

R-17

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

% Date of Decision :16<sup>th</sup> March, 2010

+ **CRL.APPEAL NO.244/2008**

PARMESHWARI ..... Appellant  
Through: Mr.Sumeet Verma, Advocate.

versus

STATE ..... Respondent  
Through: Ms.Richa Kapoor, A.P.P.

+ **CRL.APPEAL NO.245/2008**

LOKESH KUMAR ..... Appellant  
Through: Mr.Sumeet Verma, Advocate.

versus

STATE ..... Respondent  
Through: Ms.Richa Kapoor, A.P.P.

**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. Four accused, namely, Bimla wife of the deceased Satish, Parmeshwari, Arvind Kumar Akela and Lokesh Kumar were charged for the offence of having entered into a conspiracy and in pursuance thereof having murdered Satish.

Accused Parmeshwari and Lokesh Kumar were additionally charged for the offence punishable under Section 452/34 IPC.

2. At the end of the trial, vide judgment and order dated 25.2.2008, Bimla, Parmeshwari and Lokesh Kumar have been convicted for the offences they were charged of. Arvind Kumar Akela has been acquitted.

3. For unexplainable reasons, Bimla has not preferred any appeal against her conviction. Appellants Parmeshwari and Lokesh Kumar have challenged the impugned decision.

4. Before dealing with the issues involved we would wish to bring on record a fairly disturbing thing which we had noticed in the instant case.

5. With impunity the learned Trial Judge has permitted evidence of confessions to be brought on record and has referred to the same not only in the decision but even while questioning the accused. For example, while examining Bimla under Section 313 Cr.P.C., question No.25 put to her is that it has come in evidence that after co-accused Parmeshwari was arrested and interrogated he made a statement confessing his guilt and the connivance of Bimla and the other co-accused.

6. This is most unfortunate. Every accused is entitled to a fair trial. A fair trial means that a Judge decides the issues brought before him as per law applicable and evidence

properly brought before the Judge. Inadmissible evidence cannot be brought on record, much less relied upon in a judicial proceeding and that too for the offence relatable to murder.

7. We shall be issuing further directions at the end of the decision to bring the instant decision to the notice of the learned Trial Judge who has penned the instant decision.

8. Reverting to the evidence, we do not intend to pen-profile what has been spoken by various witnesses. It would be sufficient for us to note that in convicting appellant Parmeshwari the incriminating evidence held established against Parmeshwari, as per the impugned decision, is that after he was arrested and he made a disclosure statement, he led the police to a spot and got recovered a blue jeans as per memo Ex.PW-6/C followed by a recovery of a pair of shoes and a shirt as recorded in the memo Ex.PW-7/A. As per the report Ex.PW-25/H and Ex.PW-25/H-1 of the serologist, human blood of the same group as that of the deceased was detected on the shoes, the shirt and the jeans. Further incriminating evidence held established against Parmeshwari is the report Ex.PW-22/C as per which a foot-print lifted from the scene of the crime was opined to be as possibly that of Parmeshwari. We may note that the expression used by the expert is: "That

the foot-print lifted from the scene of the crime could be that of Parmeshwari”.

9. Against Lokesh Kumar, incriminating evidence held established is that another foot-print was opined to be as possibly that of Lokesh Kumar as per report Ex.PW-22/C. Further incriminating evidence against Lokesh Kumar is that after he was arrested and made a disclosure statement he got recovered a khukri as shown entered in the memo Ex.PW-6/D as also a white sandoz vest and a shirt as entered in the memo Ex.PW-6/E, all of which except the khukri were detected with human blood of the same group as that of the deceased vide report Ex.PW-25/H and Ex.PW-25/H-1 of the serologist. On the khukri, blood was detected but neither its species nor the group could be detected.

10. Apart there-from the further incriminating evidence held established by the learned Trial Judge is that Parmeshwari was having illicit relations with Bimla and that the motive for the crime was to do away with Satish so that Parmeshwari and Bimla could have a merry time.

11. We note that Bimla has been convicted by the learned Trial Judge on account of her having illicit relations with Parmeshwari.

12. Since Bimla has not filed an appeal we may only

note that the place of the crime was her matrimonial house and the deceased was murdered in the middle of the night. She feigned semi-consciousness and refused to volunteer any information to the investigating officer.

13. Since Bimla has not filed any appeal we note no further qua Bimla.

14. The first and the foremost question which needs to be answered is whether it stands satisfactorily proved that Bimla and Parmeshwari were having illicit relationship.

15. The witnesses who have thrown light on the relations between Bimla and Parmeshwari are Vijay Singh PW-6, Babita Sharma PW-7 and Surinder Kumari PW-20.

16. We note that Vijay Singh has deposed that he saw Bimla talking with Parmeshwari two to four times and once having seeing Parmeshwari putting his hands on the breast etc. of Bimla. We note that on being cross-examined he admitted that it was for the first time he had stated in Court that he had seen Parmeshwari putting his hands on the breast of Bimla and that he had not ever so stated before the police.

