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IN THE HIGH COURT OF DELHI

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Judgment reserved on : 30.03.2009

Judgment delivered on: 02.04.2009

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CRL.A. No.538/2008

RAJU

...Appellant

Through : Mr.P.S.Goindi, 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? Yes
3. Whether judgment should be reported in Digest? Yes

: PRADEEP NANDRAJOG, J.

1. Case of the prosecution is that PW-2 Yashveer, the brother of the deceased and PW-6 Kanwar Singh, the father of the deceased had witnessed appellant stabbing Hari Krishan in Gali No.3, Padam Nagar, Sarai Rohilla, Delhi and had fled. It was further the case of the prosecution that HC Satya Narain PW-10 and HC Rajender Prasad PW-17, on patrolling duty, had also chanced to see the appellant stabbing the deceased and in spite of being chased, had fled.

2. The date of the incident is 17.3.2005. The time is stated to be between 8:20 PM to 8:30 PM.

3. Information was received at the police station about a man being stabbed in Padam Nagar, Sarai Rohilla, which was recorded at 20.47 PM vide DD No.31A Ex.PW-3/A. SI R.B.Joshi accompanied by Const. Suresh left for the spot and learnt on reaching there that the injured had been removed to the hospital in a PCR Van. SI R.B. Joshi went to the hospital and learnt that the injured had been brought dead. He obtained a copy of the MLC Ex.PW-15/A of the deceased which records under the caption: NAME OF THE RELATIVE OR FRIEND : *HC OM PRAKASH*. It records that the injured was brought at the hospital i.e. Hindu Rao Hospital at 9.15 PM. SI R.B. Joshi went back to the spot where the deceased had been stabbed and met Kanwar Singh PW-6, the father of the deceased who made a statement Ex.PW-6/A informing that he was present in his house and his son Hari Krishan (the deceased) had left for some work and at around 8:30 PM somebody informed him that a boy was quarreling with his son in Gali No.3. Accompanied with his son Yashveer, he i.e. Kanwar Singh immediately proceeded towards Gali No.3 and on reaching there saw appellant who resides in House No.221/13, Gali No.8, Padam Nagar, assaulting his son with a knife. On seeing

this, he cried for help. Two policemen responded to his cries. Raju fled. He was chased but managed to run away. Making an endorsement Ex.PW-20/A SI R.B. Joshi forwarded the statement to the police station at 11:00 PM so that an FIR could be registered. The FIR Ex.PW-8/A was registered at the police station at 11:15 PM.

4. As per the father of the deceased who claimed to be an eye-witness, his son was stabbed in Gali No.3 and had run towards his house which was on Gali No.2 and on the way his slipper had come loose. SI R.B. Joshi lifted a blood sample from street No.2, blood mixed earth and earth control from street No.2 as recorded in the seizure memo Ex.PW-3/D. Blood sample, blood mixed earth and earth control was also picked up from street No.3 as per seizure memo Ex.PW-3/B. The chappal recovered between street No.2 and 3 was seized vide seizure memo Ex.PW-3/C. Rough site plan Ex.PW-19/A was prepared by Inspector Daya Nand PW-19 who had also joined the investigation by then.

5. Appellant Raju was apprehended at 01:30 AM on 18.3.2005 i.e. in the intervening night of 17th and 18th March 2005, by HC Satnarayan and Const.Rajender and Inspector Daya Nand as recorded in the arrest memo Ex.PW-10/D.

Personal search of the appellant was conducted as recorded in

the memo Ex.PW-10/C. A knife was recovered from the appellant which was seized and after sketch Ex.PW-10/A thereof was prepared, was put inside a parcel on which the seal of 'DN' was affixed and seizure memo Ex.PW-10/B was drawn. The shirt of the appellant stated to be stained with blood was seized vide seizure memo Ex.PW-10/G and sealed 'DN' was affixed on the parcel prepared.

6. The dead body of Hari Krishan was sent to the mortuary where Dr.C.B.Dabas PW-5 conducted the post-mortem and gave his report Ex.PW-5/A noting therein that the post mortem commenced at 2:00 PM on 18.3.2005 and that six injuries were noted on the person of the deceased out of which two were deep penetrating injuries and the remaining were incised cuts. The deceased had died as a result of the stab wounds, both of which were opined to be sufficient in the ordinary course of nature to cause death. After conducting the post-mortem Dr.C.B. Dabas handed over a blood sample of the deceased on a gauze and his clothes to the police which were seized vide memo Ex.PW-19/A.

7. Surprisingly enough, evidenced by Ex.PW-11/A, the photocopy of the malkhana register, the sealed parcel containing the blood sample of the deceased and the clothes of the deceased as also the clothes recovered from the

appellant at the time of his arrest as also the knife recovered from the appellant at the time of his arrest were all given to the malkhana mohrir i.e. the constable in-charge of the malkhana at one time and kept by him in the malkhana. Relevant would it be to note that the entry of all the parcels is one and it stands firstly recorded that the blood sample and the clothes of the deceased have been received in a parcel; thereafter it is recorded that the clothes of the appellant have been received in a parcel followed by it being recorded that the knife recovered from the appellant has been received in a parcel.

