

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

% Date of Decision :12th March, 2010

+ **Crl. A. No. 175/2010**

SURESH @ SURESH SINGH Appellant
Through: Mr.Sumeet Verma, Advocate

versus

STATE (NCT) OF DELHI Respondent
Through: Mr.M.N.Dudeja, APP

Crl. A. No. 181/2010

RANVIR Appellant
Through: Mr.Ajay Verma, Advocate

versus

STATE (NCT) OF DELHI 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. With reference to the deposition of PW-6, PW-20, PW-21 and PW-23, the learned trial Judge has returned a finding that it stands established that after they were arrested on 21.04.2004, the appellants who are brothers, made disclosure statements Ex.PW-19/F and Ex.PW-19/G and

thereafter as recorded in the seizure memo Ex.PW-6/A, appellant Ranvir got recovered 4 gold bangles, one of which was broken; a broken chain made of gold; a gold chain, one pair of gold ear rings and two pairs of gold ear tops; thereafter, as recorded in the seizure memo Ex.PW-6/F, appellant Suresh got recovered a silver glass, 8 silver coins, one lady wrist watch without strap and Rs.23,190/- in cash. The recoveries were got effected by the appellants from different rooms of their residential house in village Haroli, Qutab Nagar, District Hardoi, Uttar Pradesh on 23.04.2004.

2. The learned trial Judge has also referred to incriminating evidence held to be duly proved in the form of a shirt, a pant and a pair of shoes got recovered by Suresh from his house and as entered in the seizure memo Ex.PW-6/E as also the fact that appellant Ranvir got recovered a T-Shirt, a black pant and a pair of chappals as recorded in the memo Ex.PW-6/B all of which, as per report Ex.PW-25/A, were found stained with human blood, group whereof could not be ascertained.

3. With reference to the recoveries affected at the instance of the appellants, the learned trial Judge has held that the testimony of Mahesh Chand Gupta PW-15 working as ACMM in the Rohini Courts at Delhi and the record of the TIP

proceedings Ex.PW-15/B establishes that on 24.05.2004, Deepak Jain PW-1, the son of the deceased and Praveen Jain PW-7, her husband, successfully identified the property which was recovered as shown in the memos Ex.PW-6/A and Ex.PW-6/F as the jewellery of the deceased as also other articles belonging to the family.

4. With reference to the testimony of Insp.Vir Singh Tyagi PW-23 as also the testimony of Praveen Jain PW-7 and the testimony of Insp.Virender Singh Punia PW-19, the learned trial Judge has held that the prosecution has successfully proved that various exhibits entered in the seizure memos Ex.PW-7/B and Ex.PW-7/C were lifted from the house where crime was committed. With reference to the testimony of Insp. Vir Singh Punia PW-23, K.N.Singh PW-24, a finger print expert and P.N.Ramakrishanan PW-26, a Junior Scientific Officer, CFSL Hyderabad the learned trial Judge has held that the prosecution has successfully established that chance finger prints developed by K.N.Singh PW-24 from the prints lifted from one out of the two glasses lifted from the scene of the crime as per memo Ex.PW-7/C matched with the sample finger print of the appellant Suresh. The learned trial Judge has held that the report Ex.PW-24/C has been duly proved by the author thereof K.N.Singh PW-24, which establishes that the chance

print Q1(A), Ex.PW-24/A, was identical to the sample right thumb impression S1, Ex.PW-24/B, of appellant Suresh. With reference to the report Ex.PW-26/A of P.N.Ramakrishanan PW-26, the learned trial Judge has held that the same established that P.N.Ramakrishanan developed imprints Ex.6(a) and Ex.6(c) on the cloth Ex.6 which was lifted from the scene of the crime and duly entered in the memo Ex.PW-7/B (referred to in the seizure memo as a 'Khes') and that the sole imprint of the chappal mark Ex.12R matched with the prints on the sheet of cloth i.e. that the footwear outer sole imprint on the sheet of cloth marked as Ex.6(a) and Ex.6(c) of Ex.6 belongs to the outer sole impression of the chappal marked Ex.12R. Since the chappal marked Ex.12R by the scientific expert was the one which was got recovered, as held by the learned trial Judge, by appellant Ranvir, the learned trial Judge has held that the prosecution has successfully established that the appellants were the ones who were at the scene of the crime. With reference to the recoveries, the learned trial Judge has held that the prosecution has proved that the appellants were the possessors of the fruit of the crime.

