

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

% *Judgment Reserved on: 28th January, 2010*
Judgment Delivered on: 8th February, 2010

+ **CRL.APPEAL No.920/2005**

HEMRAJ @ BABA Appellant
Through: Mr.Rajesh Mahajan, Advocate

Versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL.APPEAL No.1/2005

VIJAY KUMAR Appellant
Through: Mr.Rajesh Mahajan, Advocate

Versus

STATE Respondent
Through: Ms.Richa Kapoor, 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. Vide impugned judgment and order dated 3.9.2004, appellants Vijay Kumar and Hemraj have been convicted for the offences punishable under Sections 302/120-B IPC and for Sections 201/120-B IPC. For the offence of murder, the appellants have been sentenced to undergo Rigorous

Imprisonment for life and to pay a fine in sum of Rupees two thousand each; in default of payment of fine, they have been sentenced to undergo rigorous imprisonment for one month each. For the offence punishable under Section 201 IPC, appellants have been sentenced to undergo rigorous imprisonment for four years and to pay a fine in sum of Rupees two thousand each. In default of payment of fine, they have been sentenced to undergo rigorous imprisonment for one month each.

2. Process of law was set into motion when at 10:10 AM on 25.6.2000, information was received at PS Sangam Vihar that a dead body was lying at a Pahari in Gupta Colony. The same was recorded vide DD No.5-A. A copy of said DD was entrusted to SI Lehna Singh PW-13 for investigation. Accompanied by Const.Dharamvir PW-9 and Const.Vijender PW-11, SI Lehna Singh reached the spot and found the middle portion (torso with arms and hands attached) of a dead body without its head and legs and without clothes. It was apparent that the body had been cut into pieces, with the head and the legs severed from the torso. SI Lehna Singh prepared endorsement Ex.PW-4/B under the copy of DD No.5-A and sent the same for registration of an FIR for the offence of murder. He summoned the crime team, a photographer and the dog squad. The photographer Const.Brij Bir Singh PW-2 took seven

photographs Ex.PW-2/1 to Ex.PW-2/7 of the dead body; negatives whereof are Ex.PW-2/8 to Ex.PW-2/14. The crime team could lift no clues and even the dog squad picked up no leads. The body was sent to AIIMS mortuary alongwith a request to preserve the same for the reason the body was of an unidentified person.

3. 4 days later on 29.6.2000 at 9:24 AM information was received at PS Sangam Vihar about something lying wrapped in a bed sheet in a vacant plot near a shop of furniture situated in I-Block Gali Shani Bazaar, main road Sangam Vihar. The same was recorded vide DD No.7 Ex.PW-3/A. The investigation of the said DD was also entrusted to SI Lehna Singh and he proceeded to the spot. There, within a deserted house without a door, he found a head and two legs of a body wrapped in a bed sheet. SI Lehna Singh took three photographs Ex.PW-13/C/1 to Ex.PW-13/C/3 of the same with his personal camera. He seized and sent the head and the legs to the mortuary at AIIMS.

4. No breakthrough could be arrived as to whether the torso, head and legs were of the same person, if yes, who was the person or whether they were the body parts of two different persons, and if yes, who were they.

5. On 1.7.2000, Surender Singh PW-8 informed over the telephone at PS Sangam Vihar that he had apprehended a

person who had admitted to have committed a murder. On learning this, SI Lehna Singh went to H.N.285-A, Gali No.7, I Second block, Sangam Vihar the place where Surender Singh resided and recorded the statement of Surender PW-8, wherein Surender Singh stated that foul smell was coming from the house of Hemraj since some days. That day i.e. on 1.7.2000, when he saw Hemraj outside his house, he queried from Hemraj as to why smell of a dead body was coming from the house of Hemraj and why Hemraj was not seen for so many days. On this, Hemraj started stammering, but on his insistence, Hemraj disclosed that on 24.6.2000, he had committed murder of a chowkidar and after cutting the head and legs of the body, disposed of the rest of the dead body near a hillock, in a jungle near Gupta colony. On 28.6.2000, he threw the head and legs of the body in a vacant plot next to a furniture shop in I Block Sangam Vihar. On basis of this statement made by Surender Singh, SI Lehna Singh arrested Hemraj and in the presence of HC Ramesh Kumar, SI Lehna Singh interrogated Hemraj and recorded his disclosure statement Ex.PW-12/A wherein Hemraj disclosed that pursuant to a conspiracy between appellant Vijay and him, both Vijay and he committed murder of Chander Bahadur. He further stated that he could get the gandasa and the clothes of the deceased recovered from his house and could get co-accused

