

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

+ **CRL.A. 883/2008**

TOTA RAM Appellant
Through: Mr. Vijay Kumar Raina, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Pawan Sharma, APP.

CRL.A. 617/2008

SATYA PRAKASH Appellant
Through: Mr. Vijay Kumar Raina, Advocate.

versus

STATE (NCT OF DELHI) Respondent
Through: Mr. Pawan Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

% **ORDER**
16.01.2009

PRADEEP NANDRAJOG, J. (Oral)

1. Dildar, PW-2 was engaged in the business of sale of raw coconuts from Azadpur Market in Delhi. He was a resident of House No.4929/17, Gali No.4/4, East Old Seelampur, Delhi.

Dilshad (deceased) was his brother-in-law and Dildar had engaged services of Dilshad to maintain accounts of the business.

2. At 10.15 A.M. on 19.8.2002 a DD entry 15, Ex.PW-13/A, was recorded by PW-13 to the effect that a telephonic information was received from an unknown person informing that stabbing and quarrel is going on at House No.4929/17, Gali No.4-4, East Old Seelampur. PW-15 HC Krishan Pal, PW-16 HC Ravi Shankar, PW-19 Ct. Anil Kumar and PW-23 Ct. Ashok Kumar were deputed to the stated place of occurrence along with a copy of the DD entry.

3. They reached the spot and over powered two persons who were armed with a knife each, but threw the same on seeing the police. Noting that one out of the two injured persons (Dilshad) was in a serious condition, PW-15, HC Krishan Pal, summoned a PCR on the phone. PW-8, HC Udayvir Singh on duty at the PCR; 'Romeo 11' received the telephone call at 10.32 A.M. and immediately reached House No.4929/17, Gali No.4-4, East Old Seelampur and accompanied by PW-16 HC Ravi Shankar took Dilshad to Swami Dayanand Hospital where he was declared

dead on examination by Dr.Pushkar Chawla PW-4, who recorded the said fact in the MLC Ex.PW-4/A.

4. The other injured person i.e. Dildar was removed to Swami Dayanand Hospital where he was examined by PW-7 Dr.Shyambir Singh. MLC Ex.PW-7/A was recorded by him, noting the following eight injuries on the person of Dildar:-

1. Multiple incised wounds exposing underlying cut muscles and vessels present on Rt. side of neck head and back of head with one chopped wound on Rt. side and back of head exposing underlying bone. Rt. ear also Incised and hanging by side.
2. Multiple incised wound (criss cross) present on front of face, none with underlying muscles and vessels cut.
3. Multiple incised wounds present on left side of face and head with underlying muscles and vessels cut exposing underlying bone (?one chopped wound).
4. Multiple incised wound on Rt. shoulder with underlying muscles and vessels cut and bone exposed (?chopped wound)
5. Incised wound on left side chest and shoulder with underlying muscles and vessels cut directly (X)
6. Incised avulsed wound on Rt. hand and multiple incised wound on Rt. arm and forearm all around.
7. Incised avulsed wound on Lt. hand with cut underlying muscles and vessels, tendons of left thumb and index.
8. Multiple incised wound all around Rt. Upper Limb with cut underlying muscles and vessels.

5. Noting that Dildar requires specialized treatment on account of nerve vascular injury, Dr. Shyambir referred Dildar to Sushrant Trauma Centre for treatment wherefrom he was immediately referred on the same day to R.M.L. Hospital.

6. PW-14 SI Prem Singh, was at Karkardooma Courts when at 10.50 A.M. on 19.8.2002 he received a wireless message informing him of the incident. While he was about to embark upon the journey to go to the place of the incident he met the additional SHO of the Police Station, Krishna Nagar, PW-24 Inspector Pramod Kumar. Both reached the house where the incident had taken place.

7. At the spot, in the presence of PW-15, PW-19, PW-23 and PW-24, SI Prem Singh PW-14, seized two knives from the floor. The sketch of the two knives, Ex.PW-14/B and Ex.PW-14/C, were prepared by him. The knives were thereafter sealed with the seal of 'PS' affixed thereon. Vide seizure memo Ex.PW-14/D, the two knives and ten blood stained articles which were also seized from the room were sealed. PW-9 Const. Shiv Om, (Photographer) from the Crime team was summoned who took twenty photographs of the scene of the crime, out of which one

was washed out. The nineteen photographs Ex.PW-9/20 to Ex.PW-9/38 could be developed; negatives whereof are Ex.PW-9/1 to Ex.PW-9/19.

