

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

% *Date of Decision : March 19, 2009*

+ **CRL.A. 922/2008**

GOVIND KUMAR Appellant
Through: Ms.Purnima Sethi, Advocate.

versus

STATE Respondent
Through: Mr.Pawan Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

: **PRADEEP NANDRAJOG, J.** (Oral)

1. Case of the prosecution as led at the trial was that the appellant had a grouse against deceased Chander Prakash, who was a bachelor, on account of Chander Prakash having illicit relations with the wife of the appellant and that, motivated by the said fact, appellant murdered Chander Prakash at around 11.30 PM on 25.9.2004 when Chander Prakash was sleeping on a *charpai* (bed) outside his house.

2. Vide impugned judgment and order dated 21.8.2006, the learned Trial Judge has convicted the appellant.

3. Vide order of sentence dated 26.8.2006, sentence imposed is to undergo imprisonment for life and pay fine in sum of Rs.5,000/-; in default of payment of fine, to undergo rigorous imprisonment for one year.

4. Lallu PW-3, the brother of the deceased and a neighbour Manoj PW-4, appeared as witnesses of the prosecution and claimed to have witnessed the incident.

5. At the instance of the appellant, a knife stated to be the weapon of offence, as also the clothes which according to the prosecution were worn by the appellant at the time of commission of the offence were recovered and seized.

6. With reference to the blood group of the deceased, an opinion was sought from the serologist pertaining to the blood statedly found on the clothes of the appellant as also on the knife. The report dated 19.4.2005 submitted by the serologist is that human blood could be detected on the knife and the clothes but on reaction did not yield the group thereof.

7. The learned Trial Judge, in para 21 of the impugned decision, pertaining to the said evidence has held as follows:-

“21. The accused on his arrest had led the police to where he had hidden the knife. He had also taken the police to the railway line, Ram Nagar near the cement slabs where he got his clothes recovered. No doubt these are public places but the question that would arise is how did the accused know about the existence of the knife and the clothes, if he had no connection

with these objects. The knife had in fact been buried in the sand near the water tank while the clothes had been placed near cement slabs. The recovery of the weapon of the offence and blood stained clothes of the accused are also important and vital evidence to prove the culpability of the accused. Thus, not only does the testimony of eye witness prove the case against the accused, the circumstantial evidence also establishes his involvement in the crime."

8. With reference to the testimony of Lallu PW-3 and Manoj PW-4, learned Trial Judge has returned findings in paras 18 to 20 of the impugned decision which read as under:-

"18. PW-4 Manoj is an eye witness to the incident. He had seen the accused stabbing Govind. It is natural for a person to become scared on seeing some such incident. Nevertheless when the brother PW-3 and other relatives of the deceased came out to give chase, he also had helped in removing the injured to the hospital. This witness has provided the motive for the crime as he has deposed to the illicit relations of the wife of accused Govind with the deceased. That PW-3 and PW-4 had been detained by the police for interrogation initially has been admitted by both the witnesses. Had they any role in the murder of Chander Prakash it would have been more natural for them to have denied that fact. PW-3 has admitted in umbrage that he had been questioned by the police as the police were not believing him. Similarly, PW-4 has admitted that he had been taken away by the police for questioning and that for two days he had remained scared and had not informed the police. The testimonies of both these witnesses appear natural and convincing. They belong to the lower strata of society and have natural fear for the police. Their background makes them vulnerable. It is because on their background that the police was not willing to act immediately on their statements that they had actually seen the accused Govind stabbing Chander Prakash.

19. That does not mean that the police have not

properly investigated the case. That also does not mean that the witnesses have testified falsely to the involvement of the accused Govind in this case. The statements of PW-3 and PW-4 would show that at the time of incident the victim was lying all by himself outside the house and apart from the accused Chander Prakash only PW-4 Manoj was in the vicinity, PW-4 being rickshaw puller was sleeping near the water tank, when the incident occurred. He is not a chance witness.

