

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

% Date of Decision : 21st April, 2010

+ **CRL. APPEAL NO.358/2010**

MAHARAJDIN Appellant
Through: Mr.Vimal Puggal, Advocate and
Mr.Rajesh Madan, Advocate.

versus

STATE OF DELHI Respondent
Through: Mr.M.N.Dudeja, A.P.P. and
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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. At the outset it may be noted that there is considerable confusion whether the name of the appellant is Maharajdin or Mehrajudin. Somewhere he is referred to as Maharajdin and somewhere as Mehrajudin. Since in the memo of parties drawn up by the learned Trial Judge the appellant has been referred to as Maharajdin, we shall be referring to the appellant by said name.

2. In a well penned judgment dated 28.1.2010 the appellant has been convicted for the offence of having

murdered Vijay Kant Shukla at about 9:15 PM at Jhuggi No.C-43/296 Ambedkar Basti. The date being 6.4.2006. The appellant has also been convicted for the offence of criminally intimidating Parmatma PW-1. Vide order on sentence dated 29.1.2010, for the offence of murder the appellant has been sentenced to undergo imprisonment for life. For the offence of criminally intimidating Parmatma, sentence imposed is to undergo imprisonment for two years.

3. In returning the verdict of guilt, the learned Trial Judge has held that the testimony of Parmatma is creditworthy and hence has accepted the percipient evidence brought before the Court by Parmatma when he deposed as PW-1. Learned Trial Judge has further relied upon the testimony of Rafiq Ali PW-2 as per which from a bag containing clothes of the appellant, a cover of a knife Ex.P-8 was recovered which cover later on got linked to a knife Ex.P-7 got recovered by the appellant pursuant to his disclosure statement, on which knife human blood was detected. Lastly, appellant absconding has been held as nailing the guilt of the appellant.

4. Suffice would it be to state that if Parmatma PW-1 and Rafiq Ali PW-2 stand the test of credibility, it would hardly matter as to what is the value to be attached to the recovery of the knife Ex.P-7 at the instance of the appellant as also the

recovery of the cover Ex.P-8 of a knife, for the reason the knife is an ordinary knife and at best could be opined to be a possible weapon of offence and not the only weapon of offence. Indeed, this is the opinion of the doctor who conducted the post-mortem on the body of the deceased. Secondly, only human blood was detected on the knife and not the blood group of the deceased. To put it pithily, the evidentiary value of the recovery of the knife and its cover is very weak evidence.

5. Thus, we straightway deal with the issue of the credibility of the testimony of Parmatma and Rafiq.

6. It assumes importance to note that the crime was reported to the police when DD No.21-A Ex.PW-19/A was recorded by the duty officer at 9:35 PM on 6.4.2006. It stands recorded therein that an unknown person has rung up to inform that one Maharajdin has stabbed one Vijay Kant in Jhuggi No.C-43/296 Ambedkar Basti belonging to Satya Narayan. Thus, the cryptic first information reported to the police not only names the appellant as the offender but also discloses the name of the victim as also the place of the crime.

7. SI R.D.Yadav, SI H.N.Giri and ASI Pancham accompanied by HC Ram Sarup left the police station taking along with them a copy of DD No.21A and as deposed to by

the SHO of the police station Insp.Rajender Bhatia PW-21 even he received the information of the crime and hence proceeded to the jhuggi in question, where as deposed to by Insp.Rajender Bhatia PW-21 and Parmatma PW-1, Parmatma met Insp.Rajender Bhatia who recorded Parmatma's statement Ex.PW-1/A and making an endorsement Ex.PW-21/A beneath the statement, as deposed to by Insp.Rajender Bhatia PW-21, the tehrir was dispatched as recorded on the tehrir at 11:55 PM for FIR to be registered. As recorded vide DD No.21A at 12:10 in the middle of the night, the next date having technically arrived and hence being recorded as 7.4.2006, FIR No.106/2006 was registered for the offence of murder.