8. The FIR pertaining to the incident, Ex.PW-11/A was recorded by PW-11 HC Begraj Singh, at 4.25 P.M. on 19.8.2002 when Const. Anil Kumar PW-19, brought the tehrir from Inspector Pramod Kumar PW-24 which disclosed the commission of a cognizable offence punishable under Section 302/307/34 IPC.

9. Led by SI Prem Singh PW-14, the police personnel took the accused to the Police Station where they were formally arrested vide arrest memos Ex.PW-14/G2 and Ex.PW-14/G3. The pant and the shirt worn by them were seized vide seizure memo Ex.PW-14/E (Satya Prakash) and Ex.PW-14/F (Tota Ram).

10. The dead body of Dilshad was sent for post-mortem to Aruna Asaf Ali Hospital where PW-1 Dr.Sarvesh Tandon, conducted the post-mortem details whereof were recorded by him in the post-mortem report Ex.PW-1/A.

11. After a few days he received an application Ex.PW-1/B from

the Investigating Officer for opinion whether the injuries on Dilshad could be caused by the two knives which were seized by the police from the spot upon which he gave a report Ex.PW-1/C that the injuries noted by him on the dead body could be caused by both or either of the two weapons of offence.

12. Dildar remained admitted at R.M.L. Hospital and was declared fit for recording of statement on 26.8.2002 by Dr.Brijendra Tiwari PW-6 as per endorsement Ex.PW-6/A. Statement of Dildar was recorded by Inspector Pramod Kumar PW-24 wherein he named the appellants as the persons who killed Dilshad and attempted to kill him. In his statement the injured, Dildar disclosed to the police that he and Dilshad were attacked by the accused persons who were aware that he i.e. Dildar had money with him. He stated that the intention of the accused persons was to commit robbery.

13. At the trial, the police witnesses who were associated with the investigation or had taken the injured and the deceased to the hospital as also the ones who were concerned with the registration of the initial DD entry as also the FIR were examined. The doctors who had recorded the MLC's as also the

doctor who conducted the postmortem were examined. Dildar who had survived the attack was examined as PW-2.

14. We have noted hereinabove the injuries inflicted on the person of Dildar as recorded in the MLC Ex.PW-7/A.

15. The injuries noted on the person of the deceased Dilshad as recorded in the post-mortem record Ex.PW-1/A may be noted.

The same are as under:-

1. Incised wound (IW) over forehead, in middle, 5X2 cm. long, muscle deep, transversely placed, sharp edges (SE), Clean cut margin (CCM).
2. IW over R shoulder and around, irregular in shape, 11 x 7 cm area, ms deep, SE,CCM.
3. IW over front and R side of neck, upper part, 11X5 cm size, muscle deep, SE,CCM, going to BHS.
4. IW over back of neck, Right side, 9X4 cm size, SE,CCM, cutting scalp hair sharply, muscle deep.
5. IW over back of head, 3.5X1 cm size, vertical, SE,CCM, bone deep, cutting hair sharply.
6. IW over back of head, 2 cm below (5), 5X2 cm size, transverse, SE, CCM cutting hair sharply, bone deep.
7. IW- 6X1.5 cm size, 4 cm. below (6), transverse, ms deep, SE,CCM, cutting hair sharply, bone deep.

