

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

% *Judgment Reserved on: 11th January, 2010*
Judgment Delivered on: 15th January, 2010

+ **CRL.APPEAL NO.803/2004**

AJAY KUMAR @ BITOO Appellant
Through: Mr.Pradeep Chaudhary, Advocate

Versus

STATE Respondent
Through: Mr.M.N.Dudeja, 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? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Believing the testimony of Smt.Kanta Rani PW-1 the wife of the deceased, and of Toni PW-2 the son of the deceased, and the fact that the knife Ex.P-4 recovered pursuant to the disclosure statement of the appellant was found to be stained with the blood of the same group as that of the deceased, vide impugned judgment and order dated CRL.A.803/2004

28.8.2004 a finding has been returned that the prosecution has successfully established that the appellant murdered Trilok Chand @ Triloki. The learned Trial Judge has also referred to the fact that the T-shirt Ex.P-5 got recovered by the appellant pursuant to his disclosure statement was stained with human blood, but it appears that the said fact has not been used as an incriminating circumstance, probably for the reason the group of the blood on the shirt could not be ascertained by the serologist.

2. At the hearing of the appeal, learned counsel for the appellant urged that the wife and the son of the deceased were planted witnesses and could not have been a witness to the crime. To highlight the said plea, learned counsel referred to the site plan to scale Ex.PW-20/A as per which the spot where blood of the deceased was lifted was on the public street outside the residence of the deceased. It was urged that the wife and the son of the deceased deposed that the deceased was assaulted inside the house. Counsel submitted that the place where the assault took place was marked B in the site plan which spot was in the verandah of the house. Our attention was drawn to the fact that no trail of blood was detected from the spot mark B to the spot mark A. As a limb

of this submission it was urged that the post-mortem report of the deceased showed injuries on the chest but the two witnesses stated that the appellant stabbed the deceased in the abdomen. It was thus urged that it was apparent that the two witnesses had not witnessed the assault. The third limb of this submission was that neither the wife nor the son rescued the deceased by removing him to the hospital as was expected from the wife and the son; it was submitted that this circumstance also establishes that neither the wife nor the son were near the deceased when he was stabbed. The second point urged to discredit the testimony of the wife and the son of the deceased was by highlighting the improvements made by the two vis-à-vis the statements made by them before the police. Thirdly, it was urged that there were material contradictions and variations inter se the testimony of the wife and the son of the deceased, in reference where to it was urged that none of them could be believed as regards their version of the crime. Lastly, on the issue of recovery of the knife Ex.P-4 at the instance of the appellant, it was urged that no independent witness was associated in the recovery; thus, counsel urged that the recovery of the knife has to be ignored.

3. On the issue of the recovery of the knife Ex.P-4, suffice would it be to state that recoveries of ordinary knives etc. by the accused are treated as weak evidence. In the instant case the fate of the appellant would obviously be decided on the credibility of the testimony of the wife and the son of the deceased; namely Smt.Kanta Rani and Toni.

4. But before that it may be noted that as per the post-mortem report Ex.PW-15/A it is apparent that the deceased was attacked twice on the chest. He had three other abrasion injuries. The testimony of Dr.Jain Kumar Gupta PW-10 and the MLC Ex.PW-10/A of the deceased establishes that the death was instant for the reason the deceased was declared brought dead at 10:25 PM by Dr.Jain Kumar Gupta at the Hindu Rao Hospital. The reason why the deceased died an instant death is to be found in the post-mortem report Ex.PW-15/A and the testimony of Dr.Parvinder Singh PW-15. The injury No.1 at the chest entered the peritoneum cavity after piercing the skin and the underlined muscles and the xiphisternum sterna. The right lobe of the liver and the diaphragm on the right side were cut. Cause of death was haemorrhagic shock resulting from injury No.1 which was found to be sufficient in the ordinary course of nature to cause

death. The sketch of the knife Ex.P-4 i.e. Ex.PW-23/C shows that the blade of the knife has a length of 18.2 cm and a handle of 11.8 cm. At the handle the thickness of the knife is 2.3 cm and just before the tip the thickness is reduced to 1.5 cm. The knife is tapering towards the tip and suddenly sharpens at the tip. It is apparent that the blow was struck with considerable force resulting in the entire blade of the knife piercing nearly the entire segment of the blade into the body of the deceased.