Vijay arrested. As per SI Lehna Singh, after recording said disclosure statement of Hemraj, he produced Hemraj before the concerned Magistrate and made an application for obtaining the police custody of Hemraj for two days, stating that the police custody was required so Hemraj could get the weapon of offence recovered and get his co-appellant Vijay Kumar arrested. On being granted police custody, SI Lehna Singh took Hemraj to his house bearing No.26, Gali No.7, Ratia Marg, Block I-Second Sangam Vihar, from where, Hemraj got recovered a Gandasa Ex.P-1, stating the same to be the weapon of offence; a grey coloured pant Ex.P-2, underwear Ex.P-3, shirt Ex.P-4, belt Ex.P-5, a pair of socks Ex.P-6 and a pair of shoes Ex.P-7, stating the same to be the clothes of the deceased; and a blood stained white shirt Ex.P-13, a blood stained white vest Ex.P-8, a pink coloured cloth Ex.P-9, a blood stained lungi Ex.P-10 and a blood stained bed sheet Ex.P-11. The same were seized vide memo Ex.PW-6/A. SI Lehna Singh also arrested appellant Vijay Kumar at the instance of Hemraj.

6. On 2.7.2000, Balram Singh PW-5 visited AIIMS and identified the dead body as that of his brother-in-law Chander Bahadur. After identification, SI Lehna Singh prepared the Death Report Ex.PW-13/H and made application Ex.PW-13/G requesting for the conduct of post-mortem on the dead body. As per the application, SI Lehna Singh sent the Gandasa to the

doctor to obtain his opinion on the same being the possible weapon of offence. Dr.S.K.Gupta PW-10 conducted the post-mortem and prepared his report Ex.PW-10/A. He noted 2 ante-mortem and 5 post-mortem injuries on the body. He opined that the cause of death was ante-mortem decapitation produced by sharp edged weapon, which was sufficient in the ordinary course of nature to cause death. He opined that the gandas Ex.P-1 could be the possible weapon of offence.

7. On 9.9.2000, charge-sheet was prepared. It may be noted that as per the charge-sheet, items seized during the investigation had been sent to FSL before the charge-sheet was prepared. As per FSL report Ex.PW-13/M, on examination of the parcels received on 26.12.2000, blood was detected on pants, underwear and shirt of the deceased and on the clothes of appellant Hemraj. The blood group of the blood detected on the pants and shirt of deceased and banian and shirt of appellant was 'A' group.

8. At the trial, prosecution examined 14 witnesses, out of which the testimony of only 5 is relevant and hence we note the same.

9. Ram Rati PW-7 deposed that deceased Chander Bahadur was her husband and was employed as a chowkidar at the Blind School, Lal Kuan. Vijay Kumar along with his wife and she with her husband (the deceased) resided together in

one premises. Appellant Vijay and her husband used to consume liquor together. Appellant Hemraj was also known to appellant Vijay and sometimes Hemraj, Vijay and her husband used to consume liquor together. One evening in June 2000, her husband and appellant Vijay had left the house together. But only Vijay returned, her husband did not return. When she queried Vijay, he told her that her husband had left Vijay. On 2.7.2000 she learnt that her husband had been murdered. That the shirt Ex.P-4, pant Ex.P-12, the belt Ex.P-5, pair of socks Ex.P-6 and the shoes Ex.P-7 were the clothes of her husband.

