

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

+ **Crl. Appeal No. 442/2007**

% **Date of Order : March 18, 2009**

RAVI Appellant
Through : Mr. Ashish Kumar Das, Advocate

VERSUS

STATE Respondent
Through : Ms. Richa Kapoor, Advocate

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? Yes.
- (2) To be referred to the reporter or not? Yes.
- (3) Whether the judgment should be reported in the Digest ? Yes.

PRADEEP NANDRAJOG, J. (Oral)

1. Being unconventional, but to save on time and paper, we commence our decision a little unconventionally. We note the answer given by the appellant after his statement was recorded under Section 313 Cr.P.C., to the question: do you want to say anything else in this case? The

appellant replied:-

“I have been falsely and wrongly implicated in this false case. I went to Gopala Tower in search of a job at 7th Floor in the office of CADMACH Pharmaceutical and while I was coming down from the 7th Floor, I saw that a man was running and one person was crying that ‘maar diya’ ‘mar diya’. On hearing this, I also tried to chase that man and the man who was running absconded somewhere. I fell down and sustained injuries on my right hand fingers from a piece of glass. Blood started oozing out from my hands. The police arrested me under the impression that I am the assailant. Thereafter, I was falsely implicated in this case by the police.”

2. It is apparent that the appellant was apprehended at the spot and had an injury on his hand. His MLC Ex.PW-2/A records that the appellant was brought to Sucheta Kriplani Hospital at 6:45 PM on 21.6.2000 by HC Kartar Singh and Const.Suresh PW-6 who told the doctor that the appellant had suffered the injury from a knife while stabbing a victim.

3. The place of the incident is Gopala Tower, 25, Rajender Place, New Delhi. The time is around 6:00 PM. The date is 21.6.2000.

4. HC Kartar Singh PW-26 posted in the PCR Van ‘OSCAR’ received information at 6:16 PM on 21.6.2000 that a person had been killed at Gopala Tower. He proceeded in the van to Gopala Tower and on reaching there found a young man standing who was encircled with public persons. The young man was having knives in his hands and a bag on his

shoulder having blood stains thereon. He saw the young man, on seeing the PCR Van, put the knives in the bag. With the help of Const. Neeraj Kumar, HC Kartar Singh apprehended the young man and took possession of the bag in which the knives were kept. The young man is the appellant.

5. In the meanwhile, DD No.24-A was recorded at PS Prasad Nagar at 6:15 PM by the Duty Constable regarding a stabbing incident at Gopala Tower. SI Umesh PW-32 accompanied by Const. Prem Singh and HC Kattar Singh left for the spot. They reached soon thereafter and from HC Kartar Singh took custody of the appellant and the bag in which the two knives were kept. The sketch of the two knives Ex.PW-9/A and Ex.PW-9/B were prepared by SI Umesh. While SI Umesh was preparing the sketch of the two knives, the SHO of the police station, Inspector S.S.Malik PW-33 also reached the spot as he had received a wireless message of the incident. He seized the two knives vide seizure memo Ex.PW-9/C and completed the formality of the formal arrest of the appellant vide arrest memo Ex.PW-9/E.

6. The appellant, who had a knife injury on his hand, was sent to Sucheta Kriplani Hospital under custody of HC Kartar Singh where his MLC Ex.PW-2/A was drawn up after he was examined by the doctor.

7. Jagdish, working with Indian Toners & Developers Ltd. was present at the spot and claimed to be an eye witness. Inspector S.S.Malik PW-33 recorded his statement Ex.PW-4/A and made an endorsement Ex.PW-33/A thereon and handed over the same to Const. Rajbir for registration of an FIR.

8. A photographer was summoned at the spot who took photographs. The site plan was prepared. The body of the deceased named Shiva was taken into possession vide seizure memo Ex.PW-32/A and the body was sent for post-mortem.

9. Dr.Aakash Jhanjee PW-3, conducted the post-mortem on 22.6.2000 and on the post-mortem report Ex.PW-3/A noted as many as 23 injuries, which as per his testimony in Court, were caused by two different sharp edged weapons. He opined that the death was caused by haemorrhagic shock consequent upon the injuries. Thereafter a few days later, with reference to the two knives which were recovered from the appellant at the spot, he opined that the injuries could be caused by the said two knives.

