

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

% *Judgment Reserved on: 31st July, 2009*
Judgment Delivered on: 06th August, 2009

+ **CRL.A.462/2007**

ANKUSH GUPTA Appellant
Through: Mr. D.M. Bhalla, Advocate.

versus

STATE Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE INDERMEET KAUR

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

INDERMEET KAUR, J.

1. This appeal has been directed against the impugned judgment dated 27.10.2006 whereby the appellant Ankush Gupta has been convicted for having committed murder of deceased Rajeev Gupta.

2. Version of the prosecution was unfolded on the statement of Rajesh Burman PW-3 brother-in-law of the deceased and a purported eye-witness to the incident. His

statement Ex.PW-3/A recorded on 03.6.2002 is to the effect that on 03.6.2002 his brother-in-law Rajeev Gupta had visited the house of his brother Pradeep at Flat No. 17D, Dilshad Garden along with his wife Anita Gupta. Pradeep had sustained injuries on the previous day i.e. on 02.6.2002 because of a fight which had ensued between him and the relatives of Shri Kishan Goel pursuant to which an FIR had been lodged in Police Station Seemapuri. At about 7.30 PM when Rajeev and his wife Anita were returning back, the accused Ankush Gupta had an altercation with Rajeev. He i.e. the accused took out a dagger and stabbed Rajeev on the left side of his chest and fled away with the knife. PW-3 had removed the injured to the Guru Teg Bahadur Hospital where he had been declared brought dead. Ex.PW-3/A categorically recited that Ankush was the offender and legal action should be taken against him. On this Statement Ex.PW-3/A, the endorsement Ex.PW-9/A was made and the rukka was taken by Const. Ramesh PW-6 pursuant to which the formal FIR was registered.

4. Anita Gupta PW-2 the wife of the deceased was the second eye-witness to the incident and she had corroborated the version as set up by PW-3 in his statement Ex.PW-3/A.

5. The investigative team was headed by Investigating Officer SI Sushil Kumar PW-9 who accompanied by PW-6

had reached the spot i.e. in front of house No.18A, Pocket A, Dilshad Garden. Blood was lying on the ground but no eye-witness could be located; the injured had already been removed to the Guru Teg Bahadur Hospital where he had been declared brought dead. PW-9 had recorded the statement Ex.PW-3/A of Rajesh Burman PW-3 in the hospital pursuant to which the case of the prosecution had been set in motion.

6. Since the offence was opined to be one of murder, the investigation was thereafter handed over to SHO i.e. Inspector Y.K. Tyagi PW-19. Blood and earth control were lifted from the spot. The photographer was summoned and nine photographs Ex.PW-1/1 to Ex.PW-1/9 of the scene of crime were taken from different angles by Ratan Singh PW-7. Const.Rambir PW-15 had delivered the copy of the FIR to the Elaka Magistrate on the same day. Exhibits which have been retrieved from the spot had been handed over by the Investigating Officer to H.C.Ravinder Kumar PW-4 who deposited them in the Malkhana of Police Station Seemapuri.

7. At the trial, the MLC Ex.PW-5/A of the deceased Rajeev Gupta was proved by Dr.Parmeshwar Ram PW-5 by identifying the signatures of Dr.Rajesh Singh at point 'A' who had examined the patient at that time and had been declared brought dead to the casualty.

8. On 04.6.2002, post mortem of the deceased was conducted by Dr.K.K.Banerjee PW-13 who had noted one ante mortem injury on his body i.e. :

“stab wound 3.5cm X 1cm X cavity deep Wedge shaped vertically placed on the front of right side of chest a little away from mid line, the upper end being 4 cm below supra sterna notch, and lower end being 11 cm above the xiphoid process. The lower end was more acute with abraded margin and upper end was little blunt. The wound was directed on probing into the mediastinum of chest.”

9. The cause of death was opined as shock as result of ante mortem injury to major blood vessels and internal organs produced by a pointed weapon whose one edge is more sharp than the other. Injury no.1 was sufficient to cause death in the ordinary course of nature. The report was proved as Ex.PW-13/A. Dead body was thereafter handed over to Sanjeev Gupta PW-1 the brother of the deceased who had identified the same vide memo Ex.PW-1/A.