17. Babita Sharma PW-7 deposed that Bimla used to meet Parmeshwari and had told her that she was Parmeshwari's bhabhi. That at the instance of their distant relative Shashi Prabha, a room was given on rent to

Parmeshwari.

18. Surinder Kumari PW-20, the mother of Babita Sharma has likewise deposed that at the asking of their relative Shashi Prabha she had let out a room in her house to Parmeshwari and that Bimla used to visit Parmeshwari. She additionally deposed that Shashi Prabha was close to Bimla and that when room was given on rent to Parmeshwari, Bimla and Shashi Prabha had come with Parmeshwari.

19. It may be noted that the learned Trial Judge has held that the keen interest shown by Bimla to get on rent a tenanted premises to Parmeshwari and her visiting Parmeshwari is sufficient evidence wherefrom it can be gathered that the two were having illicit relationship.

20. We have our doubts whether such a finding could be returned on so thin a piece of evidence. Merely because a man and a woman meet would not mean that the two are having illicit relationship.

21. As regards the recoveries of shoes, a shirt and a pant at the instance of Parmeshwari as also the recovery of a white sandoz vest and a shirt at the instance of Lokesh Kumar which were found to be stained with human blood of the same group as that of the deceased, suffice would it be to note that the disclosure statements of Parmeshwari and Lokesh Kumar

that they were wearing the respective clothes when the crime was committed would be inadmissible in evidence. The prosecution had to lead independent evidence to establish that the pant, shirt and shoes got recovered by Parmeshwari and the shirt and the white sandoz vest got recovered by Lokesh Kumar were worn by the two when the crime was committed.

22. Thus, the evidence relatable to the recoveries would be that Parmeshwari and Lokesh Kumar got recovered ordinary objects such as shoes, shirt, pant and a vest which were blood stained and the group of the blood was same as that of the deceased. As held in the decisions reported as JT 2008 (1) SC 191 Mani v State of Tamil Nadu, 1999 Cri.L.J. 265 Deva Singh vs. State of Rajasthan, 1993 Cri.L.J. 3901 Surjit Singh v. State of Punjab, AIR 1977 SC 1753 Narsinbhai Haribhai Prajapati v. Chhatrasinh and Ors. and AIR 1963 SC 1113 Prabhu v State of UP, such recoveries are very weak evidence.

23. On the issue of the foot-prints of the appellants being detected at the scene of the crime with reference to the sample foot-prints of appellant Parmeshwari and Lokesh Kumar, we note that the sample foot-prints of the two were not taken by a proper identification as required by the Identification of Prisoner's Act 1920. Even necessary orders

were not obtained from the Competent Court before taken their sample foot-prints.

24. Thus, in view of decisions reported as 1962(3) SCR 10 State of Bombay vs. Kathi Kalu Oghad & Ors., AIR 1980 SC 791 State of U.P. vs. Rambabu Mishra and 1994 (5) SCC 152 Sukhwinder Singh & Ors. vs State of Punjab, the evidence relatable to the report Ex.PW-22/C has to be excluded while considering the incriminating evidence against Parmeshwari and Lokesh Kumar.

25. That apart, as held in the decision reported as 1997 (10) SCC 44 Mohd.Aman & Anr. vs. State of Rajasthan, the science of foot-print is not well developed. Unlike fingerprints where distinct characteristics get developed on the prints of the fingers, no such distinctive characteristic marks develop on the foot of a human being. Thus, expert opinion pertaining to foot-prints has always been treated as a very weak evidence.

26. That is why, in the instant case, the expert has not given a definite finding by writing in the report that foot-prints lifted from the scene of the crime were those of Parmeshwari and Lokesh Kumar. The report has merely opined that the foot-prints lifted from the scene of the crime could be that of Parmeshwari and Lokesh Kumar.

27. Thus, the only incriminating evidence against Parmeshwari and Lokesh would be the exhibits got recovered by them, being ordinary articles which were found to be stained with human blood as that of the same group of the deceased and no more.

28. Assuming that evidence pertaining to foot-prints has also to be put in the scales against the two appellants, we still feel that with respect to the said two pieces of evidence which quality of evidence has been held by the Supreme Court to be very weak evidence, in a case of circumstantial evidence, it cannot be said that it would be sufficient to infer the guilt of the appellants.

29. The appeals are allowed.

30. The appellants are acquitted of the charge framed against them.

31. Since the appellants are in jail, we direct that a copy of this decision be sent to the Superintendent, Central Jail, Tihar with further direction that if not required in custody in any other case, the appellants be set free forthwith.

32. The last direction.

33. The Registry is directed to send a copy of the instant decision to the learned District and Sessions Judge, Delhi who would ensure that the decision is sent to the learned

Trial Judge who has penned the impugned decision so that in future the learned Trial Judge does not commit the kind of blunders as he has committed in the instant case while not only recording evidence but even while examining the accused and lastly while penning the impugned decision.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

March 16, 2010  
dk bainsla