10. At the spot on 21.6.2000 itself, apart from Jagdish at whose instance the FIR was recorded, one Sandeep PW-5, Kailash PW-7, A.K.Channana PW-8, B.N.Joshi PW-10 and

N.L.Gautam PW-30, who claimed to be eye witnesses and were present at the spot when the police arrived, made statements implicating the appellant.

11. The bag and the blood stained knives which were recovered at the spot itself by HC Kartar Singh from the possession of the appellant, along with the blood sample of the deceased were sent to the serologist and as per report Ex.PW-21/A, Ex.PW-21/B and Ex.PW-21/C, it was opined that the blood group of the deceased was of Group 'O' and that human blood of same group was found on the bag. On the two knives, human blood was detected, but on reaction, did not yield the group thereof.

12. Needless to state the fate of the case of the prosecution hinged upon the testimony of the eye witnesses.

13. At the trial PW-4, PW-5, PW-8 and PW-10 turned hostile and save and except admitted their presence at the spot and Shiva being murdered, resiled from their earlier statements, in which they had implicated the appellant.

14. PW-7 Kailash Singh, employed in the kitchen of Indian Toners & Developers Ltd. deposed that on 21.6.2000 he was present in the kitchen at around 6:00 PM and heard an alarm. That Jagdish PW-4 and Sandeep PW-5 came out of their office along with him. They ran towards the 6th Floor.

He kept standing on the 5th Floor. He saw the appellant with two knives in his hands going towards the ground floor. Jagdish yelled from the 6th Floor that the appellant be chased as he had killed Shiva. That he i.e. PW-7 chased the accused and followed him till the ground floor. He raised an alarm. The Estate Manager and 10-15 drivers surrounded the accused and after sometime the police came and apprehended the accused.

15. In cross examination, he admitted having made some statements in Court which were not forming part of his statement made to the police i.e. his statement under Section 161 Cr.P.C. We shall be referring to said statement while discussing the contentions made by learned counsel for the appellant. During cross examination he made an admission that the accused was chasing a person, but immediately corrected by saying that we were running after the accused. He further stated: *it is wrong to suggest that accused had come in the premises and he was the person among the crowd who were following the person who had inflicted the injury on the person of Shiva.*

16. PW-30 Sh. N.L.Gautam, deposed that he was the Estate Manager Gopala Tower and that on 21.6.2000 was sitting in his cabin at 6:00 PM. He noticed a person running

downstairs said person was being followed by some persons who were shouting 'chor chor'. He came out. A good crowd had gathered. The crowd encircled the boy who had two knives in his hands. That boy started saying 'call police, call police'. He said that he was under fear of being beaten by the crowd. The police arrived and apprehended the boy. PW-30 identified appellant as the boy who was holding the knives and was apprehended.

17. HC Kartar Singh PW-26 deposed that while posted in the PCR Van 'OSCAR', on 21.6.2000 he received a call at around 6:16 PM informing that a person had been killed in Gopala Tower. He proceeded in the van to Gopala Tower and on reaching there found a young man standing who was encircled with public persons. The young man was having knives in his hands and a bag on his shoulder having blood stains thereon. He saw that the young man, on seeing the PCR Van, put the knives in the bag. With the help of Const. Neeraj Kumar he apprehended the young man and took possession of the bag in which the knives were kept. He deposed that appellant was the young man apprehended at the spot.

18. SI Umesh PW-32 and Inspector S.S.Malik PW-33 deposed having reached the spot and taking custody of the

appellant and his formal arrest as also the seizure of the bag containing the two knives which was handed over by HC Kartar Singh to them. We note that S.S.Malik PW-33 stated in cross-examination that he recorded the statement of Anita PW-29 on 13.7.2000. PW-6 Const.Suresh Chand stated in cross-examination that he had received the pullandas containing the clothes of the appellant from the doctor on 31.6.2000.

19. Since certain submissions have been made with reference to the testimony of PW-24, PW-25 and PW-11, all police officers, we note their testimony in brief and the relatable controversy thereto.

20. PW-11 HC Satpal, deposed that he was on duty as a motorcycle rider on 21.6.2000 and while patrolling saw a crowd at Gopala Tower. A PCR Van was parked. He saw the appellant in custody and that HC Kartar Singh had recovered two chhuras from the appellant which he handed over to SI Umesh who prepared the sketches Ex.PW-9/A and Ex.PW-9/B in his presence and that the seizure memo Ex.PW-9/C was prepared in his presence. In cross examination he admitted that nothing was recovered from the spot in his presence.