10. Inspector Y.K. Tyagi PW-19 arrested the accused on 04.6.2002 from in front of S.G. Pocket vide memo Ex.PW-3/D; his personal search was conducted vide memo Ex.PW-3/E; his disclosure statement Ex.PW-3/F was recorded pursuant to which dagger used in the incident containing blood stains was recovered at his pointing out from the roof of a Pyaoo which was situated adjacent to the entrance gate

of A pocket. It was taken into possession vide memo Ex.PW-3/G and sketch of the dagger was prepared Ex.PW-3/H.

11. On 30.7.2002, the Investigation Officer obtained the subsequent opinion of Dr.K.K.Banerjee PW-13 on this weapon of offence. PW-13 had opined that injury no.1 on the dead body of Rajeev Gupta was possible with the type of weapon which had been sent to him for examination; this opinion was endorsed in the report Ex.PW-13/B. Scaled site plan was prepared by Const. Sonu Kaushik PW-14 on 01.8.2002 Ex.PW-14/A.

12. The Trial Judge had held the appellant guilty for the offence of murder of Rajeev Gupta in view of the versions of Anita PW-2 wife of deceased as also Rajesh Burman PW-3 brother in law of the deceased who claimed to be eye witnesses.

13. The subsequent recovery of the knife which was opined by the doctor to be weapon of offence and the cause of injury no.1 on the dead body of Rajesh Gupta which was the cause of his death was another incriminating circumstance held against the appellant. It was this evidence which had sustained the conviction against him.

14. On behalf of the appellant, it has been argued that the judgment of the Trial Judge is illegal; he and has not appreciated the evidence which had been brought on record

in the correct perspective. Attention has been drawn to the testimony of DW-1 Sh.Devender Kumar Gupta the father of the appellant. It is stated that the version of DW-1 had been brushed aside lightly without taking into account that DW-1 had categorically on oath deposed:

“..... Sachin is the nephew of my brother in law Shri Kishan Goel. A case has been regd. against them by Rajesh Burman in which three persons are named. On the night of 3.6.02, after midnight, my son Ankush Gupta was lifted by the police from my house. The alleged incident was reported in the Newspapers wherein it was reported that one boy Raju was arrested by the police in this case but was released. The newspapers reporting are marked A to Mark C.”

15. It is argued that the newspaper reports Ex.D/BC and Mark A to Mark C clearly show that one Raju had been apprehended by the police in the first instance and this was pursuant to the public beating which he received at the hands of the crowd which had gathered there at the time of incident and had apprehended Raju who was trying to flee from the place of occurrence; it is stated that the Investigation Officer, in his cross-examination has admitted that he had, in fact, questioned Raju but thereafter he was allowed to go scot free. It is argued that the real culprit is Raju but prosecution has not been able to answer as to why he was allowed to let go. It is argued that it also come in the version of PW-2 and PW-3 that there was a previous

animosity between the families of the appellant Ankush Gupta and the deceased; all the aforestated reasons clearly establish that the testimony of PW-2 and PW-3 is suspect and appellant has been falsely roped in for a crime not committed by him; real culprit is Raju.

16. PW-2 and PW-3 claim to be the eye-witnesses to the incident. Before adverting to their versions, let us examine the site plan Ex.PW-14/A. Perusal of the same shows that point 'A' is the public road in front of Flat No.18A, Pocket-A, Dilshad Garden where the deceased Rajeev Gupta had been stabbed. Point 'B' is the place from where Rajesh Burman the eye-witness had witnessed the occurrence i.e. at a distance of 8 to 9 feet. The flats are located in the DDA Colony of Dilshad Garden and the incident had occurred on the service lane in front of Flat No.18A connecting it to the main road. This has also been elicited in the version of Investigating Officer PW-19.

17. Let us now examine the statements of the alleged eye-witnesses. Anita Gupta PW-2 was the wife of the deceased. She had on oath stated that she alongwith her husband Rajeev Gupta had gone to meet her brother in Flat No.18A, Dilshad Garden situated on the ground floor. At about 7.30 PM when they were returning back they were followed by their elder brother who had come to see them off; in the

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meantime Ankush Gupta came from Flat no.17D and threatened her husband that he would be killed; he stated that he had given beatings to his brother in law and now it was the turn of his well-wishers; accused took out knife and hit it against the chest of her husband who fell down; he was thereafter removed to the hospital.

18. In her cross-examination PW-2 has stated that the place of occurrence is a thoroughfare; incident had taken place at about 7.30 PM; she had not accompanied her deceased husband to the hospital. She denied the suggestion that the accused had been falsely implicated in connivance with the police.

