

R-10

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

% Date of Decision: 6th April, 2010

+ **CRL.APPEAL NO.51/2008**

JAGMENDER @ HAPPY Appellant
Through: Ms.Shraddha Bhargava, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

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 the Reporter or not?
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J. (Oral)

1. Vide impugned judgment and order dated 15.10.2007 the appellant has been convicted for the offence of having murdered Gurmeet Singh on 4.6.2001 at the midnight at around 12:15. The learned Trial Judge has held that the prosecution has successfully established that at around 12:15 AM i.e. midnight of 4.6.2001, when the deceased along with his family members came out of Celebration Gardens at National Highway No.8, the appellant suddenly put a pistol at the neck of the deceased and fire a shot.

2. In returning the finding of guilt, the learned Trial Judge has held that the ocular testimony of Amandeep PW-2 as per which Amandeep identified the appellant as the assassin of his father coupled with the fact that apart from Amandeep, Manmohan Singh PW-3 stated that the assailant was wearing a gray coloured T-shirt and the fact that a gray coloured T-shirt was recovered from hotel Love Palace, Paharganj at the instance of the accused on 10.7.2001 and at the TIP proceedings was successfully identified by Amandeep as the one which he saw his father's assassin wearing when he fired the shot, were sufficient evidence wherefrom guilt of the appellant could be inferred. Learned Trial Judge has also held that the appellant failing to give a satisfactory reason of his visiting Delhi and staying at a hotel and then abandoning the hotel wherefrom the packet of clothes belonging to the appellant were recovered was also an incriminating circumstance against the appellant.

3. We need not pen a very lengthy judgment for the reason, the learned Trial Judge has chosen to parrot the song of the prosecution and has ignored most vital evidence which we shall soon be noting.

4. The appellant was arrested on 22.6.2001 in another FIR at P.S. New Ashok Nagar and as claimed by the

prosecution he disclosed to the investigating officer of said case that he was involved in the murder of Gurmeet Singh. Said information was passed on to the investigating officer of this case. The prosecution claims that the custody of the appellant was taken over by the investigating officer of the instant case and that appellant made a disclosure statement stating that he had stayed at hotel Love Palace and had left a bag with clothes which included the T-shirt which he was wearing when he committed the murder and that he could lead the investigating officer to said hotel and get recovered the bag containing his clothes as also his T-shirt. As per the prosecution, the appellant led the investigating officer to hotel Love Palace and pointed out the same. Thereafter, the man at the counter of the hotel handed over a bag which contained the clothes belonging to the appellant. One article of was a gray coloured T-shirt.

5. Who was the investigating officer?

6. SI Prabhu Dayal PW-20 has deposed that he was posted at PS Vasant Kunj on 4.6.2001 and on receipt of DD No.5A went to Celebration Gardens. He learnt that the injured was removed to the hospital. He left Const.Manoj at the place of the incident and went to Safdarjung Hospital where he found Gurmeet Singh being brought dead. He found

Manmohan Singh injured and unfit for statement. He met Amandeep Singh PW-2 whose statement Ex.PW-2/A was recorded and pursuant thereto he got the FIR registered. He went to the place of incident and prepared the site plan Ex.PW-20/B with the assistance of Amandeep and lifted blood stained earth and control earth vide memo Ex.PW-20/C. He deposed that on 4.7.2001 custody of the appellant was handed over to him for TIP proceedings. He stated that during police custody, the pointing out memo Ex.PW-7/A dated 10.7.2001 as also the pointing out memo Ex.PW-20/D was prepared by him. The seizure memo Ex.PW-19/A dated 10.7.2001 was also prepared by him.

7. Interestingly, on being cross-examined he categorically stated: *'I had conducted the investigation only on 4.6.2001 and thereafter it was transferred and handed over to Insp.Mahesh Sharma'*.

8. If this be so, we are surprised how come SI Prabhu Dayal authored the two pointing out memos Ex.PW-7/A and Ex.PW-20/D. We are also surprised as to how come he authored the seizure memo Ex.PW-19/A.

9. But, what is of extreme surprise to us is the fact that the disclosure statement Ex.PW-20A /of the appellant is dated 11.7.2001.

