testimony of Dr.L.C.Gupta PW-17, which conclusively establishes that the deceased died due to manual strangulation i.e. his death was a clear case of murder. Dr.Tapas Chatterjee PW-7 proved the MLC Ex.PW-7/A of Munna Lal PW-2 which clearly establishes that an attempt was made to murder Munna Lal.

15. At the hearing of the appeal, learned counsel for the appellant made a two-fold submission. First, it was urged that Munna Lal PW-2, in his statements i.e. the one made to the investigating officer and the other made in court, repeatedly named Dheeraj and his associates as the ones whom he accompanied. In his testimony in Court, he first identified the appellant as Dheeraj and only later on, corrected himself by stating that the appellant was Dhirender. That even while describing the incident, at most of the places, he names Dheeraj and not Dhirender. As such, the learned counsel urged that Dhirender was not the culprit and since he is the brother of Dheeraj, he has been wrongly inculpated by the prosecution. The second argument of the counsel was that the two crucial witnesses; being, Kamal, the driver on whose guarantee Gangawat Travels gave the accused persons the vehicle on hire

and who had also seen the accused persons, the deceased and Munna Lal PW-2 together before they left for Delhi; and Poonam, the wife of Sanjay Verma PW-4 who was also present at the house when the accused persons left two drums there; being material witnesses ought to have been examined and they not being examined entitled the appellant to be acquitted.

16. The second submission is without any legal basis. Suffice would it be to state that it is the quality of the evidence and not the quantity thereof which is relevant at any trial. A single truthful witness carries more weight than a thousand liars. Repeatedly stated lies never become truth and a truth once stated is sufficient.

17. There is no need to duplicate witnesses. There is no need to cite two witnesses who deposed to the same fact. What would have Kamal deposed if brought as a witness? He would have, at best, deposed that at his guarantee the vehicle was given on hire by Raj Kumar to Dheeraj and at that time the appellant was with his brother and so were the two other co-accused. This has been deposed to by PW-2. There was no need to duplicate the evidence. Similarly, what would Poonam the wife of Sanjay Verma have deposed? She would have simply deposed that the appellants were the neighbours of her father, a fact deposed to by PW-4 Sanjay Verma.

18. Now, Sanjay Verma is a close acquaintance of Dheeraj and his brother, the appellant. He has no axe to grind. Why should he depose falsely? He has not even been cross examined. No suggestion has been put to him that he has deposed falsely. The evidence establishes that the appellant along with his brother Chottu had come to his house at 12:30 in the intervening night of 16th and 17th March, 2001 along with two or three persons. They had travelled in a white Marshal vehicle. They had brought their meals with them. They kept two drums in his house and after taking meals left the place and that after 2-3 days the police recovered two drums Ex.P-1 and P-2 from his house. It is apparent that the testimony of Sanjay Verma establishes the presence of appellant in the house of PW-4 and that the vehicle in question was outside the house of PW-4.

19. No doubt, PW-2, has fumbled with words in that he referred to the appellant as Dheeraj at the first instance but immediately corrected himself by stating that he was referring to Dhirender i.e. the appellant, went on to depose as noted above. It is true that in his further deposition he kept on referring to Dheeraj. But, therefrom it cannot be urged that the witness was lying.

20. A perusal of the testimony of PW-2 evidences that for unexplainable reasons he got stuck up with the name Dheeraj

and kept on talking about Dheeraj. The reason is obvious. His testimony as also the testimony of Raj Kumar shows that Dheeraj was playing an active role. It does happen that where out of a group, one of them plays an active role, the witnesses keep on referring to him and his associates with the difference that the said person is named and the others are referred as the associates.

21. The testimony of PW-2 establishes that the appellant, his brother Dheeraj and two more accused were with the deceased and PW-2 when they took food. The DD entries and the testimony of SI Sanjay PW-18 establishes that the dead body of the deceased was recovered from a garbage dump at Mayur Vihar Phase III which is near village Kondli where the accused took meals along with PW-2 and the deceased. This was the place where PW-2 was picked up in an unconscious condition. The theory of last seen evidence clearly comes into play. So proximate is the time when the crime was committed to the place of last seen that any reasonable person would conclude that the appellant and his three co-accused who are proclaimed offenders are the offenders unless the appellant explains when did he part company with the deceased and the injured [AIR 1955 SC 801 Deonandan Mishra Vs. State of Bihar, (2002) 8 SCC 45 Bodhraj @ Bodha & Ors. vs. State of Jammu & Kashmir and (2003) 7 SCC 37 Babu S/o Raveendran vs. Babu S/o

Bahuleyan & Anr., 2003 (8) SCC 93 Amit @ Ammu Vs. State of Maharashtra and 2005 (3) SCC 114 State of UP Vs. Satish]. The testimony of PW-2 clearly establishes that he lost consciousness immediately when he ate the food. At that point of time, the appellant was present.

22. The vehicle which was took on hire is missing and has till date not been traced.

23. We find no merit in the appeal which is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

November 23, 2009
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