19. PW-3 the brother-in-law of the deceased as also the complainant had deposed that one day prior to the incident i.e. on 02.6.2002 his younger brother Pradeep had been beaten by some persons who had been sent by Shri Krishan Goel; pursuant to which a case was registered in Police Station Seemapuri. This version of PW-3 has been sought to be corroborated by SI Sultan Singh PW-18, who had on 02.6.2002 while on emergency duty at Police Station Seemapuri received DD No.20A and on reaching house no. 17D, Pocket-A, Dilshad Garden i.e. the residence of Pradeep, had learnt that the injured Pradeep had already been removed to the hospital; he recorded statement of Pradeep

pursuant to which FIR No.175/02 had been registered under Sections 342/34 IPC. The persons accused of that offence were one Pawan Bhagat, Sachin Aggarwal and Ashok Jain.

20. In cross-examination PW-3 has stated that Ashok Jain and his friends had beaten his brother Pradeep on the previous day. Devender Kumar Gupta DW-1 father of the accused had deposed that Sachin is the nephew of his brother-in-law Shri Krishan Goel and a case had been registered against them on the complaint of Pradeep.

21. This evidence has established that on 02.6.2002 i.e. one day prior to the fateful day an FIR had been registered in Police Station Seempuri against Sachin nephew of Shri Kishan Goel who was the brother-in-law of DW-1 and father of the appellant. Animosity to the extent of enmity was brewing between the family of accused Ankush Gupta and the complainant; matter had reached a sore point which had necessitated the registration of an FIR; Pradeep had sustained serious injuries at the hands of the family members of present appellant Ankush Gupta; so much so that he had become bed ridden and was unable to climb the flight of stairs to his own house; in this situation Lal Chand Shamra PW-12 his neighbour had permitted Pradeep to temporarily reside in his ground floor at House No.18A, Pocket-A, Dilshad Garden which had subsequently become

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the place of occurrence. This is corroborated from the testimony of PW-12.

22. PW-3 had also stated that one month prior to this incident an altercation between uncle of the appellant Ankush and his brother Pradeep had taken place on the point of the tying of a stray dog which has been corroborated by the accused himself in his statement under Section 313 Cr. P.C. wherein he had stated that trivial arguments between his family members and that of the complainant over a pet dog had also taken place earlier to this incident. Appellant had further voiced his defence stating that because of this previous enmity he has been falsely implicated.

23. PW-3 has on oath recited that at about 7.30 PM when his sister and his Jeeja i.e. Anita and deceased Rajeev Gupta were coming back to their home, PW-3 being about 8 to 10 steps behind them, saw that the accused Ankush Gupta come there and had an altercation with his sister and her husband; he stabbed Rajeev Gupta who fell down on the spot; accused fled away with the knife. PW-3 removed the injured to the hospital.

24. In his cross-examination, he has stated that nobody was present with him when he taken the injured to the hospital; his sister had not accompanied him to the hospital. He denied the suggestion that someone else had stabbed the deceased and the appellant has been falsely implicated.

25. Testimony of DW-1 has already been discussed supra. He was the father of the accused and his version is to the effect that because of earlier enmity brewing between the family of the complainant and that of the appellant, firstly over an issue of the tying of a stray dog, which incident was a month old and thereafter on 02.6.2002 FIR have been registered against Sachin for having caused grievous hurt to Pradeep; and Sachin being closely related to the appellant, for this reason the appellant has been falsely implicated.

26. DW-1 had on oath deposed that his son had been picked up by police on the night of 03.2.2002 after mid-night; the real culprit was one Raju who had been arrested by the police and this had also been published in the newspaper but Raju had thereafter been released. The newspaper cutting had also been placed on record. DW-1 further deposed that recovery of the knife had also been falsely planted upon his son.

27. From this evidence what can be gathered is:

PW-2 and deceased Rajeev Gupta had gone to visit Pradeep on 03.6.2002 who had sustained injuries on the previous day; when they were returning back altercation took place between Rajeev Gupta and the assailant; the assailant stabbed him in his chest pursuant to which he died; incident had occurred in front of Flat No. 18A, Pocket-A, Dilshad Garden; Rajeev Gupta was removed hospital by Rajesh Burman;

MLC Ex.PW-5/A is proof of the said fact; admittedly Rajeev Gupta had succumbed to his death on 03.6.2002.