10. Surender Singh PW-8 deposed that since about a year and a half prior to the incident Hemraj was residing in a tenanted premises opposite his house. Since 5 or 6 days prior to 1.7.2000, foul smell was coming from the house of Hemraj. On 1.7.2000, at about 10:00 A.M. or 10:30 A.M. he was sitting on the porch of his house when he saw Hemraj ready to go somewhere on his cycle. Hemraj was carrying a bag. He asked Hemraj as to how come Hemraj was not seen for the last so many days and why foul smell was coming. On this Hemraj started stammering. On his insistence, Hemraj disclosed to him that on 24.6.2000 Hemraj had murdered a chowkidar and after cutting his body had thrown the middle portion of the body in a jungle in the ditches in the pahari area and he had

thrown the head and legs of the deceased in a vacant block near Shani Bazaar. On learning this he apprehended Hemraj and informed about the confession and apprehension to the police. The police arrived and arrested Hemraj. On interrogation by the police Hemraj got recovered a gandasa and cut clothes of the deceased from his house.

11. SI Lehna Singh PW-13 deposed that at about 10:10 A.M. on 25.6.2000 he was entrusted with the investigation pertaining to DD No.5A. He went to the pahari near Gupta Colony and found the middle portion of a body lying there. The body was without clothes and had some injuries caused by a sharp edged weapon. He prepared tehrir and sent the same for registration of the FIR and summoned a photographer, crime team and dog squad. At about 9:24 A.M. on 29.6.2000 another DD was recorded and pursuant to the same he recovered the head and legs of a body wrapped in a bed sheet from a vacant plot near a furniture shop near Shani Bazaar, Sangam Vihar, Main Road. He sent the same along with the bed sheet to AIIMS. On 1.7.2000 he learnt about the apprehension of a person who had committed a murder and went to H.No.285-A Gali No.7, I Second Block, Sangam Vihar, where he met Surender who had apprehended Hemraj. He arrested Hemraj and recorded his disclosure statement. He then produced Hemraj before the concerned Magistrate and

obtained his police custody. Thereafter Hemraj got recovered a gandasa and clothes of the deceased from his house in Sangam Vihar which were seized vide memo Ex.PW-6/A. He also arrested appellant Vijay at the instance of Hemraj. On 2.7.2000 Trilok brother of the deceased and Balram brother-in-law of the deceased visited the police station and informed him that Chander Bahadur was missing. He showed them the dead body and they identified the same to be that of Chander Bahadur. Thereafter, on the same day the post-mortem on the body was got conducted.

12. HC Ramesh Kumar PW-12 deposed that he joined the investigation on 1.7.2000 and on that day secret information was received about the apprehension of a person who had committed a murder. On learning the same they went to I/II Block Sangam Vihar and met one Surender who informed them that Hemraj confessed to Surender about having committed murder of a chowkidar. They arrested Hemraj. SI Lehna Singh recorded his disclosure statement and effected recoveries of a gandasa and some clothes from his house.

13. Balraj Singh PW-5 deposed that deceased Chander Bahadur was his brother-in-law and on 2.7.2000 he identified the dead body of Chander Bahadur in the hospital. On being

cross-examined, he stated that he learnt about the death of Chander Bahadur on 1.7.2000.

14. In his examination under Section 313 Cr.P.C. appellant Hemraj denied all incriminating evidence against him but admitted that Surender Singh PW-8 was residing in a house opposite his house for about a year and a half prior to incident.

15. Vide impugned judgment and order dated 3.9.2004, appellants Vijay Kumar and Hemraj have been convicted for the offences punishable under Sections 302/120-B IPC and Sections 201/120-B IPC. The conviction of appellant Vijay Kumar is based on the testimony of Ram Rati PW-7, the wife of the deceased, which as per the learned Trial Judge held established that the deceased Chander Bahadur was last seen in the company of appellant Vijay Kumar soon before the recovery of his dead body. The conviction of appellant Hemraj is based on the extra judicial confession made by him to Surender Singh PW-8. Further, the recovery of clothes identified by the wife of deceased as the clothes of the deceased, at the instance of appellant Hemraj from his house and the recovery of Gandasa, opined by PW-10 who conducted the post-mortem to be the possible weapon of offence, at the instance of appellant Hemraj were also held to be incriminating evidence against appellant Hemraj.

