

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

% *Date of Decision : 23rd February, 2010*

+ **CRL.APPEAL NO.882/2005**

SHIV DUTT @ TITU Appellant
Through: Mr.V.Madhukar, Advocate and
Mr.Jayendra Sevada, 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 the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. With reference to the testimony of Prem Prakash PW-1, Raj Kumar PW-2 and Sahib Singh PW-5, who claimed to be eye-witnesses to the incident, all of whom have deposed that in front of their eyes the appellant fatally stabbed the deceased Dharam Singh and fled, the learned Trial Judge has returned a verdict of guilt against the appellant.

2. The learned Trial Judge has found link evidence in the form of the recovery of a dagger Ex.P-1/A after the appellant was apprehended and made a disclosure statement

that he could get recovered the weapon of offence and led the police to a vacant plot and produced the dagger Ex.P-1/A which as per the report Ex.PW-3/D of the doctor who conducted the post-mortem, was opined to be capable of causing the injuries noted on the person of the deceased.

3. Further link evidence inculpatory of the guilt of the appellant is the report of the serologist as per which human blood of the same group as that of the deceased was detected on the dagger Ex.P-1/A.

4. It is apparent that the fate of the instant appeal has to be decided on an appreciation of the evidence of PW-1, PW-2 and PW-5.

5. At the backdrop it has to be kept in mind, a fact not disputed by learned counsel for the appellant, that the place where the deceased was stabbed happens to be a public street opposite the shop from where the appellant carries on business. It is a street in Block-J, Jahangirpuri, Village Bhalswa.

6. The earliest written record of the crime being committed is to be found in the PCR form Ex.PW-16/A, duly proved by Const.Indu PW-16, in which it is recorded that at 18:35 hours one Manoj has rung up from telephone No.7115609 and informed that a person has been stabbed outside House No.J-1786 Jahangirpuri i.e. house of the appellant.

7. The next written record of the crime is the MLC Ex.PW-15/A proved by Ms.Vineet Kiran PW-15, a record clerk, who has deposed that she was working as the record clerk in Babu Jagjiwan Ram Memorial (BJRM) Hospital since May 2000 and was conversant with the handwriting and signature of Dr.Manik Gupta and that the MLC Ex.PW-15/A is in the hand of Dr.Manik Gupta and bears his signature. The MLC records that a patient named Dharam Singh son of Kishan Singh aged 27 years has been brought to BJRM Hospital by his brother Sahib Singh PW-5 at 7:00 PM. It stands recorded that Dharam Singh was stabbed on various parts of his body including the abdomen. It is recorded that the pupils of Dharam Singh were fixed and dilated. There was no pulse nor was the blood pressure recordable. In simple words, Dharam Singh was declared 'brought dead'.

8. Information received at the police control room was transmitted over the wireless to PS Jahangirpuri and the same was noted by the duty constable vide DD No.44-B Ex.PW-6/D, duly proved by ASI Dharamvir Singh PW-6. As noted in DD No.44-B it was recorded at the police station at 6:40 PM.

9. SI Paramjit Singh PW-11 was entrusted with a copy of DD No.44-B and accompanied by Const.Ranbir Singh he left for the place of the incident where Const.Gajender met them. As deposed to by him, he saw blood in plenty at the road and

learnt that the injured had been removed to BJRM Hospital. Leaving Const.Gajender at the spot he went with Const.Ranbir Singh to the said hospital where he learnt that the injured Dharam Singh who had been brought to the hospital by his brother Sahib Singh was dead. He met Sahib Singh in the hospital and recorded his statement Ex.PW-5/A and sent the same to the police station for FIR to be registered at 9:30 PM, a fact recorded in the endorsement Ex.PW-6/A penned by him beneath the statement Ex.PW-5/A.

10. From the afore-noted facts it is apparent that the crime was reported to the police control room at 6:35 PM and hence it can be safely inferred that the crime took place on or around 6:30 PM. We also have on record, through the medium of MLC Ex.PW-15/A, that Sahib Singh PW-5, the brother of Dharam Singh had transported the injured Dharam Singh from the spot where the crime was committed to BJRM Hospital.