28. All these facts stand admitted. The sole plea of the appellant that he is not the culprit and the culprit is Raju who had in fact been apprehended by the police when he was trying to flee from the place of occurrence, he had been nabbed, queried and questioned but for reasons unexplained he had been allowed to go scot free.

29. PW-2 and PW-3 who are the stated eye-witnesses had categorically been suggested by learned Defence Counsel that the present appellant had been falsely implicated and the real culprit was some other person. This is also the plea taken by the appellant in his statement under Section 313 Cr.P.C. wherein he has stated that because of previous enmity between his family and the family of the complainant this case has been falsely foisted against him. DW-1 his father had reiterated the stand of his son and had deposed that because of earlier enmity between the two families i.e. between the family of the accused and the complainant, the appellant had been lifted by the police at the behest of Rajesh Burman and this enmity was evidenced by the fact that one day prior to the incident i.e. 02.6.2002, on the complaint of Pradeep (the brother of Rajesh Burman), Sachin the nephew of brother-in-law of DW-1 and first cousin of the appellant had been arrested by the police for causing injuries to Pradeep. It has also come on record that Pradeep

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had sustained serious injuries pursuant to the incident of 02.6.2002, so much so, that he had to temporarily shift residence and stay on the ground floor of a flat of his friend as he could not climb the flight of stairs to his own flat i.e. House No.17-D, Dilshad Garden.

30. The newspaper publication brought on record on the version of DW-1 has also been perused. This publication is dated 04.6.2002 and categorically states that on 03.6.2002 at Pocket-A, Dilshad Garden Rajeev had been stabbed on his chest by one person by the name of Raju and the injured had thereafter succumbed to his injuries. Raju had been arrested by the police. Investigating Officer Y.K. Tyagi PW-19 had admitted in his cross-examination that on the day of incident he had interrogated one boy named Raju. This is in conformity with the version of DW-1.

31. It has thus been established that there was some person by the name of Raju who had been interrogated by the Investigating Officer on the day of incident itself i.e. 03.6.2002; as per the newspaper publication he was the culprit and he had been arrested by the police but he had been allowed to let go.

32. The case diaries maintained by the Investigating Officer have been summoned and perused by this Court. The entries of 03.6.2002 show that, in fact, Inspector Y.K. Tyagi had interrogated one person by the name of Raju @ Rajender son of Anand Singh R/o House No.73, Pocket-D, Dilshad Garden and on

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query from him Raju had revealed that he was in the company of Ankush on 03.6.2002 and at about 6.50 PM Ankush had asked him to accompany him to his Bua's house at Pocket A, Dilshad Garden for drinking water; when they returning back they met one uncle with whom Ankush had altercation. Ankush took out a sharp instrument and stabbed the said uncle on his chest; uncle fell down; Ankush managed to flee away. Public gathered there and he i.e. Raju had been apprehended by the police; he had disclosed the address of Ankush as Flat No. 52-D, SG Pocket, Dilshad Garden.

33. This case diary further reveals that Raju had been apprehended by Const. Ramesh No.752/NE who had produced him before the Investigating Officer. From this version, it appears that Raju was the first person who had come to know about this incident; was he a witness or was he the assailant or was he an accomplice of Ankush? It appears that the Investigating Officer himself was confused as to what role had to be attributed to Raju; either way it was not a fit case where the Investigating Officer should have allowed Raju to get away scot free; he was neither cited as a witness nor arrayed as a co-accused. Assailant

34. The next page of the case diary shows that the Investigating Officer had recorded the statement of Const. Ramesh No.752/NE, P.S. Sultanpuri after interrogation of Raju

but in this narration there is no mention that Const. Ramesh had produced Raju before the Investigating Officer.

35. At this stage it is also useful to advert to the testimony of Const. Ramesh who had come into the witness box as PW-6. He had on oath stated that on hearing about the incident he had reached the spot at about 7.45 PM but no eye-witness was found. Eye-witness Rajesh Burman had met them in the hospital where his statement was recorded by SI Sushil Kumar. He has categorically stated that no name of any person from whom inquiries were made at the spot had been noted. In his cross-examination he has stated that he does not know that if any boy by the name of Raju was arrested and released on the next day.

