

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

+ **Crl. Appeal No. 344/2008**

% Date of Order : February 02, 2009

RAMESH KUMAR Appellant
Through : Mr.K.K. Jha, Advocate.

VERSUS

STATE (GOVT. OF NCT DELHI) Respondent
Through : Mr. Pawan Sharma, 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?
- (3) Whether the judgment should be reported in the Digest ?

PRADEEP NANDRAJOG, J. (Oral)

1. Heard learned counsel for the parties.
2. Police surfaced on the scene when on 1.7.2006 at about 9.30 P.M. a telephonic information was given at number 100 informing that a stabbing incident had taken place in a street at Khajuri Khas. The information was recorded at Police

Station Khajuri Khas. SI Rajesh Dogra PW-21 and Insp. B.P.Sharma PW-22, accompanied by a constable proceeded to the spot and met Shashi PW-1 who happens to be the wife of the appellant and sister of the deceased Chander Prakash. Her statement Ex.PW-22/A was recorded by Insp. B.P. Sharma.

3. As per the statement she disclosed to the police that she was a resident of house No.E-2, Gali No.16, Bijli Ghar, Sonia Vihar, Delhi and her husband used to drink liquor in the house of one Hari Ram, which was objected to by her. Due to this, her husband used to be annoyed with her. That at 9.30 P.M. her husband was sitting outside the house of Hari Ram. When she went to call him he got angry and on returning to the house started quarreling with her. He said that she had insulted him in front of neighbours and started beating her. He picked up a knife and stabbed her in her hand. She immediately went to the house of her mother Brijwati PW-5 and brother Chander Prakash @ Dabboo who lived nearby. That her brother and her mother came to the house with her. Her husband attacked her brother Chander Prakash and injured him. Bhagwan Shah PW-6, and other people gathered

at the spot. After inflicting injuries on her brother her husband fled and that her brother was taken to the hospital.

4. Inspector B.P.Sharma made an endorsement, Ex.PW-22/B, beneath the statement and forwarded the same to the Police Station for registration of a FIR.

5. Since Shashi was found with an injury on her hand she was taken to the hospital where she was examined by Dr. P. Ram PW-20, who recorded the MLC Ex.PW-20/A to the effect that Shashi had a superficial incised wound over the left forearm. While recording the history of the injury he recorded *"Alleged H/O Assault"*.

6. At the hospital, namely Trauma Centre, Majnu Ka Tila, where Chander Prakash was removed Inspector B.P.Sharma learnt that Chander Prakash had been declared dead when brought to the hospital. Dr. G.C. Prabhat PW-18, had recorded the MLC of the deceased Ex.PW-18/A. It was noted on the MLC that Chander Prakash had been brought to the hospital by Bhagwan Shah. History of the injuries was noted as *"Alleged H/O stabbed by his relative as told by B/by No.2"*.

7. The doctor removed the clothes of the deceased

and handed over the same to Insp. B.P. Sharma who seized the same vide seizure memo Ex.PW-3/A and affixed the seal of 'BPS' on the same.

8. The dead body was sent for post-mortem which was conducted by Dr. Arvind PW-19 who recorded the result of the post-mortem in the post-mortem report Ex.PW-19/B as under:-

“(1) Stab wound of size 2.8 cm x 0.3 cm present over the right lower chest, wound was 7 cm right to mid line and 5.5 cm below to right nipple. Wound was vertically placed, upper edge of wound was acute. The direction of the wound was backward and medial. Wound entered the chest cavity after cutting fifth rib and fourth inter costal muscle at mid clavicular line, making a nic on lower margin of upper lobe of right lung and then entered the abdominal cavity after cutting diaphragm into the right lobe of liver. Right chest cavity and abdominal cavity was containing blood and blood clot. Total depth of the wound was 11 cm.

(2) Incised wound of size 1.2 cm x .3 cm x .5 cm present over left temple region 1 cm lateral to outer border of left eye brow placed obliquely, tailing was present for a distance of .5 cm on lower lateral edge of wound.

Injury No. 1 was opined to be sufficient in the ordinary course of nature to cause death.

9. Returning to the spot, control earth, blood-stained earth and grass stained with blood were lifted and sealed by Insp. B.P. Sharma; seizure whereof was noted in the seizure

memos Ex.PW-21/A and Ex.PW-21/B.