20. In the light of the clear and convincing testimony of PW-3 and PW-4 only one conclusion can be reached that the accused Govind had intentionally and willfully stabbed Chander Prakash while Chander Prakash was lying on his cot. The strength with which the accused Govind had struck Chander Prakash is evident from the autopsy report which says that there was only one blow and that had reached the lung and pleural cavity and had injured the heart. It was with care precision. It appears that the accused Govind has stabbed the injured. That injury was sufficient to cause the death almost instantaneously to Chander Prakash.”

9. It is apparent that the conviction or otherwise of the appellant depends upon the creditworthiness of the testimony of the eye-witnesses, simply for the reason, the report of the serologist does not conclusively establish the linkage to the crime inasmuch as the group of the blood of human origin found on the knife and the clothes could not be ascertained.

10. We propose to note in its entirety the deposition by way of examination-in-chief of PW-3 as also the examination-in-chief of PW-4 and a part of his cross-examination.

11. But, before that, it would be important to note that the police investigation commenced when DD Entry No.3A was

recorded at the local police station; the informant informed that a stabbing incident had taken place at Ram Nagar, Railway Colony, Paharganj.

12. SI Nageen Kaushik PW-12, accompanied by Const.Mukesh left for the spot and on learning that the injured had been removed to Lady Hardinge Medical Hospital proceeded to the hospital and found Lallu PW-3, the brother of the deceased in the hospital. The deceased had already been declared brought dead by the doctor on duty.

13. SI Nageen Kaushik recorded the statement Ex.PW-3/A of Lallu PW-3 in which he informed that he was a resident of 143-E Ram Nagar, Railway Colony, Paharganj and that he was a rickshaw puller. He informed that apart from him, his mother, brothers Kishan Lal and Chander Prakash as also his son Bunty were residing. That in the adjoining quarter his sister Shanti was residing with her family and that Shanti was employed as a safai karamchari under the railways. He informed that today night his mother, Kishan Lal and Bunty were sleeping inside the room and Chander Prakash was sleeping on a charpai outside. Regarding himself, Lallu informed that he was listening to music lying on a bed and around 11.30 – 11.45 in the night he heard a shriek from outside which led him to go outside. He saw that his brother Chander Prakash had fallen from the bed and was

unconscious. That he called his mother who in turn awoke the other residents of the house and that he i.e. Lallu along with his brother and nephew removed Chander Prakash to Lady Hardinge Medical Hospital where the doctor on duty declared Chander Prakash 'brought dead'. He informed that somebody had murdered his brother and that he desires action to be taken against said person.

14. SI Nageen Kaushik made an endorsement Ex.PW-12/A on the statement Ex.PW-3/A made by Lallu and dispatched the statement and his endorsement (tehrir) for registration of an FIR at around 2.30 AM.

15. FIR Ex.PW-7/B was registered at around 2.45 AM on 26.9.2004.

16. Dead body of Chander Prakash was sent to the mortuary where Dr.Amit Kochhar PW-11 conducted the post-mortem. He found one stab injury 4 cm x 1.5 cm x 5 cm which had cut into the pleural cavity. He gave opinion that the cause of death was haemorrhagic shock as a result of the heart being punctured. He gave his opinion on the post-mortem report Ex.PW-11/A.

17. The knife stated to have been recovered pursuant to the disclosure statement of the appellant i.e. the knife Ex.P-4 was shown to Dr.Amit Kochhar, when he deposed in Court as

PW-11, and he opined that the stab injury could have been inflicted by the knife Ex.P-4.

18. It must be noted at the outset that in his statement Ex.PW-3/A the maker of the statement i.e.Lallu PW-3, has not claimed having witnessed the stabbing incident much less claimed that he saw someone running away. Though he has not stated in express words that he was inside the room, but said fact of Lallu being inside the room is evidenced from the fact that he stated that he was listening to music while lying down and upon hearing the shriek he went out. Obviously, one goes outside if one is inside.