21. PW-24 Const. Manish Kumar deposed that on 31.8.2000 he took 13 pullandas from the Malkhana to FSL

Malviya Nagar, but in cross examination stated that the probable date was 30.8.2000.

22. PW-25 Inspector Laxmi Narain, deposed that the investigation of the case was taken over by him on 4.8.2000 and on 30.8.2000 he arranged to send 13 pullandas to the Forensic Science Laboratory at Malviya Nagar.

23. Anita PW-29, deposed that she knew accused Ravi as he was her classmate since school and both had studied together from the 8th Standard to the 12th Standard. They fell in love in 12th Standard. Due to unavoidable reasons their married could not be formalized and she stopped meeting Ravi. Six years after Ravi i.e. the appellant surfaced, but by that time she was engaged to the deceased Shiva. That 2-3 days after her engagement she received a phone call from Ravi extending congratulations but thereafter he started pestering her to break her engagement. She refused. She told Shiva about her past. Shiva told her that she could go back to Ravi. She told Shiva that because Ravi had abandoned her six years ago she was not ready to go back to him. Shiva wanted the residential address of Ravi. Ravi told her not to give his residential address but could give his office phone number. That Ravi started threatening Shiva. That on 21.6.2000 she received a call from Ravi at around 9:30 AM

and he told her 'mera deemag bahut garam ho raha hai' and requested her to come back to him otherwise there may be bad consequences. At 2:30 PM she received another call from Ravi who pressurized her to return to him.

24. In cross examination she deposed that her statement was recorded by the police on 22.6.2000.

25. Vide impugned judgment and order dated 16.5.2007, the appellant has been convicted for the offence of murdering Shiva and for possessing and using the two knives, has been convicted for the offence punishable under Section 27 of the Arms Act. The appellant has been directed to undergo imprisonment for life for the offence of murdering Shiva.

26. At the hearing today learned counsel for the appellant urged that neither PW-7 nor PW-30 are truthful witnesses. Learned counsel urged that PW-7 had made 3 improvements in his deposition in Court, in that, deposed that (i) he had followed the accused towards the ground floor (ii) and while so doing had made noises and (iii) lastly 10-15 drivers surrounded the accused. We note that said 3 statements do not form part of his statement recorded by the police.

27. To our mind the alleged improvements are

inconsequential. Relevant would it be to note that certain accompanying statements pertaining to a fact in issue have not to be put at par with evidence given by a witness which directly relates to a fact in issue.

28. It happens more than once, that immediately after a gruesome incident is seen, for sometime the mental faculties are impaired and one omits some minor points but discloses the same, when in composure.

29. As noted in para 15 above, the witness made an admission during cross examination that the accused was chasing a person, but immediately corrected by saying that all were running after the accused. He categorically deposed *it is wrong to suggest that accused had come in the premises and he was the person among the crowd who were following the person who had inflicted the injury on the person of Shiva*. It is apparent that a slip of the tongue is sought to be capitalized upon. We find no merit in the plea urged at the hearing that the admission of PW-7 shows that the appellant was a person who was chasing the assailant.

30. Pertaining to the testimony of PW-30, learned counsel urged that in cross examination the witness stated that his statement mark 'C' was not made by him and it was never read over to him. But we wonder, as to what turns

thereon. The fact of the matter remains that while deposing in Court, PW-30 identified the appellant as the person whom he saw armed with two knives and was apprehended at the spot.

31. Pertaining to the deposition of PW-24 and PW-25, suffice would it be to note that both witnesses deposed in the year 2004 and whether the date on which the pullandas were deposited at the FSL Malviya Nagar was 30.8.2000 or was 31.8.2000, could well be a memory lapse. In any case, it is not the case of the appellant that the seals were tampered with. Unfortunately, the Malkhana register was not produced in evidence and therefore there is no evidence as to whether the pullandas were taken out from the malkhana on 30.8.2000 or 31.8.2000. In any case, the fact that there is no controversy that the seals were tampered with, makes the issue a non-issue.

32. With reference to the deposition of PW-11, as noted above, a submission was urged that the recovery of the knives from the appellant stands disproved because, in cross-examination, PW-11 admitted that nothing was recovered from the spot in his presence.

