

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

+ **Crl. L.P.No. 213/2008**

% **Date of Order : April 09, 2009**

STATE Petitioner
Through : Mr. Pawan Sharma, Advocate

VERSUS

PRAMOD & ORS. Respondents
Through : Mr. Sudarshan Rajan, Adv. for R-1
and R-2
Mr. S.C.Gupta, Adv. for R-3
Mr. R.K.Bali, Adv. for R-4
Ms. Neelam Grover, Adv. for R-5
Mr. Jitender Sethi, Adv. for R-6

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. Seven accused; namely Vinod, Pramod, Mukesh Kumar, Rakesh @ Makhan, S.D.Sharma, Karan and Rajbir @ Chhanga were sent to trial for having murdered Ashok and Pappu Pehlwan. The case of the prosecution was that one Ami Lal, father of Devender, owned a piece of land ad-measuring

1000 sq. yards at Ghonda Chowk where mini buses were being parked on daily basis. Ami Lal used to charge Rs.20/- per day from the owners of the mini bus. That in the last week of February 2003, the bus operators made a complaint to Ami Lal that Vinod, Pramod, Rajbir, Makhan Singh and Karan Singh, all vagabonds of the area, were demanding money from them to park their mini buses. Devender, son of Ami Lal, discussed this with Pappu Pehlwan, a cousin of Devender, who in turn spoke to Vinod, Pramod, Rajbir, Makhan Singh and Karan Singh, but they threatened him with dire consequences if he created obstacles in their way. That, Devender and Pappu Pehlwan told the bus operators not to pay any money to the vagabonds and on said account the said vagabonds had a grouse against Devender and Pappu Pehlwan.

2. That on 27.2.2003, Devender along with Pappu Pehlwan were going towards Ghonda Chowk in connection with some work and at around 7-7:30 PM reached Madras Cafe where the said persons as also two more, namely Mukesh and S.K.Sharma met them. Karan exhorted Makhan that Devender and Pappu should not be left alive. Just at that point of time, Ashok and Ram Kumar who were sipping juice at a stall nearby reached. They intervened. At that junction Mukesh and S.K.Sharma exhorted that Devender, Pappu Pehlwan and their

well-wishers should be finished. That on the exhortation of Mukesh and S.K.Sharma; Rajbir, Vinod and Pramod took out firearms from the dub of their pants and fired shots. Whereas Pappu Pehlwan and Ashok sustained injuries and fell down; to save themselves, Devender and Ram Kumar ducked and lay flat on the ground. The offenders ran away with their respective weapons. Sunder, a cousin of Devender reached and rescued them. A Maruti van coming from Ghonda Chowk side was stopped. Ashok and Pappu Pehlwan were put inside the van and were removed to GTB hospital where both of them were proclaimed dead on arrival.

3. The incident was first reported to the police when a telephonic information was noted by the duty constable, being DD No.20-A, Ex.PW-3/C, at 7.30 PM on 27.2.2003 that two people have been shot near Maujpur juncture adjoining Parivar restaurant.

4. At 7.42 PM, vide DD No.21-A, Ex.PW-3/D, information was recorded that the informant had informed that his brother had been shot at.

5. Inspector Veer Singh Tyagi PW-35, accompanied by other police officers reached GTB hospital where he met Devender, whose statement Ex.PW-2/A was recorded, in which he named the accused as the assailants of his brother Pappu

Pehlwan and Ashok. He attributed various roles to the accused. Making an endorsement Ex.PW-3/B thereon, Inspector Veer Singh Tyagi forwarded the statement at around 9.15 PM for registration of an FIR and pursuant thereto the FIR was registered.

6. Vide impugned judgment and order dated 30.4.2008 save and except accused Vinod, all other co-accused have been acquitted for the reason the learned Trial Judge has returned a finding that from the evidence on record it was apparent that Devender was not an eye witness and that even Ram Kumar the other person who claimed to be any eye witness was also not an eye witness and that Sunder, another witness of the prosecution could not be believed that Ashok made to him any dying declaration.

7. It may be noted that the conviction of Vinod has been sustained not on the basis of the testimony of any eye witness but on the basis of a recovery of a country made pistol pursuant to a disclosure statement made by him followed by the appellant getting the said pistol recovered from a concealed portion in the wall of his house as also the recovery of a used cartridge, which as per the ballistic report Ex.PW-22/A, was opined to be fired through the country made pistol, Ex.F-1. It may be noted that no recovery of any firearm or any

other incriminating weapon of offence has been shown or sought to be proved against the respondents.

8. Devender PW-2, at whose instance the FIR was registered had deposed that he and Ram Kumar were present when the firing took place and they i.e. Devender and Ram Kumar could save themselves by ducking and lying flat on the ground and that after shooting the deceased Pappu Pehlwan and Ashok, the assailants fled and he and Ram Kumar continued to be at the spot till Sunder came after 10 minutes and thereafter the injured were removed to the hospital. Discussing the conduct of Devender, it has been held that evidence suggests that Devender learnt about his brother being shot at and reached the hospital and from the hospital made a call to the police at 7.42 PM which resulted in DD No.21-A being recorded.