8. IW- 6X2 cm size, 3.5 below (7), transverse, over back of neck, SE, CCM in lower part, transverse, ms to bone deep, (cutting c 4,5,6 sharply below it).
9. IW over right scapula, 7X2 cm size, ms deep, SE, CCM. Obliquely vertical.
10. IW over back of (R) hand, 10X2 cm side, in cleft b/w ring and little finger, ms – bone deep, SE, CCM.
11. Distal phalanx of (R) index finger, sharply cut, and hanging by skin tag. SE , CCM.
12. IW over back of (L) hand, obliquely placed, 5X2 cm, bone deep, SE,CCM.
13. IW over back of (L) Hand, SE, CCM, 5X2 cm size, over base of little + ring finger, transverse.
14. Distal phalanx of (R) index finger missing, remaining edges sharply cut.
16. The cause of death opined in the post-mortem report is hemorrhagic shock, consequent upon cutting of blood vessels of right side of neck by a sharp edged weapon. All injuries are recorded as being ante mortem. It is recorded that all injuries are caused by a heavy, sharp cutting weapon and that injury No.3 was fatal and sufficient to cause death in ordinary course of nature. Injuries No. 10 to 14 are opined to be defence wounds.
17. CFSL report pertaining to the blood stained clothes i.e. the pant and the shirt of the accused as also the weapons of offence

and the other articles seized by the police vide seizure memos Ex.PW-14/D, Ex.PW-14/E and Ex.PW-14/F was tendered in evidence by PW-24 Inspector Pramod Kumar who stated that he had obtained the same from the Laboratory at Malviya Nagar. The report Ex.PW-24/I recorded the opinion as under:-

Portion of exhibits as detailed in the main Biology Report have been examined using various serological techniques. The results obtained have been analysed as given below:

	Exhibits	Species of Origin	ABO Group /Remarks
1a	Gaddi	Human	'AB' Group
1b	Gaddi	Human	'AB' Group
1c	Gaddi	Human	'AB' Group
1d	Gaddi	Human	'AB' Group
2a	Dari	Human	'AB' Group
2b	Dari	Human	No reaction
2c	Dari	Human	'AB' Group
2d	Plastic sheet	Human	'B' Group
3	Tehmad	Human	'B' Group
4	Tawa	Human	No reaction
5	Rubber pipe	Human	No reaction
6	Blood stained cemented and concrete material	Human	No reaction
7	Cemented and concrete material	No reaction	..

	(control)		
8	Blood stained cemented material	Human	No reaction
9	Cemented material (control)	No reaction	..
10	Cotton wool swab	Human	No reaction
11	Weapon of offence	Human	'AB' Group
12	Weapon of offence	Human	'B' Group
13a	Pants	Human	'AB' Group
13b	Shirt	Human	'AB' Group
14a	Pants	Human	'AB' Group
14b	Shirt	Human	'AB' Group
15	Blood stained gauze cloth piece	Human	'B' Group
16a	Banian	Human	'B' Group
16b	Underwear	Human	'B' Group
16c	Hand kerchief	Human	'B' Group

18. Relevant would it be note at this stage that as per Ex.PW-24/H the relatable description of the exhibits is noted as under:-

DESCRIPTION OF ARTICLES CONTAINED IN PARCEL

Parcel '1' : One sealed cloth parcel sealed with the seal of "PS" containing exhibits '1a', '1b', '1c' and '1d'.

Exhibit '1a' : One 'Gaddi' having brown stains.

Exhibit '1b' : One 'Gaddi' having brown stains.

- Exhibit '1c' : One 'Gaddi' having brown stains.
- Exhibit '1d' : One 'Gaddi' having brown stains.
- Parcel '2' : One sealed cloth parcel sealed with the seal of "PS" containing exhibits '2a', '2b', '2c' and '2d'.
- Exhibit '2a': One Dari having darker stains.
- Exhibit '2b': One Dari having brown stains.
- Exhibit '2c': One Dari having brown stains.
- Exhibit '2d': One plastic sheet having brown stains.
- Parcel '3' : One sealed cloth parcel sealed with the seal of "PS" containing exhibit '3'.
- Exhibit '3' : One Tehmed having brown stains.
- Parcel '4' : One sealed cloth parcel sealed with the seal of "PS" containing exhibit '4'.
- Exhibit '4' : One 'Tawa' having darker stains.
- Parcel '5' : One sealed cloth parcel sealed with the seal of "PS" containing exhibit '5'.
- Exhibit '5' : One Rubber pipe having brown stains.
- Parcel 6' : One sealed cloth parcel sealed with the seal of "PS" containing exhibit '6', kept in a plastic container.
- Exhibit '6' : Cemented and concrete material described as "blood stained concrete of floor".
- Parcel '7' : One sealed cloth parcel sealed with the seal of "PS" containing exhibit '7', kept in a plastic container.
- Exhibit '7' : Cemented and concrete material described as

“sample concrete”.