36. This version of PW-6 on oath is definitely not in conformity with the case diary prepared by the Investigating Officer; Investigating Officer PW-19 had categorically recorded in the case diary that Raju had been apprehended by Const. Ramesh and had been produced before him pursuant to which he had been queried. Why was Const. Ramesh evading the answers on the queries as to whether Raju had been arrested and subsequently released on the next day? PW-6 as per his version on oath in Court had been accompanied to the spot by SI Sushil Kumar PW-9. PW-9 in his cross-examination has also given evasive answers on the specific queries put to him as to whether Raju had been arrested in connection with this case

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and as to whether such a publication had been effected in the newspaper dated 04.6.2002. The investigative team appears to be playing a hide and seek and is not coming out with the truthful version; why and under what circumstances Raju had been apprehended and arrested and then allowed to go scot free had not been answered by the prosecution. The narratives in the case diary are in conflict with the versions of the investigative team i.e. PW-6. PW-9 and P-19. This has prejudiced the investigation for which there is no answer.

37. Under Section 172 of the Cr.P.C., the Court has the unfettered power to examine the entries in the case diary which is maintained by the Investigating Officer. This is a very important safeguard. The legislature has reposed complete trust in the court which is conducting the inquiry or the trial. It has empowered the Court to call for any such relevant case diary, if there is any inconsistency or contradiction arising in the context of the case diary the Court can use the entries for the purpose of contradicting the Police Officer as provided in Sub-section (3) of Section 172 of the Cr.P.C. This is based on the premise that ultimately there can be no better custodian or guardian of the interest of justice than the Court trying the case. No Court will deny to itself the power to make use of the entries in the diary to the advantage of the accused by contradicting the Police Officer with reference to the contents of the diary.

38. In Mukund Lal v. Union of India & Anr., AIR 1989 SC 144, the Supreme Court while upholding the constitutional validity of Section 172(3) of the Cr.P.C. had *inter alia* held:

“The public interest requirement from the stand point of the need to ensure a fair trial for an accused is more than sufficiently met by the power conferred on the Court, which is the ultimate custodian of the interest of justice and can always be trusted to be vigilant to ensure that the interest of accused persons standing the trial, is fully safeguarded. This is a factor which must be accorded its due weight. There would be no prejudice or failure of justice to the accused person since the Court can be trusted to look into the police diary for the purpose of protecting his interest.”

39. The appellant was arrested in this case on 04.6.2002 at 8.30 PM from his house at C-52, SG Pocket, Dilshad Garden which is evidenced from the arrest memo Ex.PW-3/D. It is also not the case of the prosecution that he was absconding.

40. In the overall scenario, what has emerged is that Rajeev Gupta had died on 03.6.2002; it was a single stab injury on his chest; incident had occurred in front of House No.18A, Pocket-A, Dilshad Garden. However, who was the real culprit/assailant; the appellant or Raju, has not been established by the prosecution. Raju had undoubtedly entered the scene of crime in the first instance when he had been nabbed by a mob while he was trying to flee from the place of occurrence; Const. Ramesh had apprehended him and produced him before Investigating Officer; Investigating Officer had interrogated him; Raju as per his revelation had witnessed the incident and

as per his version Ankush had committed the crime and had fled away; news was flashed in the media that Raju had been arrested for the murder of Rajeev Gupta; Raju was however allowed to let go by the Investigating Officer and the Investigating Officer chose neither to cite him as a witness and nor as an accomplice; Const.Ramesh who as per the Investigating Officer had first apprehended Raju and produced him before Investigating Officer was shying from the specific queries put to him about the arrest of Raju; so also is the version of SI Sushil Kumar. It has also been established that there was a previous enmity between the family of the complainant and the accused and these grievances had been brewing since the last more than one month; one day prior to the incident a police case had been registered at the behest of the brother of the complainant against the cousin of the accused.

41. In these circumstances, in our view, benefit of doubt has accrued in favour of the appellant and it cannot be said with a complete certainty that the prosecution has been able to prove that it was the appellant who was the offender; so many queries having been remained unanswered by the prosecution we deem it a fit case to reverse the finding of the Trial Judge and accordingly, a benefit of doubt to the accused of the charge leveled against him, he is accordingly acquitted. Appeal is

allowed. The appellant is acquitted of the charge framed against him. His bail bond and surety bond are discharged.

(INDERMEET KAUR)
JUDGE

(PRADEEP NANDRAJOG)
JUDGE

August 06, 2009
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