10. A rough site plan was prepared at the pointing out of Shashi. The spot where the deceased was attacked, was pointed out by Shashi as recorded in the pointing out memo Ex.PW-21/C. Ct. Sanjeev PW-9 was summoned who took five photographs of the site of the incident Ex.PW-9/A-1 to Ex.PW-9/A-5; negatives whereof are Ex.PW-9/B-1 to Ex.PW-9/B-5.

11. Site plan to scale was thereafter prepared by PW-16 SI Mukesh Jain. The same is Ex.PW-16/A.

12. The appellant was apprehended as per arrest memo Ex.PW-6/D and at the time of his arrest a shirt worn by him and having blood stains thereon was seized vide seizure memo Ex.PW-6/C. The seal of 'BPS' was affixed on the pullandah prepared.

13. We eschew reference to the alleged recovery of a knife at the instance of the appellant for the reason there is conflicting evidence of the circumstance and the time when the same was seized. Indeed, the learned trial Judge has not used the same as a piece of incriminating evidence against the appellant.

14. But we hasten to note that the learned trial Judge

has held, in our opinion correctly, that merely because the weapon of offence is not recovered does not mean that the accused has to be let off on said ground.

15. The blood stained clothes of the deceased seized at the hospital; the blood stained earth and blood stained grass seized at the site of occurrence; the shirt worn by the appellant and seized at the time of his arrest were all sent for forensic examination to Forensic Science Laboratory (FSL) at Madhuban Chowk. The report of the FSL, Ex.PW-22/F, was obtained, as per which the clothes worn by the deceased and handed over to the police by the doctor as also the blood stained grass and earth control seized from the site of occurrence and additionally the shirt worn by the appellant were opined as having blood of human origin. Save and except blood stains on grass and earth which gave no reaction, all other articles were opined to be having blood group 'A'.

16. During investigation statement of Brijwati PW-5 the mother of the deceased as also Bhagwan Shah PW-6 were recorded. As per the said statements the appellant was named by them as the assailant.

17. Armed with the aforesaid material i.e. seizures effected, and as noted above, the report of the FSL, the MLC and the post-mortem report of the deceased and hoping that the witnesses who had disclosed to the police what had happened would support the case of the prosecution, a charge sheet was filed charging the appellant of having murdered his brother-in-law.

18. PW-1 Shashi, the wife of the appellant and the sister of the deceased did not support the case of the prosecution. She deposed that on 1.7.2006 she was returning after attending call of nature and heard commotion. She hurried to reach her house and in the process fell over a stone and sustained injuries on her hand. She deposed that she became perplexed and when she reached her house she saw that the police had reached; lot of people had gathered and thereafter the police took away her husband.

19. Relevant would it be to note that when she was cross examined by the learned Public Prosecutor she stated "*I had pointed out the place to the police from where Dabboo was lifted*". Dabboo is the pet name of Chander Prakash.

20. Brijwati, mother of the deceased and mother-in-

law of the appellant was examined as PW-5. She fully supported the case of the prosecution and deposed that her daughter Shashi had come to their house complaining that the accused had beaten her and that her son Chander Prakash accompanied by herself i.e. Brijwati and Shashi went to the house of the accused. Accused stabbed Chander Prakash with a knife. Her son fell down. He was stabbed again. She raised cries. People gathered. The appellant fled. Police came. Her son was removed to the hospital where he died. She stated that the police recorded the statement of her daughter at the spot.

21. She was cross examined. Indeed, nothing has been brought out in the cross examination to discredit the witnesses. None has been shown to us at the hearing today.

22. Bhagwan Shah PW-6 also did not support the case of the prosecution fully. He stated that it was dark when he reached the spot and saw Chander Prakash lying in the street. He deposed that he summoned the PCR van and took Chander Prakash to the Trauma Centre in the ambulance. But, he supported the prosecution with reference to the appellant being arrested on information provided by him. He

supported the prosecution with reference to the seizure of the bloodstained shirt which the appellant was wearing as recorded in the seizure memo Ex.PW-6/C. He affirmed that the mother and the sister of the deceased were present at the spot when he reached the spot.

23. On being cross-examined by counsel for the appellant he stated that it was correct that at the time of the incident there was darkness in the area.

24. Dr. G.C. Prabhat PW-18 deposed that Chander Prakash was brought to the hospital and that he correctly recorded what he saw and was told in the MLC Ex.PW-18/A.

25. We note that the witness was cross examined and no questions were put to him by the counsel for the accused with reference to how he had recorded the fact that injured was stabbed by a relative as told to him by 'brought by No.2'. We note that in the MLC the name of the person recorded as *"Brought by 2 is Bhagwan Shah"*.