Parcel ‘8’ : One sealed cloth parcel sealed with the seal of “PS” containing exhibit ‘8’, kept in a plastic container.

Exhibit ‘8’ : Cemented material described as “blood stained concrete wall”.

Parcel ‘9’ : One sealed cloth parcel sealed with the seal of “PS” containing exhibit ‘9’, kept in a plastic container.

Exhibit ‘9’ : Cemented material described as “Sample concrete of wall”.

Parcel ‘10’ : One sealed cloth parcel sealed with the seal of “PS” containing exhibit ‘10’, kept in a plastic container.

Exhibit ‘10’ : Cotton wool swab having brown stains.

Parcel ‘11’ : One sealed cloth parcel sealed with the seal of “KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI” containing exhibit ‘11’,

Exhibit ‘11’ : One weapon of offence described as ‘Chhura’ made up of wooden handle and metallic blade having brown stains.

Parcel ‘12’ : One sealed cloth parcel sealed with the seal of “KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI” containing exhibit ‘12’,

Exhibit ‘12’ : One weapon of offence described as ‘Chhura’ made up of wooden handle and metallic blade having brown stains.

Parcel ‘13’ : One sealed cloth parcel sealed with the seal of “PS” containing exhibits ‘13a’ and ‘13b’.

Exhibit ‘13a’ : One pants having brown stains.

- Exhibit '13b': One shirt having brown stains.
- Parcel '14' : One sealed cloth parcel sealed with the seal of "PS" containing exhibits '14a' and '14b'.
- Exhibit '14a': One pants having brown stains.
- Exhibit '14b': One shirt having brown stains.
- Parcel '15' : One sealed envelope sealed with the seal of "KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI" containing exhibit '15',
- Exhibit '15': brown gauze cloth piece described as "Blood sample".
- Parcel '16' : One sealed polythene bag parcel sealed with the seal of "KLS AAA HOSPITAL SUBZI MANDI MORTUARY DELHI" containing exhibits '16a', '16b' and '16c'.
- Exhibit '16a': One banian having brown stains.
- Exhibit '16b': One underwear having brown stains.
- Exhibit '16c': One hand kerchief having brown stains.

RESULTS OF ANALYSIS

1. Blood was detected on exhibits '1a', '1b', '1c', '1d', '2a', '2b', '2c', '2d', '3', '4', '5', '6', '8', '10', '11', '12', '13a', '13b', '14a', '14b', '15', '16a', '16b' and '16c'.
2. Blood could not be detected on exhibits '7' and '9'.

19. With reference to Ex.PW-24/H and Ex.PW-24/I it may be noted that parcel No.16 containing the clothes of the deceased and handed over to the Investigating Officer by the concerned doctor were found to be containing human blood of B group and knife, Ex.P-2 having similar human blood of B group. Similarly,

the other knife Ex.P-1 was found to have human blood of AB group. This blood group i.e. AB is recorded as being found on the clothes of both the accused persons.

20. Believing the testimony of the police officials and in particular PW-14, PW-15, PW-16, PW-19 and PW-24 as also Dildar PW-2 who not only identified the accused but even gave a motive for the crime and with reference to the FSL report, the post-mortem report of the deceased and the MLC of Dildar, the accused who were charged for having committed an offence punishable under Section 302 IPC i.e. murder of Dilshad and the offence punishable under Section 307 IPC i.e. attempt to murder Dildar were held guilty by the learned trial Judge.

21. Needless to state, the injuries on the person of the deceased and the injuries on Dildar, as noted above, are sufficient to draw the conclusion that indeed Dilshad was murdered and a murderous assault was launched on Dildar. This has not been seriously disputed before us. The only question is, whether the appellants are the culprits.

22. The contention urged by learned counsel for the appellants

is that a microscopic examination of the testimony of PW-15, PW-16, PW-19 and PW-23 evidences serious contradictions and inconsistencies. It is urged that it is a case of false implication.