6. That a crime was committed i.e. a housewife was fatally stabbed in Block A, Bhajanpura Delhi was noted at PS Nand Nagri by HC Poonam PW-5 who entered said information

vide DD No.14-A Ex.PW-5/A at 2:47 PM and entrusted the same to SI Virender Singh Punia PW-19. Accompanied by Const.Amarpal he reached House No.A-35, Gali No.5, Bhajanpura and saw the dead body of a lady with cut marks on the neck. The husband of the lady and her sons were present in the house. They had reached the house because, as deposed by Aman Jain PW-4, the younger son of the deceased named Prabha Jain, he had returned home from school and got no response when he knocked at the door and since the same was not locked he opened the door of the house and on entering the house saw his mother in a pool of blood and from the house of his neighbour immediately informed his father. As deposed to by Praveen Jain PW-7, the husband of the deceased and Deepak Jain PW-1, the son of the deceased, both of them immediately reached their house from their shop when they heard from Aman about the tragedy which had befallen the family.

7. SI Virender Singh PW-19 recorded the statement Ex.PW-7/A of Praveen Jain as per which he and his sons had left the house in the morning and at around 2:30 PM his son Aman returned home to find his mother lying dead and he i.e. Praveen and his elder son returned to the house on receiving information of the tragedy.

8. Since an argument has been raised during appeal today with reference to the statement Ex.PW-7/A, we note that Praveen Jain has stated that on returning home he checked the almirah in the house but found nothing missing.

9. Making an endorsement Ex.PW-19/A beneath the statement of Praveen Jain SI Virender Singh Punia got the FIR registered and summoned the crime team and a photographer. Insp.Vir Singh Tyagi PW-23 the SHO of the police station received information of the crime and he proceeded to the spot and joined company with SI Virender Singh Punia.

10. As deposed to by the two police officers they lifted various articles from the place of the crime as entered in the memos Ex.PW-7/B and Ex.PW-7/C, of the many exhibits lifted, suffice would it be to note that a piece of cloth referred to as a "Khes" and two glasses (made of glass) were lifted for the reason on the piece of cloth two blood stained foot marks of the sole of a footwear were noted and on the glasses some finger prints could be seen. We may note that the crime team could not lift the finger prints from the glasses but noticed fine imprints of finger prints thereon. The photographer HC Padam Singh PW-14 took 10 photographs Ex.P-1 to P-10, negatives whereof are Ex.P-11 to Ex.P-20 of the scene of the crime. The

dead body was seized and sent for post-mortem.

11. After all this was over, Insp.Vir Singh Tyagi PW-23 requested Praveen Jain to again check up whether anything was missing in his house and whether he remembered as to who could have come to his house, for the reason the entry in the house was a friendly entry, and evidenced by two glass tumblers picked up from the room where the deceased was murdered was some proof of the fact that the deceased had served water or cold drinks to two persons and thus through the medium of said information was the possibility of tracking somebody known to the family who had visited the house. A supplementary statement of Praveen Jain was recorded on the same day i.e. 16.4.2004 as per which Praveen Jain told that after rechecking the almirah he found Rs.48,000/- missing as also a small purse in which his wife used to keep a gold chain, two pairs of tops, a silver tumbler, her watch and 8-10 silver coins. He further stated that the gold bangles, the golden chain and the ear rings from the person of her wife were also missing. He further disclosed that a boy named Raja @ Ranvir who lives in Karawal Nagar used to supply him boxes and he had told him in the morning that some boxes lying in his i.e. Praveen's house may be collected by him and delivered at the shop.

12. As deposed to by Insp.Vir Singh Tyagi PW-23 and somewhat reconfirmed by Raghupati PW-3 the police went to F-188, West Karawal Nagar on 17.4.2004 but could not locate the appellants in the said house. Raghupati PW-3 has deposed that the appellants were his tenants in House No.F-188, West Karawal Nagar and the two left his house without informing him and that the two did not even attend the marriage reception of his son and that he learnt that the appellants were missing when police came to the house on 17.4.2004.