5. It may be noted that the MLC Ex.PW-10/A of the deceased Trilok records that he was brought by the driver Kuldeep Rana of the CATS van at 10:25 PM to Hindu Rao Hospital on 28.8.2001. It may also be noted that information was received at the local police station through the police control room at 9:40 that a man had been stabbed at house No.311, A-Block, Shakurpur as noted vide DD No.60-B Ex.PW-21/A.

6. Who made the call to the police control room? Amrit Lal PW-8 has thrown light on the issue by deposing that he was running a PCO/STD booth from the ground floor of his house C-8, J.J. Colony, Shakurpur and that around 9:30 PM on

28.8.2001 Smt.Kanta living nearby his house had come to his PCO booth regarding a murder and had telephoned at No.100.

7. Kanta PW-1 has deposed that she was the one who had rung up the police. Thus, from the evidence of PW-8 and from DD No.60-B Ex.PW-21/A, it is apparent that by 9:35 PM, Kanta had informed the police about her husband being murdered. It is apparent that she was nearby.

8. SI Rajender Dabas was the police officer to whom copy of DD No.60-B was handed over for investigation and as deposed to by him on reaching the spot and learning that the injured had been removed to Hindu Rao Hospital, proceeded to the hospital and returned to the spot after obtaining the MLC of the injured who had died and met Kanta at the spot whose statement Ex.PW-1/A was recorded by him and after making the endorsement Ex.PW-21/B he forwarded the same through Ct.Gokul Chand for FIR to be registered. The time of dispatch of the tehrir as recorded thereon is 12:10 AM on 29.8.2001 i.e. soon after midnight. The statement Ex.PW-1/A of Kanta has resulted in the FIR being registered.

9. Inspector Surender Singh PW-23 was the SHO of the concerned Police Station and as deposed to by him he reached the spot on receiving message over the wireless of the crime

and he prepared the rough site plan Ex.PW-21/C, blood control earth and control earth was lifted by him as recorded in the memos Ex.PW-12/A and Ex.PW-12/B. These were lifted from the streets outside house No.A-311, J.J.Colony, Shakurpur, Delhi. The said spot has been marked as point 'A' on the rough site plan as also the site plan to scale subsequently prepared i.e. Ex.PW-20/A.

10. The conduct of Kanta and Toni referred to by learned counsel for the appellant and the aberrations in their testimony pointed out require this Court to note the testimony of the two witnesses.

11. Kanta Rani PW-1 deposed that she was married to late Shri Trilok Chand and they resided at house No.A-311, Shakurpur, J.J.Colony, Delhi and that at 6:30 PM on 28.8.2001, the appellant came to the house and enquired about her husband who was not in the house. Later on, Toni, her son told her that the appellant was beating her husband in the park. She went to the park and met her husband whose vest was torn. Her husband informed her that the appellant had assaulted him. She and her husband returned home and at around 9:30 PM appellant, in a drunken condition, came to their house and abused her husband who told appellant not to

abuse him. Appellant asked Toni to give him cold water. Toni went to the fridge to bring water. Appellant gave knife blow at the abdomen of her husband and by the time she could reach out to her husband, he gave a second knife blow. Her husband caught the appellant and took him outside the house so that the appellant may not assault Kanta Rani and her son Toni. She raised a hue and cry. People gathered. She went to a PCO booth and informed that police control room. An ambulance came and took her husband to Hindu Rao Hospital where he died.