23. The second submission made is that the FIR was registered at 4.25 P.M. There is delay in registration of the FIR and this probablises the creation of false evidence or false implication. It is urged that non involvement of any independent witnesses; more so for the reason the place in question is a house in a crowded locality, is fatal to the case of the prosecution.

24. Lastly, it is urged that PW-2 Dildar, was in a conscious condition when taken to the hospital on 19.8.2002 and there is no reason why his statement was not recorded on the same day.

25. With reference to the contradictions in the testimony of PW-15, PW-16, PW-19 and PW-23 it is urged that PW-15 has deposed at variance vis-à-vis the deposition of the other witnesses to the effect that PW-15, PW-19 and PW-23 stated that when the police party entered the house the accused, on seeing the police, threw the knives which they were holding whereas PW-15 stated that the accused were disarmed by the

police.

26. This has led us to read the testimony of four witnesses. Indeed, learned counsel could not point out any such discrepant statement made by PW-15. The testimony of four police officers clearly shows that each one of them has stated that when they entered the house they saw the accused persons holding a knife each, in their hands and that when they saw the police party, the accused threw the knives on the floor.

27. The only discrepant statement shown is in the testimony of HC Ravi Shanker who on cross examination, stated that the statement of Dildar i.e. PW-2 was recorded in the hospital by the SHO at 12.00 noon on the day of the occurrence.

28. Indeed, while being cross examined, PW-16 HC Ravi Shanker has indeed said that the SHO recorded statement of Dildar in the hospital at 12.00 noon on the day of the incident.

29. But, does this discredit the version of the prosecution?

30. We think no.

31. PW-24 has recorded the statement of the injured PW-2 Dildar on 26.8.2002 in the evening after the injured i.e. Dildar was certified by Dr.Brijendra Tiwari PW-6, as per his opinion, Ex.PW-6/A that the patient was fit for making a statement.

32. We have carefully gone through the testimony of PW-24, Insp. Pramod Kumar. In his examination in chief he has deposed that on 26.8.2002 he recorded the statement of injured Dildar at R.M.L. Hospital on being declared fit by PW-6. In cross examination, no suggestion has been put to either him of having recorded any statement of the injured, much less on 19.8.2002. We have also perused the testimony of SI Prem Singh PW-14. No suggestion has been put to him that he recorded the statement of PW-2 at R.M.L. Hospital on 19.8.2002.

33. It be noted that both PW-14 and PW-24 have deposed of making a visit to RML Hospital on 19.8.2002. We note that PW-14 has categorically stated that they reached RML hospital at 1.45 P.M. and found injured Dildar admitted in the emergency ward and since doctor opined the injured unfit for statement, they could not record the statement of Dildar. We find that PW-14 has not been subjected to any cross examination with

respect to said statement made by him in his examination in chief.

34. Thus, an inadvertent statement made by HC Ravi Shanker does not dent the case of the prosecution.

35. Pertaining to the delay in the registration of the FIR, which we note was registered at 4.25 P.M., the testimony of PW-14 clarifies and explains the delay.

36. As noted above, the first information was received by the Police Station through an unknown person over the telephone, recorded vide DD No.15, Ex.PW-13/A at 10.15 A.M. As per the testimony of the police officers who swung into action and immediately reached the spot, by 10.32 A.M. they summoned a PCR van to remove deceased Dilshad, then in a serious condition to the hospital. The testimony of PW-8, HC Udaybir Singh establishes the said fact. The MLC of Dilshad shows that he was brought, declared dead, at SDN Hospital at 11.00 A.M. PW-14, SI Prem Singh had received a wireless message at 10.50 A.M. when he was at Karkardooma Courts. Soon thereafter he reached the site of the incident and as deposed by him, learnt

that Dilshad and Dildar were removed to SDN hospital. As per his testimony he went to SDN hospital where he learnt that Dilshad had died and Dildar was referred to Sushrant Trauma Centre. He went to Sushrant Trauma Centre where he learnt that the injured was referred to RML hospital. He went to RML hospital and reached there by 1.45 P.M. He spent some time there till doctor opined that the injured was unfit for statement. He went back to the spot and sent the tehrir for registration of the FIR.