8. Parmatma's statement and the tehrir span three pages. Having received information of the crime at 9:35 PM and leaving the police station; reaching the spot where the crime was committed; after surveying the place and recording Parmatma's statement and making the endorsement beneath the same, it can hardly be argued that the dispatch of the tehrir at 11:55 PM is belated. Thus, we see hardly any scope for the argument that Parmatma would be a planted witness, an argument which has been very feebly advanced before us.

9. As deposed to by Parmatma, he runs a grocery shop in his jhuggi bearing No.C-43/295 Ambedkar Basti i.e. the

jhuggi immediately adjoining the jhuggi No.C-43/296 where the crime was committed. As per him, on the first floor of Jhuggi No.C-43/296, which jhuggi belongs to his brother Satya Narayan, deceased Vijay Kant Shukla along with his brothers Dinesh and Ramesh as also accused Maharajdin were residing as tenants for about 3-4 years and there was some money transaction between Vijay Kant Shukla and Maharajdin. A few days prior to when the crime was committed there was a dispute between Vijay Kant Shukla and Maharajdin over money borrowed by Vijay Kant Shukla and Maharajdin started living separately after leaving the jhuggi in question. On 6.4.2006 at about 9:00 PM when he was in his shop he heard cries of Vijay Kant Shukla. He saw accused Maharajdin stab Vijay Kant Shukla with a knife. He closed the door of the jhuggi and tried to stop Maharajdin from stabbing Vijay Kant Shukla but Maharajdin threatened him and Parmatma that unless he leaves he would be killed. Thus, he i.e. Parmatma stood on the side and Maharajdin ran away. People collected. Somebody telephoned the police. Police reached and his statement Ex.PW-1/A was recorded. He deposed that the memos Ex.PW-1/B to Ex.PW-1/E pertaining to various exhibits which were stained with blood and were lifted from the spot were signed by him as a witness and that the recoveries were in his

presence.

10. On being cross-examined Maharajdin stated that his statement was recorded at the spot and again at the police station and that he did not remember when his third statement was recorded.

11. Rafiq Ali PW-2 deposed that Maharajdin had started residing with him in his jhuggi No.43/295 and that after the murder of Vijay Kant police came to his jhuggi and in his presence checked the bag of Maharajdin and from beneath the clothes in the bag recovered a cover Ex.P-8 of a knife which was seized vide memo Ex.PW-2/A. He deposed that on the cover the inscription '*B-I Meena Butcher Knife*' as also the name of the manufacturer '*Bharat Industries, Jilla Garden Chowk, Kanal Road, Rajkot-360002, India*' was printed.

12. Suffice would it be to note that the testimony of Rafiq Ali, as noted above, has gone unchallenged. His cross-examination, in its entirety is being recorded. It reads as under:-

"I do not remember the date when the police had made the above recovery of plastic knife cover mentioned above. The police had come to the spot at about 6.45 PM. One Parmatma was present at that time when the recovery was effected. 3-4 police officials were present at the time of recovery along with public persons. I cannot tell the names of those public persons. Those persons had not put their signatures on the recovery memo.

It is wrong to suggest that no recovery was effected in my presence. It is wrong to suggest that I am deposing falsely."

13. Insp.Rajender Bhatia PW-21 deposed having recorded Parmatma's statement Ex.PW-1/A and having made the endorsement Ex.PW-21/A and got the FIR registered. He deposed that he effected the recoveries on the spot as entered in the memos proved by Parmatma. He further deposed that he summoned the crime team which could detect nothing and that the photographer took photographs Ex.PW-6/B-1 to Ex.PW-6/B-15 of the scene of the crime. He deposed that during investigation Rafiq Ali met him and in the presence of Rafiq Ali he recovered the cover Ex.P-8 of the knife on which the inscription as deposed to by Rafiq was printed.