12. On being cross-examined as to why she did not take her husband to the hospital, she stated that she persuaded some TSR drivers to take her husband to the hospital but they refused and that an ambulance came and removed her husband to the hospital informing that they would be taking him to Jahangir Puri. She went to the hospital at Jahangir Puri but could not find her husband. She later on learnt that her husband was taken to H.R. Hospital. She went to said hospital but was not allowed entry in the Emergency Ward and that she returned after about half-an-hour.

13. Vis-à-vis her statement Ex.PW-1/A we note that the cross-examination brings out 4 variations. They may be called

improvements. The first is that it is not recorded in her statement Ex.PW-1/A that Toni told her that the appellant had assaulted her husband in the park. It is recorded that her husband told her that the appellant had assaulted him in the park. The second is that in her statement Ex.PW-1/A it has not been recorded that she went to the park and returned with her husband. The third is the different manner in which Ex.PW-1/A records how her husband was assaulted. The difference is that while deposing in Court she stated that appellant inflicted a knife blow on the abdomen of her husband and before she could come to the rescue of her husband, the appellant inflicted the second blow. In the statement Ex.PW-1/A it is recorded that the appellant took out a chhuri from behind and started attacking her husband with intention of killing him. Lastly, in her statement Ex.PW-1/A she has not stated that her husband caught the appellant and took him out so that he may not assault her or Toni.

14. Toni PW-2, deposed that on 29.8.2001 he was a student of class VI and was sitting on the bed in the house with his mother when appellant came at around 9:30 PM. Thereafter he saw the appellant beat his father in the park. The vest of his father was torn and his father came back and

took dinner. Appellant returned at about 9:30 PM and asked his father to accompany him to the park. Appellant asked him to bring water and after drinking water, threw the glass towards the bed. His father asked him to go inside. His father cried. Appellant stabbed his father in the verandah. His father took the appellant outside. His mother threw a danda at the appellant. Appellant ran away. His mother informed the police. His father was removed to the hospital by the police where he died.

15. It may be noted that the improvements made by Toni vis-à-vis his statement recorded by the police are that in the said statement it is not recorded that he saw his father being beaten in the park by the appellant. It is also not recorded that his father had taken dinner or that his father asked him to go inside.

16. With reference to the deposition of Toni it is apparent that he has mumbled jumbled the facts pertaining to his father being beaten in the park and what happened in the house at 9:30 PM. As is noted from his statement he commences his deposition by stating that he was present in the house at 9:30 PM with his parents and that the appellant came. He follows it up by saying that he saw his father being

beaten in the park and that his father came back home and after taking dinner he i.e. Toni lay down on the bed at 9:30 PM and the appellant came and asked his father to accompany him to the park.

17. Toni was aged 13 years (a fact noted in his testimony) when he deposed in Court on 6.5.2002. It is apparent that he was aged about 12 years when the incident took place. The inchoateness and variations and improvements in the testimony of Toni have to be considered in light of his tender age as also the fact that he comes from a humble socio-economic background.

18. It is time to deal with the contentions urged by learned counsel for the appellant which have been noted in para 2 above. The first plea urged was that the site plan Ex.PW-20/A shows that blood was lifted from the street outside and there was no trail of blood from the house to the street evidences that Trilok Chand was stabbed on the street and not inside the house as claimed by Kanta and Toni and thus it is doubtful that the two were eye witnesses.

19. The site plan Ex.PW-20/A shows that the spot wherefrom blood was lifted from the street is hardly 4 feet away from the boundary of the house and the said spot is

about 10 feet from the spot inside the verandah where Trilok Chand was stated to be stabbed. From the testimony of Kanta and Toni it is to be revealed that Trilok Chand moved out when he was stabbed. From the post-mortem report Ex.PW-15/A it is revealed that apart from 3 abrasions Trilok Chand had a stab wound, entry point whereof was 15 cm below the inner to left nipple and 11 cm above umbilicus and the second was an incised wound, entry point whereof was near injury No.1. This incised wound was not very deep. Injury No.1 had pierced deep into the abdomen, which we all know is a cavity. It is apparent that when Trilok Chand was stabbed fatally i.e. when injury No.1 was inflicted, the knife pierced through the peritoneum cavity and the xiphisternum sternal and went on to pierce the liver. The knife was travelling at an angle downwards i.e. towards the abdomen. Thus, the blood did not ooze out. It may be highlighted that the post-mortem report records that the internal examination revealed that the abdomen peritoneum cavity was full of blood. This explains no trail of blood from the verandah to the spot A on the street wherefrom blood was lifted.