13. Needless to state, the appellants became suspects and a look out was kept to nab them. As deposed to by SI Manoj PW-20, HC Rishi Pal PW-21 and Insp.Vir Singh Tyagi PW-23 the appellants were apprehended in Delhi on 21.4.2004 and not only confessed to the crime but made disclosures as recorded in the disclosure statements Ex.PW-19/F and Ex.PW-19/G respectively that they can get recovered the stolen property which they had partitioned. Both of them disclosed that the clothes which they were wearing at the time when they committed the crime could be got recovered by them. Suresh informed that he can get recovered the shoes which he was wearing when the crime was committed. Ranvir informed that he can get recovered the chappals which he was wearing when the crime was committed. He also stated that he can

get recovered the knife used in commission of the crime.

14. Since an argument was advanced with reference to the place of arrest of the appellants, with reference to the testimony of Harsh Wardhan Tomar PW-6, it may be noted that in the recovery memos drawn up and proved at the trial, Harsh Wardhan Tomar has signed as a witness. As per him, Suresh was arrested at Delhi and he took the police to Hardoi where Ranvir was arrested. But, on being cross-examined by the learned APP, he corrected himself that both accused were arrested together at Delhi. We may note that Harsh Wardhan Tomar deposed on 20.9.2007 i.e. after more than 3 years of the recoveries in which he had participated.

15. As deposed to by PW-6, PW-20, PW-21 and PW-23, after the appellants made disclosure statements they were taken to village Haroli, Qutub Nagar, District Hardoi. The appellants led all witnesses to their house and from a room in the house Ranvir got recovered 4 gold bangles (one of which was broken) one broken gold chain, one gold chain, a pair of ear rings and two pair of ear tops. The recovery was entered in the memo Ex.PW-6/A. Ranvir also produced a T-shirt, a black pant and a pair of chappals which were entered in the memo Ex.PW-6/B. He produced a knife which was entered in the memo Ex.PW-6/C and after seizure a sketch Ex.PW-6/D

thereof was drawn. Suresh produced from another room a silver glass, 8 silver coins, a lady wrist watch without straps and Rs.23,190/- which were seized vide memo Ex.PW-6/F . He produced a shirt, a pant and a pair of shoes which were seized vide memo Ex.PW-6/E.

16. Since an argument was advanced we may note that PW-6 initially stated that the knife was got recovered by Suresh but immediately corrected himself by saying that the same was got recovered by Ranvir. It may be also noted that while deposing in Court PW-6 stated that at the instance of Ranvir two pair of ear rings and two pair of ear tops were recovered; the fact of the matter being that in the memo Ex.PW-6/A only one pair of ear rings and two pair of ear tops have been shown as recovered.

17. As deposed to by Insp.Vir Singh Tyagi he obtained the sample finger print impressions of the accused when they were in his custody and along with various exhibits seized during investigation and which required expert evaluation, sent the same for scientific analysis. As deposed to by K.N.Singh PW-24, a finger print expert, the crime team could not lift any chance prints from the two glass tumblers which were seized from the place of the crime, but he could do so and that one out of the two corresponded to the right thumb

impression of accused Suresh and that his report Ex.PW-24/A was correct. We note that PW-24 has not been cross-examined. Dr.N.R.K.Rao PW-25 deposed that he conducted the serological test on various exhibits sent to him and that on most of them he could only detect human blood but not the group thereof. We note that these exhibits are the clothes, the pair of shoes and the pair of chappals as also the knife got recovered by the appellants, and as aforenoted. P.N.Ramakrishnan PW-26 proved his report Ex.PW-26/A, relevant extracts whereof have been noted by us in para 4 above. The witness was not cross-examined.