16. At the hearing of the appeal, qua appellant Vijay, counsel urged that the only incriminating evidence that has come on record is that he was last seen with the deceased by Ram Rati PW-7, the wife of the deceased. No recoveries are alleged to have been effected from or at the instance of appellant Vijay. Counsel urged that the solitary circumstance of last seen is not sufficient to fasten guilt to the appellant Vijay for the reason that the statement of this witness regarding last seen was recorded only after the arrest of Vijay on 2.7.2000, though the deceased was missing since 24.6.2000. Counsel urged that the unexplained delay makes the statement of this witness not worthy of credence. Further, counsel urged that no motive has been proved by the prosecution for Vijay to have murdered the deceased.

17. Qua appellant Hemraj, learned counsel urged that the extra-judicial confession made to PW-8 would be admissible only if the testimony of PW-8 is found to be reliable. The credibility of the testimony of PW-8 would in turn depend upon the same being in conformity with the prosecution story as a whole and in consonance with the deposition of other witnesses. Attempting to discredit PW-8, counsel highlighted the following discrepancies:-

(a) While PW-8 deposed that he was the one to have informed the police about the apprehension of Hemraj, but the

police officials HC Ramesh Kumar PW-12 and SI Lehna Singh PW-13 deposed that Hemraj was arrested on the basis of information received from a secret informer.

(b) The deposition of PW-8 that he got suspicious as foul smell was emanating from the house of Hemraj, has not been corroborated either by the presence of any part of the dead body in the house causing the foul smell, or by the testimony of any of the police witnesses who accompanied Hemraj and recovered the gandasa and clothes from said house. Thus, counsel urged, the genesis of suspicion of Surender PW-8 being the foul smell has not been proved.

(c) PW-8 deposed that Hemraj was carrying a bag with him and was on a cycle when he apprehended Hemraj. But neither any bag, nor any cycle was seized by the police from the personal search of Hemraj.

(d) As per PW-8, the incident of appellant Hemraj making an extra judicial confession to him, his informing the police, arrival of the police, recording of the disclosure statement of Hemraj by the police and the effecting of recoveries were part of one transaction and took place in continuity with each other. But, as per SI Lehna Singh PW-13 after the recording of the disclosure statement, he first produced Hemraj before the concerned Magistrate and only

after obtaining the police custody of Hemraj he effected the recoveries of weapon and clothes at the instance of Hemraj.

(e) Lastly, it was urged that though the presence of Surender PW-8 at the time of recording of disclosure statement of Hemraj has been deposed to by all the relevant witnesses being PW-8, PW-12 and PW-13, but the said disclosure statement does not bear the signatures of PW-8 as a witness to the same. Learned counsel further highlighted that the recovery memo Ex.PW-6/A pertaining to the articles recovered at the instance of appellant Hemraj from his house bears the signature of PW-8. Counsel urged that said circumstance read in conjunction with the discrepancy noted in sub-para (d) above, suggest subsequent manipulation of the disclosure statement. Counsel highlighted that the caption of the disclosure statement reads: '*Case FIR No.240/2000 dt 25-6-2000 u/s 302/201/120-B IPC, P.S. Sangam Vihar, New Delhi*'. It was urged that the angle of conspiracy was revealed only after Hemraj made the purported disclosure statement and if at all, the offence punishable under Section 120B IPC was disclosed to the police and thus at the time of recording the disclosure statement it could not be mentioned that the same pertained to an FIR relating to, inter alia, the charge of conspiracy. Thus, counsel urged that it was apparent that the disclosure statement had been anti timed.