9. In a nutshell, the reasoning of the learned Trial Judge is that, whereas in his statement Ex.PW-2/A Devender stated that when Sunder reached the spot, the accused ran away, but in court, he deposed that Sunder came after about 10 minutes of the accused having run away from the spot. The learned trial judge noted that it is strange that even after the assailants had run away Devender made no attempt to flag down a vehicle in which his brother and his brother's

friend Ashok, both of who were shot, could be removed to the hospital. The fact that the shirt of Sunder was stained with blood when the police reached the hospital and hence was dutifully seized by the police, the claim of Devender that even his clothes were stained with blood has been disbelieved, for the reason had it been so stained with blood, there was no reason why the police would not have seized the same. The inference drawn by the learned trial judge is that this shows that the Devender was not present at the spot and did not participate in transporting the injured to the hospital and his claim to the contrary was false. The learned Trial Judge has additionally noted that SI Jagbir PW-34 and Inspector Veer Singh Tyagi PW-35 have categorically deposed that they did not notice any blood on the shirt or the clothes of Devender and hence did not seize the same. Lastly, the learned Trial Judge has noted that in his statement Ex.PW-2/A, while informing the police at 7.42 PM, Devender informed the police that he made the call when his brother was declared brought dead at the hospital wherefrom an inference has been drawn that Devender, who admittedly had a mobile phone with him having contacted the police at 7:42 PM shows that he surfaced at the hospital just around said time and learnt about his brother being shot and having died.

10. Ram Kumar, the person named by Devender as having reached the spot along with Ashok, before the firing took place, was examined as PW-4. The learned Trial Judge has discussed the evidentiary worth and the credibility of the testimony of Ram Kumar in paragraphs 26 to 33 of the decision. In a nut shell, the learned Trial Judge has held that the fact that the clothes of Ram Kumar were not seized by the police shows that the same were not stained with blood and his claim that when he helped in removing his brother Ashok to the hospital, his clothes got stained with blood was false. As in the reasoning while discussing the evidentiary worth of the testimony of Devender, the learned Trial Judge has held that if the police seized the clothes of Sunder which were stained with blood, there is no reason why clothes of Ram Kumar would not be seized if even they were stained with blood. Similarly, the unnatural conduct of Ram Kumar to be sitting at the spot even after the assailants fled, to await Sunder reaching after 10 minutes and thereafter removing his brother to the hospital has been found to be unnatural. In a nut shell it has been held that the evidence probablizes that even Ram Kumar reached the hospital on learning that his brother has been shot.

11. The testimony of Sunder who claimed to have

reached the spot where the incident took place soon after the firing was over and also claimed that Ashok had made a dying declaration to him inculcating the appellant, has been discussed by the learned Trial Judge in paragraphs 34 to 38 of the decision. Noting that according to Sunder he was present in his house at 7-7:30 PM on 27.2.2003 and that he learnt from his children that his brother was fired in front of Madras Cafe and at that he reached the place and found Pappu Pehlwan and Ashok lying in an injured condition and he saw Ram Kumar and Devender sitting in a sad mood and he consoled them and thereupon got stopped a Maruti van in which Pappu Pehlwan and Ashok were removed to the hospital, has been found to be a strange conduct by the learned Judge, for the reason, the immediate reaction of Sunder would have been to summon a rescue for the injured, before consoling the grieving relatives. Not only that. The learned Trial Judge has found that some time would have been consumed for the information to reach Sunder that a firing had taken place and Sunder reaching the place of the incident. Noting Sunder's admission that the place of occurrence was 1½ kilometer from his residence, the learned Trial Judge has held that Sunder would have reached the place of occurrence at least after 7-8 minutes of the firing being over, by which time the accused would have fled. The

claim of Sunder that Ashok made a dying declaration to him telling him that the appellant had fired at him has been disbelieved by the learned Trial Judge with reference to the post-mortem report Ex.PW-7/A of Ashok which evidences that the bullet which had pierced the chest cavity of Ashok at the intercostals space, had pierced the upper lobe of the left lung; coming out of the lung it entered the heart and piercing through the heart, made an exit not only through the heart, but even through the back. The learned Trial Judge has opined that in such a situation, the heart would have contracted for not more than 4 to 5 times. That from the fact noted in the post-mortem report that the left chest cavity was filled with blood and the left lung had collapsed, the learned Trial Judge has opined that with the heart not pumping, oxygen supply to the brain would have diminished and due to severe anoxia of brain, Ashok would have died immediately at the spot and would not be in a position to speak to anyone after 4 to 5 minutes of being shot.

12. But, from the fact that the clothes of Sunder were found stained with blood and were seized by the police in the hospital as also the fact that the MLC of Pappu Pehlwan and Ashok records that Sunder had brought them to the hospital, the learned Trial Judge has concluded by holding that evidence

establishes that on hearing about the firing, Sunder reached the spot. The assailants had run away by then. He flagged a vehicle in which Pappu Pehlwan and Ashok were removed to the hospital. He informed Devender and Ram Kumar who also reached the hospital.

13. We find no infirmity in the reasoning of the learned Trial Judge. It is settled law that where a Court of Sessions has analyzed the evidence and the view taken is reasonable and probable and no material evidence or circumstance has been omitted to be considered and no irrelevant or inadmissible evidence has been considered and no irrelevant circumstance has been taken into account, the appellate Court would not interfere with said finding of fact.

14. We find no case made out to grant leave to appeal. The petition is dismissed.

(PRADEEP NANDRAJOG)
JUDGE

(ARUNA SURESH)
JUDGE

APRIL 09, 2009
MM