19. In his deposition Lallu PW-3 deposed as under:-

"I am a rickshaw puller. In my house my mother, my brother Krishan Lal, my son Bunty reside with me and before his death Chander Prakash used to also reside with me. In the adjacent quarters my sister Shanti resides with her children. My sister Shanti is employed as a safai karamchari in the railway. On 25.9.2004 at 11.30 PM, at that time I my mother my brother Kishan Lal and my son Bunty were sleeping inside the room while my brother Chander Prakash was sleeping outside on a charpai in the open. I was listening to a radio programme Mirchi at that time. The volume of the radio was low. I heard a shriek from outside. (1) I immediately opened the door and I saw Govind present in the court today stab my brother and run away from the spot. He was wearing a red colour T-shirt and blue colour jeans at that time. There was a bulb left on outside the house and the area was well lit that I could see what was happening. I saw my brother bleeding from the middle of his chest. (2) I called out to Manoj to help in removing my brother to the hospital. When we took my brother to

the Lady Harding Hospital, he was declared brought dead. My statement was recorded at the police station. I was taken to the Police Station from the hospital and I was made to sit at the Police Station while the police investigated to the matter and as the culprit Govind was not traceable. (3) Manoj then informed the police that Govind had stabbed my brother as he had witnessed the incident. I too had seen the stabbing by Govind accused. (4) My statement was recorded before Manoj came to inform the police. Statement Ex.PW-3/A is made by me. And it bears my thumb impression at point A. (5) Though I had told the police that Govind was responsible for the stabbing of my brother, they were not believing me. The police were accusing me of having murdered my brother and had given me beatings. Chander was unmarried. Rani is the wife of the accused. I am not aware of the quarrel that the accused may have had with my brother, though quarrel had taken place. I identified the dead body vide my statement Ex.PW-3/B. Kishan Lal my brother received the dead body because I was at the police station. I had identified the dead body at the hospital. My mother came to the Police Station and then I was allowed to go from the police station and thereafter my brother was cremated. The accused used to reside on the footpath at the corner of the lane. I can identify the seized articles. Chander Prakash was only in under clothes at the time of stabbing. At this stage, a carton sealed with the seal of CFSL intact produced in the Court and open. The witness has taken out the underwear (kachha) which he identifies as being that of his brother and which he had been wearing at the time of incident. The Kachha is Ex.P-1. The witness had identified the T-shirt and Jeans as belong to the accused Govind and the T-shirt (Red colour) is Ex.P-2 and Blue Jeans is Ex.P-3 and the witness has also identified the knife as the same with which his brother had been stabbed and the same is Ex.P-4. The witness has identified the bed sheets as belonging to them and states that the bed sheet Ex.P-5 was the sheet with which the deceased had covered himself. (Court observation the bed sheet bears cut marks from where the CFSL has removed cloth for analysis.) the witness has also identified the plastic nevar as

belonging to the pot on which his brother is lying at the time of incident and which had cut out. Plastic nevar is collectively Ex.P-6. The photographs on the judicial file are of my deceased brother.”

20. We have given serial numbers 1 to 5 and have also underlined certain statements made by Lallu in his deposition for the reason, they are important and relevant while discussing the testimony of Lallu as also the testimony of Manoj, the other stated eye-witness to the incident.

21. Manoj PW-4 deposed in Court on 31.8.2005. We note his entire examination-in-chief and relatable part of the cross-examination, ignoring certain questions in cross-examination pertaining to his knowledge of Govind having a ill will towards Chander Prakash on account of Chander Prakash having illicit relations with the wife of the accused. The examination-in-chief and relatable part of the cross-examination of Manoj reads as under:-

“I am a rickshaw puller and during the night sleep near the water tank. Nearby resides Lallu and his family members. It was night of 25th September at 11.30 PM. It was Saturday. (1) I had just prepared by bed and was settling down when I heard a shriek. (2) I got up to see and found Govind stabbing Chander Prakash. There was light from a bulb and I could see what was happening. I saw Govind run away after stabbing. (3) Because I became frightened I went back to the bed. (4) Lallu, myself, Lallu’s nephew, had taken Chander Prakash to hospital. I remained on the side because I was frightened. Chander was unmarried. He was having illicit relations with Rani, wife of Govind. Govind is the accused, present in the

Court today and I identify him. The accused Govind had told me that since Chander Prakash was having illicit relations with his wife, he would kill Chander Prakash. Chander Prakash deceased was my friend. I had conveyed what accused Govind had told me to Lallu. I would be able to identify the clothes. The witness has picked out the red T-shirt and states that it belongs to Govind. He has also identified the jeans as belonging to Govind. They are already exhibited Ex.P-2 and P-3. The witness had identified the bed sheet Ex.P-5, as the sheet used by his friend Chander Prakash to cover himself. The witness has picked out the knife Ex.P-4 as the knife with which Chander Prakash had been stabbed. The witness identifies the underwear Ex.P-1 as belonging to the deceased. The witnesses has also identified the nevar Ex.P-6.

xxxxxxxxxx by Sh. Anant Singh, counsel for the accused.