37. Delay in registration of the FIR is thus fully explained.

38. That no independent witnesses were involved in the investigation is not of much consequence in the facts and circumstances of the instant case. There is no rule of law that police personnel cannot be truthful witnesses. There is no rule of law that the police always tells a lie.

39. At this stage, we note a decision cited by the learned counsel for the appellants on the issue of involving independent witnesses during investigation. The same is reported as 2002 (9) SCC 155 Jagdish & Anr. vs. State of M.P.

40. The facts of the said case were that evidence established a running family feud between the families of the injured and the accused. The court was considering the truthfulness of PW-1 Saligram vis-à-vis the testimony of another stated eye witness PW-7 Adiram. Noting that PW-1 the author of the FIR had deposed in court at variance with his first statement made to the police pursuant where to the FIR was registered, the court considered whether PW-7 Adiram, was at all an eye witness. Finding discrepancies in the statement of PW-1 and PW-7 pertaining to PW-7's presence on the scene of crime; noting that the place of the occurrence was a village road and the time was 11.00 A.M., the Supreme Court observed that non examination of public witnesses was a factor to be taken note of. Suffice would it be to state that testimony of PW-1, Saligram and PW-7 Adiram, was doubted by the Supreme Court on the premise that since no independent public witness was examined; the two being interested witnesses; their testimony has to be ignored. We repeat, the Supreme Court found inherent contradictions in the testimony of PW-1 Saligram and PW-7 Adiram; as also noted a completely different version given by PW-1 while deposing in court vis-à-vis his statement made to the police pursuant where to the FIR was registered. Thus, on facts, the decision is

clearly distinguishable.

41. Another decision cited by learned counsel for the appellants is 1998 (2) SCC 371, Sans Pal Singh vs. State of Delhi.

42. The decision is a short order spanning three paragraphs. The full facts as disclosed at the trial have not been noted in the said decision. The prosecution appeared to have hinged its case on stated recoveries effected by two police officers, SI Mahipal Singh and HC Sat Pal Singh. Doubting the recoveries, the Supreme Court additionally noted that non involvement of independent witnesses who were available at the spot as deposed to by PW-6, was a circumstance to be kept in mind while considering the evidence.

43. In the instant case, PW-2 Dildar who was grievously injured, is a witness whose testimony has to be kept in view. PW-2 has deposed that he was engaged in the business of sale and purchase of green coconuts at Azadpur Mandi. That he had engaged his cousin, Dilshad, to maintain the accounts of the business. He deposed that on 19.8.2002 he and Dilshad were

present in their room and were sleeping when the accused persons entered the room and demanded keys of the box (presumably the money box); they i.e. Dildar and Dilshad resisted. He deposed that the accused persons who were holding knives in their hands attacked them. In cross examination he deposed that the accused persons were residing near Kanti Nagar Railway tracks and were employed by one Mubalik who was also in the same business as he i.e. sale and purchase of raw coconuts. It is apparent from the testimony of PW-2 that he had seen the accused persons who were the employees of Mubalik; Mubalik was in the same business as he i.e. sale and purchase of green coconuts. It is apparent that PW-2 was in a position to identify the accused persons.

44. We see no reason to differ with the conclusion arrived at by the learned trial Judge; namely that the appellants acted in concert and entered the house of PW-2; armed with knives; to commit robbery. The injuries on the person of the deceased and PW-2 evidences an intention of the appellants to use force to accomplish their mission. The weapons of offence i.e. the two knives, as per the sketch Ex.PW-14/C and Ex.PW-14/D reveal that both knives had a blade of 10 inch. The handle was 5.1 inch

of one knife and 4.8 inch of the other. Armed with the knives having afore noted blade length and causing as many as fourteen injuries on the deceased and as many as eight on the person of the injured is good evidence to hold that the intention of the appellants was to cause the death of Dilshad when he was attacked and similar was the intent when Dildar was attacked.

45. The appeals are dismissed.

PRADEEP NANDRAJOG, J.

ARUNA SURESH, J.

JANUARY 16, 2009
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