26. Dr. P.Ram PW-20 who had treated Shashi when she was brought to the hospital proved the MLC of Shashi Ex.PW-20/A. We note that Dr. P.Ram was not cross examined.

27. We eschew reference to the testimony of the

police witnesses who were associated with the investigation for the reason no submissions have been made pertaining to the seizure effected.

28. Learned trial Judge has believed the testimony of PW-5 and noting the post-mortem report has held that the evidence establishes the intention of the appellant to murder his brother-in-law. The result is the conviction of the appellant for the offence of murdering his brother-in-law.

29. At the hearing of the appeal learned counsel for the appellant has made the following submissions:-

(a) PW-6 categorically stated that it was dark as there was no electricity supply. The time was 9.30 P.M. Thus, PW-5 could not have seen what she allegedly deposed.

(b) That PW-5 was an interested witness as she was the mother of the deceased and therefore her testimony has to be ignored.

(c) The third submission made by counsel is that there is no reason to disbelieve PW-1 who was the natural witness as also PW-6 and that their testimonies show that the assailant was an unknown person.

30. The submissions made by learned counsel for the

appellant have hardly impressed us.

31. PW-5, the mother of the deceased happens to be the mother-in-law of the appellant. If she did not know who the assailant was, surely she would not have implicated her son-in-law.

32. A related witness is not an interested witness. An interested witness is a witness who has a motive to falsely implicate the accused persons. Enmity of said witness with the accused has to be shown. Indeed, in the instant case none has been shown to us.

33. We note that Shashi has not supported the case of the prosecution but has admitted one fact which runs contrary to her earlier deposition. As noted above, she has admitted that she pointed out to the police the place where her brother Dabboo was lifted before he was transported to the hospital. If she had seen nothing, wherefrom could she point out the place where her brother fell after he was stabbed and was removed to the hospital? This admission of Shashi shows that she had indeed assisted the police when the site plan was prepared because the investigating officer has clearly deposed that he prepared the site plan with the

assistance of Shashi.

34. We note that PW-6 has corroborated Shashi's presence at the spot as also the presence of Brijwati PW-5, in that, he categorically stated that both were present at the spot when he had reached. We note that this statement of PW-6 has gone unchallenged. Thus, presence of PW-5 at the spot stands corroborated.

35. We note that when she appeared in the Court Shashi may have disclaimed the circumstance under which she received injuries on her forearm, but it has to be further noted that when Dr.P.Ram PW-20 deposed, no question has been put to him; no suggestion has been made to him, with respect to the circumstance of his having written on the MLC of Shashi that the injury was a result of assault. The MLC Ex.PW-20/A proves the fact that Shashi had told the doctor that she had sustained injuries as a result of being assaulted.

36. This corroborates PW-5 with respect to what had happened, requiring PW-5 to reach the house of the appellant along with her son Chander Prakash. Indeed, if Shashi was not injured by her husband, she would not have gone to the house of her mother seeking help and as a result thereof, her

mother Brijwati and brother Chander Prakash would not have visited her house.

37. The appellant has not explained as to wherefrom blood came on his shirt. The appellant has rendered no explanation on the fact that the blood of the same group was found on his shirt as was found on the clothes of the deceased.

38. We note that from the blood stained earth and the grass lifted from the site, human blood was detected.

39. We are satisfied that the learned trial Judge has correctly appreciated the evidence and has returned a correct finding, namely, that the deceased was assaulted by the appellant.

40. On the issue whether it is a case of murder or culpable homicide not amounting to murder, suffice would it be to say that no submission has been made on this issue at the hearing of the appeal. Indeed, the injury caused on the deceased as per the post-mortem report, contents whereof have been noted by us in para 8 above show that the knife blow was directed at a vital part of the body. The knife entered the chest cavity after cutting the fourth and fifth rib

costal muscle at mid-clavicular line. It pierced through the upper lobe of the right lung and cutting through the abdominal cavity pierced further ahead, cutting the diaphragm and then the right lobe of the liver. The knife had caused a wound 11 cms deep. This shows the force with which the blow was inflicted. Indeed, from the act of the appellant an intention to cause the death of the deceased can be reasonably inferred. In any case, the intention to cause a dangerous injury can be gathered. The nature of the injury itself shows that it was so imminently dangerous that death would result in all probability.

41. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

February 02, 2009
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