The police had made inquiries from me after one or two days after the incident. I was proceeding to the latrine when I was taken by the police. Sonu, Govinda has also accompanied us to the hospital. (6) Since I was scared I did not tell anyone that I had seen Govind stab Chander Prakash. I was in the company of others, but nevertheless, I remained scared. (7) It is correct that from the hospital I had quietly ran away. It is incorrect to suggest that I had stabbed Chander Prakash and has run away because I had stabbed Chander Prakash."

22. We have assigned serial numbers and underlined the seven statements of Manoj; four pertaining to his examination-in-chief and three pertaining to his cross-examination as they are relevant to discuss the credibility of Manoj vis-à-vis self and with reference to the testimony of Lallu.

23. The five statements of Lallu which we have underlined and prefaced with serial numbers 1 to 5 show that as

per Lallu, immediately upon opening the door after he had heard the shrieks he saw Govind stab his brother and running away from the spot. Statement No.2 shows that thereafter he called out Manoj to help in removing his brother to the hospital.

24. If this be so, as per the testimony of Lallu, Manoj could not be an eye-witness to the incident of stabbing because Lallu had called Manoj after the accused had ran away from the spot.

25. Statement No.3 highlighted by us, as made by Lallu, shows that according to Lallu, Manoj informed the police that Govind has stabbed his brother and that he had witnessed the incident. Throwing light with respect to the point of time when Manoj informed the police, statement No.4 highlighted by us, as made by Lallu, evidences that his i.e. Lallu's statement Ex.PW-3/A was recorded by the police before Manoj came to the police station. Meaning thereby, that Lallu and Manoj had both gone to the police station. Statement No.5 highlighted by us, as made by Lallu, evidences that according to Lallu, the police had incorrectly recorded his statement Ex.PW-3/A; Lallu clearly states in statement No.5 that though he was telling the police that the appellant was responsible for stabbing his brother the police was not believing him.

26. Turning to the statement of Manoj, we find that he

claims to be an eye-witness. He claims that when he had just prepared his bed and was settling down, he heard a shriek (statement No.1) and got up to see and found Govind stab Chander Prakash (statement No.2).

27. It is apparent that there is a clear contradiction in the testimony of Lallu and in the testimony of Manoj. Whereas Lallu claims having called Manoj after the assailant had ran away from the spot, Manoj claims to the contrary.

28. It is important to note that Manoj has not deposed that when he came out of his room on hearing the shriek he saw Lallu standing next to his brother.

29. Statement No.3 highlighted by us and as made by Manoj shows that according to Manoj since he got frightened he went back to bed. If this is so, the immediately next statement i.e. statement No.4 made by him that he helped Lallu and Lallu's nephew to take Chander Prakash to the hospital does not make much sense.

30. Statement No.5 of Manoj during cross-examination, that police had made inquiries from his one or two days after the incident and statement No.6 that since he was scared he did not tell anyone of seeing Govind stab Chander Prakash needs to be evaluated with reference to the statement of Lallu that at the police station Manoj kept on insisting that Govind had stabbed

Chander Prakash and even he i.e. Lallu was so insisting is self contradictory.

31. According to Manoj, because he was scared he did not tell anyone having seen Govind stab Chander Prakash. It is also relevant to note that as per statement No.7 made by Manoj he quietly ran away from the hospital, meaning thereby he never went to the police station on the day of the incident.

32. Now, if Lallu claims to be the eye-witness, Lallu does not state that he was scared. What prevented Lallu from stating the truth? According to Lallu he was stating the truth and repeatedly telling the police that Govind had attacked his brother and that in spite thereof the police incorrectly recorded his statement Ex.PW-3/A.