18. Further, attacking the extra-judicial confession made by the appellant, learned counsel urged that the same was made after 7 days of the offence, which delay assumes significance. Referring to the decisions reported as 1999 Cri.L.J. 4597 State of Punjab vs. Gurdeep Singh, AIR 1973 SC 343 Rahim Beg vs. State of U.P., AIR 1982 SC 1595 Heramba Brahma vs. State of Assam, 1997 SCC (Cri) 358 Jaspal Singh vs. State of Punjab and AIR 1983 SC 295 Manzoor vs. State of Punjab counsel urged that the extra judicial confession does not inspire confidence insofar as there is no evidence that Surender PW-8 was so close an acquaintance of the appellant Hemraj and that Hemraj would find it safe to repose confidence in him and confess his guilt to him. In any case, learned counsel urged that extra judicial confession was a weak piece of evidence requiring appreciation with care and caution.

19. Stating that the disclosure statement of Hemraj and the seizure of clothes of deceased and the weapon at the instance of Hemraj were manipulated, counsel urged the following points:-

(a) The remand application dated 1.7.2000, filed by SI Lehna Singh does not state effecting recovery of clothes as a purpose for seeking the police custody of Hemraj, even though

in his disclosure Hemraj categorically stated that he could get the clothes of deceased recovered from his house.

(b) Why would a person, who is sane enough to have disposed of the torso and the head and the legs at two different places to avoid being caught not dispose of the clothes of the deceased rather preserve them in his possession?

(c) The photographs of the spot from where the head and legs were recovered, clearly show that a grey coloured pants was lying, hardly at a distance of a feet from the head. But, no such pants were seized from said spot. Rather a pair of grey coloured pants finds mention in the seizure memo Ex.PW-6/A, which records the seizure of articles recovered at the instance of Hemraj from his house. Counsel urged that this casts a doubt on the purity of investigation.

(d) SI Lehna Singh PW-13 deposed that the head and legs were found lying wrapped in a bed sheet and he sent the body along with the bed sheet to the hospital. But, neither any doctor, nor the post-mortem report prove that the dead body was received along with a bed sheet. There is no other evidence as to where the said bed sheet went. However, the seizure memo Ex.PW-6/A of the articles recovered from the house of the appellant at his instance, records seizure of one bed sheet from said house.

(e) Pertaining to the weapon of offence, as per the request application Ex.PW-13/G for conducting post-mortem, the IO sent the alleged weapon of offence to the doctor for his opinion on the same being the possible weapon of offence. However, the doctor conducting the post-mortem does not give any such opinion, in the post-mortem report. It is only in his testimony in the court that he states that the Gandasa shown to him could possibly be the weapon of offence.

(f) No witness from the malkhana was examined, nor was any register or record of the malkhana proved to show the safe custody of the seizures.

(g) While as per the charge-sheet prepared on 9.9.2000 the articles seized during the investigation had already been sent to the FSL before the preparing of the charge-sheet, but as per the FSL report, the articles were received in the laboratory only on 26.12.2000.

20. Counsel urged that a conjoint reading of all the afore-noted points (a) to (g) show that the seizures effected at the instance of appellant Hemraj from his house have been manipulated.

21. Counsel urged that while SI Lehna Singh PW-13 deposed that on 2.7.2000, relatives of the deceased i.e. Trilok and Balraj visited the police station to report about the deceased Chander Bahadur being missing, Balraj PW-5

deposed that on 1.7.2000 he had learnt about the death of Chander Bahadur. Counsel urged that this discredited the version of SI Lehna Singh.

22. Pertaining to the evidence against appellant Vijay Kumar, we note that in the extra-judicial confession made by Hemraj to PW-8, he did not state that the murder was committed by him along with appellant Vijay in pursuance of a conspiracy between them. In his statement under Section 161 Cr.P.C. and as well as his deposition in court, Surender PW-8 stated that Hemraj confessed to having committed murder of one chowkidar, but did not inculcate appellant Vijay in the extra judicial confession. Clearly, the only evidence against appellant Vijay is that of the deceased being last seen in his company by Ram Rati PW-7, wife of the deceased. The evidence of last seen is considered to be a strong piece of evidence to inculcate the appellant only if there is proximity of time and place of the appellant being last seen with the deceased and the death of the deceased. We note that as per PW-7, Vijay Kumar was seen leaving the house at Blind School, Lal Kuan, New Delhi with the deceased Chander Bahadur in the evening of 24.6.2000. But the dead body was recovered in two parts i.e. the middle portion without the legs and head on 25.6.2000 and the head and legs on 29.6.2000. We further note that while the middle portion of the body was recovered