8. Draftsman SI Mahesh Kumar PW-18 was taken to the place of occurrence on 27.3.2005 and the site plan to scale Ex.PW-18/A was prepared by him. The site plan Ex.PW-18/A lists four spots 'A', 'B', 'C' and 'D' of significance. Spot marked 'A' shows the place where appellant Raju stabbed the deceased. Spot marked 'B' shows the place from where Kanwar Singh and Yashvir Singh witnessed the occurrence. Spot marked 'C' shows the place where a pair of hawai chappal of the deceased were found. The spot marked 'D' shows the place where the deceased fell at the entrance of gali No.2. It is apparent that to reach from spot marked 'A' to spot marked 'D' one has to cross the spot marked 'B' and

thereafter the spot marked 'C'. Further, it is apparent that if a line is drawn to join the spot marked 'A' 'B' 'C' and 'D' the same would be a straight line joining the spot marked 'A' to spot marked 'B' and would thereafter be at an angle of 90 degrees to the left thereby forming the line which joins spot marked 'B' and the spot marked 'C'. The line would continue to be a straight line reaching the spot marked 'D'. The distance covered between the spot marked 'A' and the spot marked 'D' would be about 200 meters.

9. At the trial Kanwal Singh PW-6, the father of the deceased and Yashvir PW-2, the brother of the deceased deposed the same facts which were disclosed by PW-6 in his statement Ex.PW-6/A, which facts have been noted in brief by us in para 3 above. HC Satya Narain PW-10 and HC Rajender Prasad PW-17 deposed that they were on patrolling duty on 17.3.2005 and were near gali No.3, Padam Nagar, Sarai Rohilla when cries of somebody attracted them towards the gali and they saw the appellant inflicting knife blows on the deceased and fleeing.

10. After noting the deposition of PW-2, PW-6, PW-10 and PW-17 and without any analysis of their testimony, in para 6 of the impugned judgment and order dated 31.10.2007 the learned Trial Judge has concluded as under:-

“PW-2, PW-6, PW-10 and PW-17 are the eye witnesses to the incident. Perusal of their evidence shows that they have supported the case of the prosecution. They have deposed that accused has given the Chhura blows on the person of the deceased and that accused after giving the Chhura blows has ran away from the spot. They have been cross-examined by the accused but no such material has come on record to disbelieve their testimonies.

Evidence of PW-10 and PW-17 also proves that accused was apprehended with the blood stained Chhura near State Bank of India Old Rohtak Road. Accused was arrested and the Chhura was seized.”

11. It is unfortunate that the learned Trial Judge has ignored certain very vital circumstances which establish that neither PW-2 nor PW-6 i.e. the brother and the father of the deceased were even near the place of the incident. While noting the site plan in para 8 above we have noted that as per PW-2 and PW-6 they witnessed the incident from the place marked 'B'. If this be so, it is apparent that to reach the spot marked 'C' and thereon to the spot marked 'D', the injured had to cross the spot marked 'B'. Obviously, the injured crossed the spot marked 'B' for the reason the blood of the deceased was lifted from the spot marked 'A' and spot marked 'D'. It is just not possible that PW-2 and PW-6, if present at the spot, would not have held on to the deceased when he reached point 'C'. Spot marked 'D' is at the entrance of gali No.2 in which the house of the two witnesses and the deceased was

situated. The spot where the deceased was injured is in gali No.3. It is obvious that the deceased, in an injured condition, ran towards his house to seek a rescue. If his father and brother were already on the street No.3, at the entrance whereof is the spot marked 'B', where was the need for him to run further down? Further, the learned Trial Judge has ignored the fact that in the MLC Ex.PW-15/A the name of the person who has brought the injured has been recorded as HC Om Prakash. Had PW-2 and PW-6 been present at the spot, if not both, at least one of them would have accompanied the injured to the hospital, and being a close relation, one being the father and the other the brother, would have told the doctor on duty that they had brought the injured to the hospital. Not only that. SI R.B.Joshi PW-20 accompanied by Const.Suresh who left for the spot where the occurrence took place when DD Entry No.31-A was recorded at the police station at 20:47 PM has categorically deposed that on reaching the spot he learnt that the injured had been removed to the hospital in a PCR Van. That leaving behind Const.Suresh at the spot, he proceeded to the hospital and learnt that the injured had been declared dead, therefore he obtained a copy of the MLC of the deceased and finding no eye witness in the hospital, returned to the spot where he met Kanwar Singh PW-