18. The exhibits got recovered by the appellants and as entered in the memos Ex.PW-6/A and Ex.PW-6/F were put up for test identification proceedings before a learned Magistrate and on 24.5.2004 as deposed to by Mahesh Chand Gupta PW-15 the learned Metropolitan Magistrate, Praveen Jain and Deepak Jain, the husband and son respectively of the deceased, successfully identified each and every exhibit. He deposed that the memorandum of the test identification proceedings Ex.PW-7/F was drawn up by him.

19. Since an argument has been raised with respect to the credibility of the test identification proceedings, we may note that it stands recorded in the memorandum recording the

TIP proceedings: *'IO has also brought the property of similar descriptions which are to be mixed up with the case property and which consists of four bangles of golden colour, six chains of golden colour, seven pairs of golden colour ear rings, two ladies wrist watch, two glasses, three purses'*.

20. While deposing in Court Praveen Jain PW-7 was neither asked any question by the learned Public Prosecutor pertaining to his knowing the appellants and having any business dealings with them. Praveen Jain was not examined with reference to what he had disclosed to the investigating officer in his supplementary statement recorded on the day of the crime and thus we have nothing spoken of by Praveen Jain that Suresh used to supply him cartons and that on the day of the crime he had told him to pick up cartons from the house of Praveen Jain and deliver the same in his shop.

21. But, with respect to his telling the IO that after spot proceedings were over, the IO told him to recheck his house to find out whether anything was stolen, he deposed (Quote): *'Police prepared six pullandas. Thereafter, police again asked me to properly check the household articles. I found missing one gold chain from the neck of my wife weighing 15-20 gms. and one pair of jhumke from the ears of my wife and 4 bangles of gold and about Rs.48,000/- cash amount which was kept in*

the purse of my wife and colour of purse was brown and purse and money was missing. The 10-12 silver coins, one silver glass, one gold chain ladies, 2-3 pair of jhumke which was kept in the almirah was also missing. The almirah as well as its locker was in open condition. I told the police regarding the missing articles.'

22. We note that Praveen Jain and his son Deepak Jain identified the various exhibits which were seized on recovery being got effected by the appellants while deposing in Court.

23. We deal with the incriminating evidence against the appellants of the right hand thumb impression of appellant Suresh being detected on the glass tumbler recovered from the scene of the crime and the sole foot print of a chappal got recovered by Ranvir matching 2 foot prints on the "Khes" recovered from the scene of the crime.

24. Pertaining to the right hand thumb impression being detected on the glass tumbler and it being connected to appellant Suresh, a very vital piece of evidence has got tainted for the reason the investigating officer took the sample finger prints of Suresh while he was in custody and without following the procedure prescribed by the Identification of Prisoners Act 1920 and without obtaining orders from the competent Court. Thus, as held in the decisions reported as AIR 1980 SC 791

State of UP Vs. Ram Babu Mishra, 1994 (5) SCC 152
Sukhvinder Singh & Ors. Vs. State of Punjab and 2003 CrI.LJ
5054 State of Haryana Vs. Jagbir Singh & Anr. we have to
ignore the incriminating evidence against Suresh relatable to
the report Ex.PW-24/A and the testimony of K.N.Singh PW-24.

25. Pertaining to the evidence linking the chappal got
recovered by appellant Ranvir to the sole print detected on the
“Khes” which was recovered from the scene of the crime, the
report Ex.PW-26/A and the testimony of P.N.Ramakrishnan PW-
26, it is so conceded to by learned counsel for Ranvir, without
any blemish establishes the connectivity between the two, but
learned counsel urges that in view of the decision reported as
1997 (10) SCC 44 Mohd.Aman & Anr. Vs. State of Rajasthan,
said evidence is weak evidence.

26. We concede but with a slight difference. What has
been held by the Supreme Court is that it would be imprudent
to sustain a conviction with reference to expert evidence
relating to foot print impressions and unless there is
corroborative evidence, conviction should not be sustained for
the reason the Science of Foot Prints is not a very well-
developed science.

27. Admissibility and relevancy of evidence and the
weight to be attached to a piece of evidence are three

different facets.