20. The second plea that the post-mortem report revealed two stab wounds on the chest whereas the witnesses

deposed that the deceased was stabbed in the abdomen requires an inference to be drawn that the two were not eye witnesses has to be rejected for the reason, as noted above the situs of the entry point of the two stab wounds is 15 cm below the inner to left nipple and 11 cm above umbilicus. Technically, the two spots are the chest region but are fairly close to the abdominal region. Besides, the wife and the son of the deceased are not well-conversant with the nuances of terms. We say so for the reason the testimony of Kanta who stated that she does not understand what an ambulance means but knows what it is shows her innocent knowledge of words and phrases. The innocence of Toni has been noted by us in the preceding paras while commenting on his deposition. Thus, nothing turns on the issue of the two deposing that Trilok Chand was stabbed in the stomach but the actual injuries are little above.

21. The third limb of the submission predicated on the conduct of Kanta and Toni ignores the fact that Amrit Lal PW-8 has categorically deposed that Kanta came to his PCO Booth at 9:30 PM to ring up the police and inform about a murder. This is around the time the incident took place evidenced by the fact that DD No.60-B at the local police station records a

stabbing incident at the spot in question. Kuldeep Rana PW-18 the in-charge of the CATS van has corroborated that even he received wireless message at around 9:30 PM about the stabbing of a person and that he transported the patient from premises No.A-311, Shakurpur to Hindu Rao Hospital. That Kanta did not accompany her husband to the hospital and even did not meet the investigating officer at the hospital has been explained by her when she stated that by the time she returned from the PCO Booth an ambulance had taken her husband to the hospital and that prior thereto she had requested TSR drivers to take her husband to the hospital, but none agreed. She stated that she thought that her husband was being taken to the hospital at Jahangirpuri and thus she went to said hospital but learnt that her husband had been removed to Hindu Rao Hospital and when she reached there, nobody allowed her entry into the casualty and she returned home where she met the police. As regards Toni, it may be noted that he was a child studying in class-V and his conduct of not accompanying his father is not abnormal or irrational. Thus, the third limb of the first submission made by learned counsel for the appellant is rejected.

22. The second submission pertaining to the improvements in the testimony of Kanta and Toni require a look at the so called improvements made by Kanta as noted by us in para 13 above and those attributable to Toni as noted in para 15 above. Even to a layperson it is apparent that these are natural variations when an illiterate lady and a young boy, both coming from humble socio-economic background narrate about an incident which had taken place a year ago. None of them are of a kind which discredit the two witnesses. The embellishments are at the fringe facts and not pertaining to the facts in issue i.e. material facts.

23. We see no material contradictions and variations in the testimony of Kanta and Toni. As noted in para 16 above it is apparent that Toni has mumbled-jumbled some facts, in respect whereof we have penned our comments in para 17 above and hence we reiterate no further.

24. It is to be noted that the stabbing incident took place at around 9:30 PM in the house of the deceased. The wife and the minor son of the deceased are the natural witnesses inasmuch as they are expected to be in the house at 9:30 PM.

25. Ignoring the recovery of the knife Ex.P-4 pursuant to the disclosure statement of the appellant, in light of the testimony of the various witnesses noted herein above and in particular that of Kanta and Toni who are eye-witnesses, we find no merit in the appeal which is dismissed.

26. Since the appellant is in jail, copy of this order be sent to the Superintendent, Central Jail, Tihar, to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

JANUARY 15 , 2010
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