14. Suffice would it be to note that Insp.Rajender Bhatia has not been put any suggestions that he recorded more than one statement of Parmatma.

15. Insp.Anil Kumar PW-22 who was assigned further investigation on 23.8.2006 has deposed that on secret information being received he apprehended Maharajdin on 24.8.2006 and recorded his disclosure statement Ex.PW-8/C and next day at the pointing out of Maharajdin as recorded in the pointing out memo Ex.PW-8/D he recovered the knife Ex.P-7 as recorded in the memo Ex.PW-8/F and that he prepared

the sketch Ex.PW-8/E of the knife. It may be noted that on the knife Ex.P-7 the same matching inscription stands embossed as stands printed on the cover Ex.P-8.

16. When examined under Section 313 Cr.P.C. Maharajdin admitted living as a tenant along with Vijay Kant Shukla and his brothers in jhuggi No.C-43/296. He admitted that the deceased had borrowed some money from him but claimed that the same was returned. He denied residing with Rafiq or having anything to do with the knife cover Ex.P-8. Relevant would it be to note that as per Maharajdin he had left the jhuggi of Satya Narayan where he was residing along with the deceased and the two brothers of the deceased about two weeks prior to the date of the incident. He claimed that he never absconded but went to his village on account of Holi.

17. Pertaining to the recovery of the knife at the instance of the appellant, learned counsel urges that as per the prosecution the appellant was apprehended near the flatted factory complex at Jhandewalan on 24.8.2006 and the place wherefrom the knife is recovered is hardly 500 metres away. Counsel urges that there is no reason why recovery was got effected on 25.8.2006.

18. Ms.Richa Kapoor, learned counsel for the State draws our attention to the arrest memo Ex.PW-8/A of

Maharajdin which shows his arrest at 8:45 PM on 24.8.2006. Thus, counsel urges that after Maharajdin's disclosure statement was recorded, it became late night and hence recovery of the knife was effected the next day. Counsel highlights that the knife was found buried and had to be dug out.

19. Ignoring the evidence pertaining to the knife Ex.P-7, noting that the marking on the knife tallies with of what was printed on the knife cover Ex.P-8, we deal with the direct percipient evidence against the appellant spoken through the mouth of Parmatma.

20. Having perused the cross-examination of Parmatma we find that the only blemish worthy of being noted is Parmatma's deposition that after his statement was recorded at the spot further statements were recorded and these were at the police station.

21. As noted herein above, no suggestion was given to the investigating officer that he recorded more than one statement of Parmatma. Under the circumstances, the blemish of Parmatma has to be treated of a kind which does not impinge upon the creditworthiness of the testimony of Parmatma.

22. We have already noted hereinabove that Parmatma

met the investigating officer at the spot. We have already noted hereinabove that the crime was reported at the police station at 9:35 PM and the teherir was dispatched at 11:55 in the night. We rule out Parmatma being a planted witness.

23. No doubt, Parmatma has said that he saw the accused inflicting 10-12 stab blows on the person of the deceased; the fact of the matter being that the deceased received as many as 31 stab wounds, the discrepancy is explainable for the reason the cries of the deceased attracted Parmatma and it is obvious that many stab blows were possibly inflicted before Parmatma reached and saw the stab wounds being further inflicted. Besides, Parmatma was not expected to start counting the number of blows inflicted upon the deceased which were as many as 31.

24. The post-mortem report Ex.PW-11/A of the deceased, proved by its author Dr.Vijay Dhankar PW-11, shows the brutal nature of the assault. As noted above, 31 stab wounds have been inflicted on the person of the deceased and this rules out any scope for an argument that the offence committed is not murder.

25. We concur with the reasoning of the learned Trial Judge and hence dismiss the appeal.

26. Since the appellant is in jail we direct that a copy of

this decision be sent to the Superintendent, Central Jail, Tihar
to be made available to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

APRIL 21, 2010
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