28. Pertaining to the controversy as to where were the appellants apprehended, as conceded by learned counsel for the appellants the three police officers HC Rishi Pal PW-21, SI Manoj PW-20 and Insp.Vir Singh Tyagi PW-23, are unanimous in their deposition that the appellants were arrested together at Delhi and made the disclosure statements Ex.PW-19/F and Ex.PW-19/G at Delhi and thereafter took the police to their village in District Hardoi. Harsh Wardhan Tomar PW-6, initially stated that Suresh was arrested at Delhi and Ranvir was arrested at Hardoi, but corrected himself on being cross-examined by the learned APP.

29. Now, as noted in para 14 above, Harsh Wardhan Tomar deposed after more than 3 years of the incident and it is but natural that his memory failed him as indeed all human beings are fallible to failure of memory. Courts have to be conscious of the fact that the human mind neither possesses a video camera nor a tape recorder, button whereof can be pressed, to re-run a picture or re-run the voice recording. In fact, such kind of memory lapses, far from discrediting a witness, lend credence to his words for the reason perfect truths are seldom to be found, but perfect lies are often to be found.

30. The controversy pertaining to the testimony of this witness of misstating that Suresh got recovered the knife, but correcting himself immediately that Ranvir got recovered the knife and similarly his deposition that two pair of ear rings were got recovered by Ranvir whereas only one pair was recovered, are blemishes not on material aspects of the evidence and are explainable as human memory lapses. The same do not discredit the credibility of Harsh Wardhan Tomar.

31. Learned counsel for the appellants concede that no memo shows that any personal jewellery worn by the deceased was removed from her dead body. Prabha Jain, the deceased was a housewife and belongs to a middle class family, a fact which we can gather from the fact that her husband and son were running a successful small business. We take judicial notice of the fact that ladies in India and especially the ones who are married do wear bangles, ear rings and gold chains as a symbol of they being married ladies.

32. Thus, the argument that in his statement Ex.PW-7/A Praveen Jain made a positive statement that nothing was missing in his house and therefrom it has to be inferred that nothing was stolen, needs to be noted and rejected for the reason the statement Ex.PW-7/A was made by Praveen Jain immediately when he returned to his house upon hearing from

his son Aman that his wife had been murdered, by which time SI Virender Singh Punia PW-19 had also reached the house. Praveen Jain was overcome by events and was obviously in a state of shock and a disturbed state of mind. This is obvious from the fact that he could not even notice that the jewellery which his wife was normally wearing was not on her person. It is obvious that after he regained his composure by the time the crime team completed its job in the house, he told Insp.Vir Singh Tyagi that cash, personal jewellery which his wife was wearing and some more jewellery as also a silver tumbler and some silver coins were stolen.

33. We find no infirmity in the evidence led by the prosecution establishing that the motive of the crime was to murder Prabha Jain with the object of committing theft.

34. We find purity in the recoveries effected and the only question is whether there is credibility in the test identification proceedings.

35. As noted in para 19 above, the various exhibits which were recovered and were required to be put up for test identification were mixed up as follows: *'IO has also brought the property of similar descriptions which are to be mixed up with the case property and which consists of four bangles of golden colour, six chains of golden colour, seven pairs of*

golden colour ear rings, two ladies wrist watch, two glasses, three purses'.

36. The articles which were required to be identified were: (a) Four gold bangles (one broken), (b) One broken gold chain, (c) One gold chain, (d) One pair of ear rings, (e) Two pair of ear tops, (f) One silver glass, (g) Eight silver coins, and (h) One ladies wrist watch.

37. It is no doubt true that qua the silver coins no similar looking silver coins were mixed and so is the position regarding the pair of ear tops. But, with respect to the gold bangles we find that four more bangles of golden colour were mixed up. With respect to one gold chain which had to be identified, 6 more were mixed up and with respect to one pair of ear rings, 7 more pairs were mixed up. Qua the silver glass, we find only two glasses being mixed up and same is the position regarding the wrist watch.

38. If not for others, qua the gold chain and the pair of ear rings, we find considerable degree of mixing up to give credit to the test identification. Correctly identifying one gold chain out of six and one pair of ear rings out of eight is credible. Identifying three gold bangles out of seven (we ignore the identification of the broken gold bangle) is also credible, may be not of the same degree as the preceding.

