

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

% Date of Decision :25th February, 2010

+ **Crl.A.No.716/2001**

PAPPU KUMAR Appellant
Through: Mr.H.L.Aggarwal Sr.Adv. with
Mr. D.P.Sharma and
Mr.Rajinder Yadav, Advocates

versus

STATE Respondent
Through: Mr.M.N.Dudeja, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

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

PRADEEP NANDRAJOG, J. (Oral)

1. Learned senior counsel appearing on behalf of the appellant concedes that there is no blemish worthy of being noted wherefrom Rajkumar PW-1 and Ramesh PW-2 can be discredited.

2. In that view of the matter suffice would it be to note that as per Raj Kumar and Ramesh they were related to each other. Raj Kumar was the elder brother Ramesh was the younger brother. They were owners of building bearing municipal number A-130, Hari Nagar II, Jaitpur Road, Badarpur,

Delhi-44. The building had many rooms. One room was let out to Hem Raj and Mahesh Kumar. The two were paying rent to them in sum of Rs.250/- p.m.

3. In the intervening night of 6/7.01.1996, at around 2:30 AM i.e. in the middle of the night, shouts of 'Bachao-Bachao' awoke the two brothers. They heard sound of glass breaking. The sound was coming from the room taken on rent by Mahesh and Hem Raj. As they went out of their respective rooms, they saw that the light in the room occupied by Hem Raj and Mahesh was on. They knocked the door and the light went off. The door was opened. Appellant Pappu and Hem Raj were standing on the door. They enquired as to what the matter was but got no reply. They asked appellant and Hem Raj as to why had they put off the light. They received a reply that the bulb had got fused. When confronted with the question as to how come the bulb was burning a little while ago. The two switched on the light. Immediately, both i.e. appellant and Hem Raj attempted to flee. Raj Kumar and Ramesh saw Mahesh lying in a pool of blood. They ran after appellant and Hem Raj but could manage to apprehend the appellant. Hem Raj managed to run away and could never be caught.

4. Information of the crime was recorded at the police station i.e. P.S.Badarpur vide DD No.25A. SI Sanjay Singh PW-

4 as also Insp. Ajit Singh PW-12 along with two constables proceeded to the place of the occurrence where Raj Kumar and his brother handed over custody of the appellant to the two police officers. Raj Kumar's statement was recorded and on basis thereof FIR was registered.

5. Spot proceedings in the form of blood sample and various blood stained articles were completed. Rough site plan was prepared. Dead body was sent to the mortuary. Dr. Alpana Singh conducted the post-mortem and prepared the report Ex.PW-10-A, proved at the trial by Dr.Millo Tabin PW-10 who claimed to be working with Dr.Alpana Singh and being familiar with her writing and signatures. As per the post-mortem report 20 injuries most of them caused by blunt force and one by a sharp object were noted. Most of the injuries were directed towards scalp. But cause of death was asphyxia due to smothering.

6. With reference to the post-mortem report none can possibly raise an argument that with reference to the savage assault on the deceased there is some scope for an argument that the offence is of culpable homicide not amounting to murder. The dead body of Mahesh tells us that he has been brutally murdered.

7. The learned trial Judge has returned a verdict of guilt against the appellant holding that the testimony of Raj

Kumar and Ramesh establishes the presence at the appellant in the room along with Hem Raj (P.O.) at the point of time Mahesh was killed. The conduct of acting in concert is evidenced that the two switched off the light when the room was knocked. Thereafter the moment the light was switched on, both appellant and Hem Raj, attempted to flee, have been held to be sufficient evidence wherefrom the guilt of the appellant could be safely inferred.

8. It is urged by learned counsel for the appellant that the vis-à-vis the appellant not only is there no evidence of motive but Insp. Ajit Singh PW-12, the Investigating Officer, has stated that during investigation it transpired that the (Proclaimed Offender) Hem Raj was having enmity with the deceased and the appellant was having no such enmity. It is urged that there is no proof that the appellant had any common intention with Hem Raj. It is urged that no finger prints of the appellant could be detected on the weapon of offence which was used to cause the head injuries i.e. the brick recovered from the room. It is urged that there is no evidence as to what acts were committed by the appellant and which acts were committed by Hem Raj. The sum total of aforesaid is the submission that Section 34 of the Indian Penal Code which requires proof of sharing of a common intention and acting in concert in furtherance of common intention to give

effect to the common intention is not made out.