10. If this be so, we fail to understand as to how come the recoveries as shown in the memo Ex.PW-19/A could relate to a disclosure by the appellant.

11. According to SI Prabhu Dayal after conducting the spot investigation on 4.6.2001 he had handed over the investigation to Insp.Mahesh Sharma.

12. What does Insp.Mahesh Sharma PW-16 has to say?

13. He deposed that he took over the investigation after FIR was registered on 4.6.2001 and prepared the brief facts Ex.PW-16/A and filled up the inquest papers Ex.PW-16/B and recorded the statements of Harvinder Singh and Amandeep Singh and after sending the body to the mortuary for post-mortem did no further and transferred the case to some other IO.

14. No other IO has been examined by the prosecution.

15. It is unfortunate that the learned Trial Judge has failed to note the aforesaid serious lacuna. The learned Trial Judge has chosen to give a go by to Section 27 of the Evidence Act as per which only such part of a statement made by an accused to a police officer is admissible in evidence where an object is recovered and a fact is discovered pursuant to the said statement. In the instant case the recoveries precede the statement made by the accused to the police.

16. That apart, there are further serious infirmities which have been ignored by the learned Trial Judge.

17. The gray coloured T-shirt which the appellant was stated to be wearing when he committed the crime has been put up for test identification. The learned Trial Judge has heavily relied on the fact that the witness at the test identification namely Amandeep successfully identified the T-shirt in question. Surprisingly, the learned Trial Judge ignored the admission of SI Prabhu Dayal PW-20 who stated during cross-examination: *'The TIP proceedings of the clothes were conducted only after the opening of the bag and no other clothes, or pant or trouser were brought in order to mix the same'*.

18. What is the value of such a TIP, we need not comment any further.

19. Amandeep PW-2, the son of the deceased, Manmohan Singh PW-3, the younger brother of the deceased, Smt.Manmohan Kaur PW-5, the wife of the deceased, Smt.Bhupinder Kaur, wife of PW-3 and Sh.Gagan Singh PW-14, the son of Manmohan Singh was cited as eye witnesses.

20. Only Amandeep categorically deposed that he saw the appellant fire at his father. All other witnesses stated that

being dark they could not say with certainty that it was appellant who fired at the deceased.

21. After he was arrested, TIP proceedings for identification of the appellant were got fixed, but the appellant refused to participate in the same alleging that he was shown to the witness at PS R.K.Puram.

22. Now, one wonders as to how come PS R.K.Puram got involved. The appellant was not arrested pursuant to any FIR registered at the said police station. As noted above, the appellant was arrested on 22.6.2001 in another FIR which pertained to PS New Ashok Nagar. The instant FIR was registered at PS Vasant Kunj.

23. But, the fact of the matter remains that for unexplainable reasons the appellant was taken to PS R.K.Puram where the witness to the test identification proceedings were summoned. SI Prabhu Dayal PW-20 has admitted that Amandeep, Gagan and Kuldeep were called to PS R.K.Puram, but claim that they were called to make the portrait of the assailant.

24. Gagandeep Singh PW-14 admitted that the accused was shown to him after 4-5 days but claims not having identified the accused because he had not seen the face of the accused. Even Amandeep PW-2 has admitted that he was

taken to PS R.K.Puram, but claim the purpose was to prepare the computer photograph of the accused.

25. Under the circumstances one is only left with the ocular eye witness account of Amandeep PW-2 which is highly tainted.

26. All other witnesses of the prosecution claim that on account of darkness they did not have an opportunity to see the features of the assailant and this renders its suspect as to how come Amandeep PW-2 could see the features of the assailant with such clarity that he could identify the assailant in Court on 15.2.2002.

27. But, what has weighed with us the most, is the fact that the prosecution has resorted to fabrication of various memos with impunity. That has totally tainted the investigation.

28. Under the circumstances the appellant would certainly be entitled to the benefit of doubt.

29. The appeal is allowed. The impugned judgment and order dated 15.10.2007 is set aside. The order on sentence dated 17.10.2007 is quashed. The appellant is acquitted of the charge framed against him.

30. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar

with a direction that the appellant shall be set free forthwith unless required in custody in some other case.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

April 06, 2010
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