Similar would be the position with respect to identification of one ladies wrist watch and one silver glass out of three wrist watches and three silver glasses.

39. As a whole, we are satisfied that the test identification successfully conducted by Praveen Jain and his son Deepak Jain inspires confidence and proves that the fruit of the crime was recovered at the instance of the appellants.

40. That the appellants left the tenanted premises in mysterious circumstances without informing the landlord and without participating in the marriage reception of the son of the landlord is more than an act of mere abscondance. Nobody vanishes from the tenanted premises as the appellants did and as deposed to be their landlord Raghupati PW-3.

41. It is no doubt true that the learned Public Prosecutor has been somewhat lax in not properly examining Praveen Jain PW-7 in that he has not examined Praveen Jain with reference to what Praveen Jain told Insp. Vir Singh Tyagi i.e. the supplementary statement of Praveen Jain and thus through the mouth of Praveen Jain we do not have the fact that the appellants became suspect as he had told Suresh to go to his house and bring cartons. But, through the testimony of Raghupati PW-3 we have evidence that on 17th April, 2004

i.e. the day next of the crime the police came to the premises where the appellants were staying as his tenants. Even Insp.Vir Singh Tyagi PW-23, while deposing to the investigation conducted by him on 17.4.2004 has stated that after completing the formalities for the inquest i.e. the post-mortem of the deceased he could not contact the appellants. Though PW-23 has not spoken with clarity, but read meaningfully with reference to the testimony of PW-3, we have good and credible evidence before us that the police have reached the residence of the appellants the day next of the crime and obviously the same had to be on the basis of what was told by Praveen Jain to Insp.Vir Singh Tyagi.

42. We note that the next day after the crime i.e. 16.4.2004, post-mortem on the body of Prabha Jain was conducted by Dr.Anil Kohli PW-13 and as per his report Ex.PW-13/A the lady had as many as 6 external injuries of which injury No.1 proved fatal i.e. the incised cut wound on the neck which had cut through the major blood vessels of the neck, the larynx and the cervical vertebra. It is also relevant to note that injury No.2 and 3 present over the left and right ear lobule were lacerated injuries at the ear hole where ear ring/tops are inserted. As deposed to by Dr.Anil Kohli the death was obvious. Injury No.1 had caused instant death. As deposed to

by Dr.Anil Kohli on 6.5.2004 the knife Ex.P-9 (the one which was got recovered by Ranvir) was sent to him for opinion and as per his report Ex.PW-13/B he opined that the injuries on the deceased could be caused by the knife except the injuries on the ears.

43. Thus, against appellant Ranvir the incriminating evidence which we have is that the gold jewellery which was recovered at his instance and as recorded in the memo Ex.PW-6/A has been proved to be the jewellery of the deceased. The sole print of a chappal got recovered by him was found on the "Khes" which was recovered from the scene of the crime. He and his brother mysteriously left the tenanted premises of Raghupati i.e. absconded. That the knife got recovered by him was the possible weapon of offence is also, though very weak, further incriminating evidence. The cumulative effect of the aforementioned evidence and especially the fact that the jewellery was recovered within a week of the crime, are sufficient to hold that any prudent person would hold that the prosecution has proved its case against Ranvir. We hold that the chain of circumstances encircling Ranvir with the tentacles of incriminating evidence is complete wherefrom his guilt can be inferred and innocence ruled out.

44. Pertaining to appellant Suresh the incriminating

evidence is the recoveries effected at his instance as also his absconding with his brother Ranvir. Fortunately for him and unfortunately for the prosecution a very relevant and highly incriminating evidence against him of the thumb impression of his right hand being detected on glass tumbler from the house of the deceased has been rendered useless on account of a lapse committed by the investigating officer. But, from the fact that Suresh is the brother of Ranvir and both of them absconded together coupled with the fact that even from Suresh a part of the fruits of the crime was recovered, we are of the opinion that even against Suresh the chain of circumstances is complete wherefrom even his guilt can be inferred.

45. The appeals are dismissed.

46. Since the appellants are still in jail we direct that a copy of this decision be sent to the Superintendent Central Jail Tihar to be made available to the appellants.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

**MARCH 12, 2010
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