9. Rules of law and procedure are not an obstacle in courts. A criminal trial is not a steeple chase. A criminal trial is a journey, destination whereof is to ascertain the truth and find out who is the offender.

10. A fact is required to be treated as proved under the Law of Evidence when after considering the matters before it, the court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists.

11. Section 5 to Section 16 are interlinked provisions of the Law of Evidence and guide the court that where a transaction has been performed with a series of act preceding, contemporaneous and succeeding a fact in issue, all have to be considered together for the reason all are interlinked. They enwomb a fact in issue, having an umbilical relationship with the fact in issue.

12. At the centre of evaluation of evidence before a court is the test of how a prudent person would believe qua the existence or non-existence of a fact in issue with reference to the matters before it.

13. Recognizing that it is virtually impossible for an accuser to prove each and every facet of an accusation, Section 106 of the Evidence Act shifts the burden of proving a fact which is especially within the knowledge of the person.

14. The law of last seen evidence developed by courts is a combination of what flows out of the provisions of Section 6 to 16 of the Evidence Act and the burden upon the person having special knowledge under Section 106 of the Evidence Act.

15. Whether the deceased when alive, and the accused are seen together and within sufficient proximity of the time and place, the deceased is found dead, ruling out the possibility of somebody else accessing the deceased, the court would be justified in inferring the guilt of the accused unless there exists a fact which breaks the foundation of the inference or the accused renders a satisfactory explanation as to how the deceased died.

16. In this context it is relevant to note that the appellant, when examined under Section 313 Cr.P.C., failed to render any explanation as to how the deceased died.

17. We highlight that the appellant claimed not to be involved in the incident. He stated that Raj Kumar and

Ramesh has deposed falsely. He denied that they caught him at the spot as claimed by him. Without telling as to when and where was he arrested, he admitted his signatures on the various memos but stated that the police obtained his signatures on blank papers.

18. Thus, it is of importance to note that the appellant rendered no explanation as to what happened inside the room in the eventful night of 6th and 7th January, 1996.

19. That motive could not be proved does not mean that possibly there was a motive. That no finger prints of the appellant were detected in the room is meaningless for the reason as deposed to by Inspector Rajender PW-7, a finger print expert, he could lift some prints from the spot but on development did not yield any chance prints as per his report Ex.PW-7/A.

20. That there is no evidence to show as to what acts were committed by the appellant and what acts were committed by Hem Raj is irrelevant in the facts and circumstances of the instant case.

21. That the Investigation Officer could find, during investigation, no apparent motive attributable to the appellant

and some motive attributable to Hem Raj would also be an irrelevant circumstance in the instant case.

22. Let us revisit what happened in the night when Mahesh died. As told to us by Raj Kumar and Ramesh, the appellant, Hem Raj and Mahesh Kumar were sleeping in the room. There was a commotion in the room at around 2:30 A.M. in the middle of the night. The light was on inside the room. Cries of rescue were coming from the room. Raj Kumar and Ramesh walked up to the room and knocked the door of the room. The light inside was switched off. The door was opened. Raj Kumar and Ramesh inquired from the appellant and Hem Raj as to what was going on and in particular why was the light switched off. The two gave false answer that the bulb was fused. The light was switched on. The bulb emitted light. At that point of time the appellant and Hem Raj attempted to flee. Whereas Hem Raj succeeded, the appellant was caught.

23. The court must therefore presume from the facts, as they do require said presumption to be drawn, that both i.e. the appellant and Hem Raj fatedly assaulted the deceased. The prosecution had no means to find out as to who did what. It was the duty of the appellant to have spoken and disclosed the facts in his special knowledge. Section 106 of the

Evidence Act is fully applicable in the facts and circumstances of the instant case.

24. We concur with the findings of the guilt returned by the learned trial Judge pertaining to that which stands proved that the offence committed is that of murder.

25. The appeal is dismissed. The sentence to undergo life imprisonment imposed upon the appellant shall be executed.

26. The appellant is on bail. The bail bond and the surety bonds furnished by the appellant are cancelled. Since the appellant is present in court, he is taken in custody by Naib Court, HC Rambir who is directed to complete the requisite formalities to lodge the appellant in the Tihar Jail.

27. Copy of this order be supplied Dasti under the signatures of the Court Master to learned counsel for the appellant and also to counsel for the State today itself.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

FEBRUARY 25, 2010
'mr/nks'