6, the father of the deceased whose statement Ex.PW-6/A was recorded by him. Assuming that the doctor on duty ignored the presence of either PW-2 or PW-6 in the hospital and since the injured was removed to the hospital in a PCR Van, wrote that the person who brought the injured to the hospital was HC Om Prakash, PW-2 and PW-6, if present in the hospital would have certainly met SI R.B.Joshi. They, not being seen by SI R.B.Joshi in the hospital establishes that the two were not in the hospital. If this be so, it is unbelievable that the two were present in the street when Hari Kishan was stabbed. The learned Trial Judge has further ignored that on being cross examined, PW-6 disclosed that the distance between his house and gali No.3 is 50 meters and it takes about 2 to 3 minutes to reach gali No.3. Ignoring the fact that the site plan Ex.PW-18/A shows the distance to be more, a question needs to be posed and answer: *'Whether it was possible for PW-2 and PW-6 to reach the spot where Hari Kishan was stabbed and have seen him being stabbed?'* Now, both PW-2 and PW-6 have stated that they were in their house and somebody informed them that a person was quarreling with Hari Kishan in gali No.3. This led them to gali No.3. It is apparent that the person, who on seeing the quarrel in gali No.3, went to inform PW-2 and PW-6, would take 2 to 3 minutes to go to the house

of PW-2 and PW-6, who, on receipt of information of the quarrel, would take 2 to 3 minutes to reach gali No.3 from their house. The MLC of the deceased shows that he has been inflicted with 2 stab injuries and 4 incised cuts. There are no lacerated wounds nor are there any contusion wounds; absence whereof shows that no scuffle took place, and he who inflicted the wounds on the deceased did so by the use of a sharp edged weapon; meaning thereby, the assault was quick and swift. The said facts further de-probabilize the presence of PW-2 and PW-6 at the spot.

12. No doubt, the two police officers namely HC Satya Narain PW-10 and HC Rajender Prasad PW-17 have deposed of having seen the appellant stabbing the deceased, but surprisingly enough in the site plan Ex.PW-18/A, the place where the two saw the incident has not been marked; it is interesting to note that the place wherefrom PW-2 and PW-6 claimed to have witnessed the incident has been shown. The presence of the said two police officers at the spot is doubtful because no police officer i.e. neither the Officer In Charge of the PCR namely HC Om Prakash who removed the injured to the hospital, nor SI R.B.Joshi have deposed that they saw or met the two police officers i.e. PW-10 and PW-17 at the spot. Both i.e. PW-10 and PW-17 are beat constables and the

probability of the two deposing at the instance of PW-6 cannot be ruled out. It is not unknown in the city of Delhi that beat constables developed friendship with some people in the locality assigned to the beat constable. In any case, the presence of PW-10 and PW-17 at the spot is doubtful because neither SI R.B.Joshi nor HC Om Prakash has deposed of having seen them at the spot. We note that HC Om Prakash has been examined as PW-9.

13. With the eye witness account failing, the only other incriminating evidence sought to be brought on record by the appellant is the recovery of a blood stained knife from him when he was arrested and the presence of human blood of the same group as that of the deceased from his shirt at the time of his arrest.

14. The seizure memo of the knife and the shirt i.e. Ex.PW-10/B and Ex.PW-10/G evidence that the seal of DN was affixed on the parcels prepared in which the knife and the shirt were kept. We have noted hereinabove that the appellant was arrested at 1:30 AM on 18.3.2005. The incident took place at around 8:30 PM on 17.3.2005. It is apparent that the appellant was arrested in the intervening night (in the middle of the night) of 17th and 18th March 2005. We have noted

hereinabove that the post-mortem of the deceased

commenced at 2:10 PM on 18.3.2005. We have noted hereinabove that the Malkhana register shows that the parcels containing the blood sample of the deceased as also the parcel containing the blood stained clothes of the deceased were deposited in the Malkhana along with the parcel containing the knife and the clothes of the appellant. The learned Trial Judge has ignored that under the circumstances there was a clear possibility of the knife and the shirt of the appellant being tampered with, more so for the reason, the seal DN remained with the investigating officer. We note that not a single witness to the seizure memos has deposed that after seizure the articles concerned was put inside a parcel which was sealed with seal of DN and that the said seal was handed over by the IO to somebody else.

15. That apart, as observed in the decisions reported as Deva Singh Vs. State of Rajasthan 1999 Cri LJ 265 (SC), Prabhoo Vs. State of U.P. AIR 1963 SC 1113 and Surjeet Singh Vs. State of Punjab AIR 1994 SC 110, mere recoveries of a blood stained knife or an axe and/or recovery of blood stained clothes stated to be worn by the assailant pursuant to the disclosure statement of the assailant, without any further evidence, are insufficient circumstances leading to a

conclusion on a reasonable hypothesis that the person concerned is guilty of the offence.

16. The appeal is allowed. The impugned judgment and order dated 31.10.2007 is set aside. The appellant is acquitted of the charge of having murdered Hari Kishan.

17. Copy of this order be sent to the Superintendent Central Jail Tihar for compliance. The appellant be set free if not required in any other case.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

April 02, 2009
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