33. Is this version of Lallu believable?

34. We would have probably believed Lallu if we would have found no other inconsistencies in his statement. If, according to Lallu, he was the one who had seen the stabbing incident and it was he who was telling the police that appellant had stabbed his brother, where was the question of Manoj also stating the same thing to the police as claimed by Lallu. We note that as per statement No.3 made by Lallu he claims that Manoj then informed the police that Govind had stabbed his brother.

35. It is obvious that Lallu is trying to sail on two boats at the same time. Whereas he claims to be an eye-witness himself at the same time he is using the shoulder of Manoj to supplement his testimony; little realizing that as per Lallu, Manoj could not be an eye-witness to the incident. Pertaining to the deposition of Manoj we find that he claims not having told anything to anybody on the day of the incident because he became frightened. In fact he goes on to state that after he saw the incident, because he got frightened, he went back to bed.

36. Though Manoj claims to have helped Lallu and Lallu's nephew to remove Chander Prakash to the hospital, but we note that there is no evidence of Manoj being seen by the police or by anybody in the hospital. To overcome the said fact, Manoj claims (statement No.6) that since he was scared he did not tell anyone and (statement No.7) he quietly ran away from the hospital.

37. We need discuss no further. It is apparent that PW-3 and PW-4 have contradicted each other with respect to who saw the incident of stabbing.

38. Thus, credence has to be given to the statement made by Lallu i.e. Ex.PW-3/A, soon after the incident, which has the ring of truth. The truth being that Lallu did not see anyone stab, much less run away from the spot.

39. Reason is obvious. A single stab injury has been caused on the deceased. It was 11.30 PM. The assailant has struck a lethal blow with lightening speed and has fled by the time any person, on hearing the shriek, could come out of the room to the spot.

40. It is not a case of multiple stab injuries which would have consumed some time. Everything happened in a fraction of a second.

41. Removing the eye-witness account as evidence against the appellant, on account of the inherent contradictions herein above noted, we are left with only two pieces of evidence incriminating against the appellant. The first is motive. The second is the stated recovery of weapon of offence and the fact that the clothes worn by the appellant were found to be having human blood thereon.

42. Motive is weak evidence for the reason it is presumptive evidence. The fact that blood group could not be detected on the knife and the clothes got recovered by the appellant further weakens the weightage to be given to the evidentiary value thereof.

43. At best, the same would be a piece of circumstantial evidence.

44. It is settled law that to sustain a conviction on

circumstantial evidence the evidence must form a complete chain where from the only inference which can be drawn is the inference of guilt and the innocence has to be ruled out.

45. It is unfortunate that the learned Trial Judge has not critically examined the testimony of PW-3 and PW-4. The impugned decision shows a mechanical approach. The learned Trial Judge has discussed their evidence on the premise that both of them were eye-witnesses to the incident and that Manoj did not come forward with the truth at the first instance because he was scared and that the police deliberately recorded wrong facts in the statement of Lallu.

46. Why did the police do so?

47. Had this question been posed and an answer attempted, it would have dawned on the learned Trial Judge that the police has indeed acted truthfully and honestly. This is evidenced from the fact that when the next day, Manoj informed the police that he had witnessed the incident, the police immediately went about apprehending the appellant.

48. What has happened in the instant case is that Lallu and Manoj have so intertwined their testimonies that it becomes impossible to find out where does the truth lie.

49. The intertwined lies or material exaggerations, whatever may be the phrase used, by Lallu and Manoj have

rendered it impossible to separate the grain from the chaff.

50. In any case, under such circumstances, the rule of law is that the benefit of doubt has to be given to the accused.

51. The appeal is allowed.

52. The impugned judgment and order dated 21.8.2006 is set aside.

53. The appellant is acquitted of the offence of having murdered Chander Prakash.

54. The appellant is in jail. If not required in judicial custody in any other case, the appellant is directed to be set free forthwith.

55. Copy of this order be sent to the Superintendent, Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J.

SIDDHARTH MRIDUL, J.

MARCH 19, 2009
Dharmender