33. The argument is without a foundation for the reason, in his deposition PW-11 deposed: *Kartar Singh had*

already recovered two chhuras, which he produced to SI Umesh, IO prepared the sketches of the said chhuras and thereafter he prepared the parcel and fixed the seal of UB on the said parcel. The sketches of Ex.PW-9/A and Ex.PW-9/B and the seizure memo is Ex.PW-9/C. Thus, his statement in cross-examination that nothing was recovered from the spot in his presence is correct and does not contradict the witness. Being a police officer, PW-11 was aware of the difference between the recovery of an object from the spot and the handing over of an object already recovered. In his examination-in-chief he has deposed the fact that he saw Kartar Singh produce the chhuras before the Sub Inspector. We note that in his deposition Kartar Singh has categorically deposed that when he reached the spot he took possession of the bag containing two chhuras from the appellant. We note that Kartar Singh is the first police officer to reach the spot.

34. The plea, that in his deposition, PW-6 has deposed that he received the pullanda from the doctor on 31.6.2000 after the appellant was examined by the doctor and hence this shows that the appellant was not arrested on 21.6.2000 needs to be noted and rejected for the simple reason, the month of June does not have 31 days. It is apparent that due to a typographic error the date 21.6.2000 has got wrongly

typed as 31.6.2000.

35. The circumstance of an accused not satisfactorily explaining his presence at the place where the crime was committed is an incriminating circumstance.

36. The appellant has sought to explain his presence by stating that he went to the office of Cadmach Pharmaceuticals at the 7th Floor in the building called Gopala Tower i.e. the building where the offence was committed. As per the appellant when he was coming down he saw a man running and one man was crying 'maar diya maar diya'; upon hearing said cry he chased the man who was absconding, but fell down and thinking that he was the accused, the police apprehended him. The appellant could have examined a witness from Cadmach Pharmaceuticals to prove the said fact. No attempt has been made by the appellant to do so.

37. The appellant has admitted injuries on his right hand fingers and blood oozing there from when he was apprehended. He has sought to explain the injury by stating that when he was chasing the absconder, he fell down and sustained injuries on the fingers of his right hand from a piece of glass. It is not in dispute that after he was apprehended, the appellant was taken to Lady Hardinge Medical College and was examined by Dr.Sonia who prepared the MLC Ex.PW-2/A.

She was examined as PW-2. Not a suggestion has been put to her by the appellant nor has she been questioned whether the cut injury suffered by the appellant could be the result of falling on glass. It is important to note that had this happened, glass stained with blood would have been found at the site of the crime. None was lifted from the spot by the police.

38. We see no reason as to why the police officers and in particular HC Kartar Singh PW-26, to whom no suggestion has been put of any animus against the appellant, should depose falsely against the appellant.

39. Conduct of an accused pertaining to motive for any fact in issue is relevant under Section 8 of the Evidence Act. The deposition of PW-29 shows the obsession of the appellant with her. That on 21.6.2000, at around 9.30 AM, the appellant rang up PW-29 and told her “mera deemag bahut garam ho raha hai” shows his mental condition. The fact that he contacted her for the second time on said date at around 2.30 PM and pressurized her to return to him is also relevant and incriminating in the context of the mental condition of the appellant on 21.6.2000 i.e. the day when Shiva was murdered.

40. The last submission that the investigating officer

PW-33 deposed that he recorded the statement of Anita on 13.7.2000 and hence there is an inordinate delay in recording Anita's statement, has no meaning unless it is shown that in the interregnum Anita could have cooked up a story. In this connection, it is relevant to note that Anita PW-29 categorically deposed that her statement was recorded by the IO on 22.6.2000. It appears that the investigating officer wrongly mentioned the date for the reason, we note that along with the challan the statement of Anita recorded by the police has been filed and it bears the date 22.6.2000. That apart, Anita is not an eye-witness. She has only deposed about her past affair with the appellant and the appellant abandoning her and she being engaged to the deceased and soon thereafter the appellant again re-entering her life and pestering her to marry him. Her deposition establishes a motive i.e. to do away with a suitor and marry the girl.

41. It would be interesting to note that Anita has subsequently married the appellant and even an attempt was made to re-examine Anita; obviously for the reason, Anita has married the appellant and she would have resiled from her earlier deposition. What we want to convey is that Anita had no motive to falsely implicate the appellant and at the relevant time she spoke the truth.

42. We find no merit in the appeal. The appeal is dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

**March 18, 2009
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