11. Unfortunately, we do not have on record the distance between the spot where the crime was committed and BJRM Hospital. Through the testimony of Sahib Singh PW-5 we have on record that he took his brother in a rickshaw to the hospital. Unfortunately, we do not have on record the likely time consumed in requisitioning the time taken for the rickshaw to paddle down the streets to reach BJRM Hospital.

12. We have used the expression 'unfortunately' for the reason the only submission, which possibly can be urged, with reference to the claim of Sahib Singh that he was an eye-witness, is the possibility of Sahib Singh reaching the place of occurrence on getting information from somebody else and then transporting his brother to the hospital.

13. The fact that Sahib Singh has transported his injured brother to the hospital at 7:30 PM and the crime being committed around 6:30 PM required an inference to be drawn that the claim of Sahib Singh that he was with his brother, unless dented by some evidence, needs to be accepted.

14. In that view of the matter, we note the testimony of Sahib Singh who deposed that he was carrying on business of running a milk dairy on his land in Village Bhalswa, in J-Block Jahangirpuri and he was a proud owner of 5 buffaloes. His brother Dharam Singh used to reside near his dairy and the accused was on visiting terms with his brother. The accused used to borrow money from his brother but return the same. There were many such money transactions. A sum of Rs.2,40,000/- had to be paid by the accused to his brother and that on 3.4.2002 i.e. the date of the incident he was going to milch his cattle and when he reached near the house of the accused i.e. J-1786 Jahangirpuri (which incidentally is the house number given and recorded in the PCR form Ex.PW-

16/A) he saw his brother on the ground and the accused was saying that he would teach a lesson to his brother for demanding money. The accused had a knife in his right hand and he yielded a stab blow on the stomach of his brother. He raised an alarm. Many people gathered. With the help of other persons he took his injured brother in a rickshaw to the hospital and on the way his brother told him that he had gone to the house of the accused to demand money and for said reason he was stabbed. When he reached the hospital his brother was declared dead. Police recorded his statement Ex.PW-5/A. He deposed that since the intestines of his brother were protruding out he removed his shirt and tied it on the tummy of his brothers to keep the intestines intact and that the police had taken possession of the shirt vide memo Ex.PW-1/B and that at the spot, in his presence, the police lifted blood stained earth and control earth from the place where the crime was committed and as entered in the memo Ex.PW-1/A. He deposed that the shirt Ex.P-1 shown to him in the Court was the one which he had tied around the waist of his brother.

15. In cross-examination, Sahib Singh admitted that nearly 200 or more persons gathered at the spot and that 5 or 6 persons had accompanied him to the hospital, 2 of whom were Prem Prakash and Raj Kumar.

16. We note that the part of the testimony of Sahib Singh that he happened to be passing by the place as he was going to his dairy has not even been touched upon during cross-examination. No attempt has been made to question the witness on issues wherefrom the defence could urge that Sahib Singh had no reason to be at the place as claimed by him and that there was a possibility of Sahib Singh learning through somebody else that his brother had been stabbed and since Sahib Singh resides in the same area, he reached the spot thereafter. No suggestions have been given to Sahib Singh that he was not in the street.

17. The submission of learned counsel for the appellant that the claim of Sahib Singh that his brother made a dying declaration to him on the way to the hospital is false for the reason so severe are the injuries on the person of the deceased evidenced by the post-mortem report Ex.PW-3/A that there is just no possibility of the deceased surviving the attack even for a minute is meritless.

18. First of all, it may be noted that as per the post-mortem report neither the heart nor the lungs of the deceased were punctured. There was an extensive damage to the intestines and the liver. There was excessive bleeding as the intestines were badly cut. Small intestines were protruding through the stomach muscle.

19. In the absence of any opinion being elicited from Dr.R.K.Puniya as to what would be the likely time for which such a injured could live and be in a position to speak, common-sense and medical jurisprudence guides us that such an injured person would be conscious and oriented, if not for more, at least for 2 to 3 minutes, and would lose the consciousness after a litre or so of blood is lost. It is at this stage that the oxygen carrying capacity in the blood would deplete thereby impairing the body organs which includes the brain.

20. Thus, pertaining to the stabbing incident, in view of the fact that the deceased and the accused have business dealings, it would be natural for Sahib Singh to enquire from Dharam Singh as to why did the accused stab him and to answer the same, Dharam Singh responding that he had gone to collect money.

21. Thus, the scope of there being any embellishment or exaggeration in the testimony of Sahib Singh is not within the realm of a probability and does not justify the acceptance of the afore-noted argument. In this connection we may once again note that this assertion of Sahib Singh in examination-in-chief has not even been tested in cross-examination. In fact, the same has not even been challenged.

22. It is settled law that where evidence of an eye-witness is found credible, no corroboration needs to be found. Thus, on the evidence of Sahib Singh we are of the opinion that no further evidence needs to be looked into.

23. But, we have two other persons who claim to be eye-witnesses, namely, Prem Prakash and Raj Kumar who have also withstood the test of cross-examination.

24. There are two controversies regarding their testimony. The first is their claim that they accompanied Sahib Singh to the hospital vis-a-vis the categorical statement of the police officers who reached the hospital that save and except Sahib Singh meeting the police, no other person was present in the hospital and that these two persons met the investigating officer when he returned to the place of the crime after visiting the hospital, and secondly, improvements made by the two witnesses vis-à-vis their statements recorded by the investigating officer under Section 161 Cr.P.C.

25. As regards the claim of the two to have accompanied Sahib Singh to the hospital when he removed Dharam Singh in a rickshaw, we note that Sahib Singh has categorically deposed that many persons accompanied him and his brother to the hospital and that two of them were Prem Prakash and Raj Kumar. This testimony of Sahib Singh has not been challenged. Thus, Sahib Singh's uncontroverted

testimony establishes the presence of Prem Prakash and Raj Kumar with him.

26. Secondly, both of them had stated that they remained at the hospital for about 30 – 40 minutes and returned to the spot. This accounts for the police officers not meeting the two.

27. As noted above, the crime was reported to the police control room at 6:35 PM. It was reported at the police station concerned at 6:40 PM. As claimed by the investigating officer he and the constable accompanying him first went to the spot and then from there to the hospital. Sometime would obviously be taken to pen the DD entry in the police station. Further time would be taken to prepare a copy thereof. Sometime would be taken to find out as to which senior police officer is available for making inquiry. That officer would pick up a constable. Departure entry would be made in the register. The two would reach the spot. Further time would be taken by them to gather information where the injured is removed. Time would be taken to reach the hospital.

28. Thus, the mere fact that the police personnel claim that Prem Prakash and Raj Kumar were not seen by them in the hospital stands explained by the explanation of the two witnesses and hence on the said fact alone it cannot be said that the two did not go to hospital. Their claim of being

present at the spot when the crime was committed has remained un rebutted.

29. As regards the embellishments made by the two as also the improvements vis-à-vis their statement recorded under Section 161 Cr.P.C. we find that the same relate to certain facts deposed to by them surrounding the incident in question. Their statements recorded under Section 161 Cr.P.C. are cryptic and hence the reason the same not being found vis-à-vis what they deposed in Court.

30. It does happen that a person responds to the questions put and hence volunteers information with reference to the question put. It depends upon the skill of the person who questions. It is apparent that the investigating officer (IO) was satisfied with the cryptic statements made by the two witnesses that they saw the accused assaulting the deceased. It appears that the IO did not question them in detail about the incident and hence they never told him the facts in detail. But, when they appeared in Court, with reference to the questions put by the public prosecutor they have answered more.

31. Assuming that Prem Prakash and Raj Kumar have volunteered to back up the claim of their friend Sahib Singh and for said reason we were to exclude their testimony, but as noted above, the testimony of Sahib Singh and his claim of being with his brother is of unimpeachable character and thus

on his testimony alone we find sufficient evidence to convict the appellant.

32. We find no merit in the appeal which is dismissed.

33. Since the appellant is in jail we direct that a copy of this order be sent to the Superintendent, Central Jail, Tihar to be supplied to the appellant.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

FEBRUARY 23, 2010
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