from a pahari in Gupta Colony, the head and legs were recovered from a vacant plot near a shop of furniture situated in I-Block Gali Shani Bazaar, main road Sangam Vihar. There is no such proximity between the time and place of last seen and the time when the deceased died to reach to a definite conclusion that appellant Vijay Kumar was one of the offenders.

23. The probability of Vijay Kumar having parted company with the deceased cannot be ruled out.

24. In this connection, lest there be any confusion, we note that in the extra-judicial confession made by Hemraj to Surender he has not stated that he killed the deceased in conspiracy with Vijay Kumar. Said fact of a conspiracy and participation of Vijay Kumar in the crime is disclosed in Hemraj's confessional statement recorded by SI Lehna Singh, which obviously is inadmissible in evidence.

25. Thus, Vijay Kumar is entitled to be acquitted of the charge framed against him.

26. Dealing with the evidence against Hemraj and the contentions urged by learned counsel for the appellants we need to note certain backdrop facts. Chander Bahadur had left his house in the evening of 24.6.2000 and he was in the company of Vijay Kumar. Chander Bahadur, his wife, Vijay Kumar and his wife used to live together. Vijay Kumar

returned to the house and on being questioned by the wife of Chander Bahadur as to where Vijay was, told her that he and Vijay had parted company. Chander Bahadur's wife did not report Chander Bahadur being missing to the police. Why she did not do so has not been brought out either by the prosecution or the defence when she appeared as PW-7. A probable reason could be that Chander Bahadur who was working as a chowkidar and was prone to drinking may be, in the past, indulging in not returning home for days together. We have come across cases where wives have not reported their husbands missing for days together or parents not reporting their major children not returning home for days together because of the peculiar lifestyle of the husbands or the major children leaving and returning to their houses in wayward manner. The torso of a dead body with arms and hands attached was recovered at around 10:30 AM on 25.6.2000. The police had no clue as to who was murdered. On 29.6.2000, the legs and the head i.e. the remaining part of the body was recovered and even on that day the police had no clue about the identity of the person who was killed. On 1.7.2000 i.e. the date on which Surender Singh claims Hemraj having made an extra-judicial confession to him, the police was just not aware of the fact that the dead body recovered by them in a mutilated condition was that of Chander Bahadur.

Surender Singh never knew that Chander Bahadur was missing or had been murdered. The first time the investigating officer learnt about the identity of the dead body was on 1.7.2000 when he reached the house of Surender PW-8 who informed him that Hemraj has made an extra-judicial confession to him. The fact which was learnt through the confessional statement of Hemraj proved to be correct with subsequent investigation when Balram PW-5, the brother-in-law of the deceased identified the body to be that of Chander Bahadur. The aforesaid circumstances and facts form the backdrop of the leads available to the prosecution and while appreciating the evidence and the contentions urged have to be accorded their due weight.

27. From a perusal of the arguments urged by learned counsel for the appellants the challenge to the evidence led by the prosecution can be clubbed into two different heads. Firstly with reference to the caption on the confessional statement of Hemraj and the time when recoveries pursuant thereto were effected as also to the articles stated to be recovered being planted and the fact that in the application seeking police remand it was not stated that the clothes of the deceased, reference whereto had been made in the disclosure statement by Hemraj had to be recovered. The second being the various submissions challenging the credibility of the claim

of Surender Singh that Hemraj made an extra judicial confession to him.

28. At the forefront was the argument that why should Hemraj at all make a disclosure statement to Surender. Now, as deposed by Surender, Hemraj was his neighbour for the last 1½ years living right opposite his house. It was but natural for Surender to question Hemraj as to where Hemraj was if he had not seen Hemraj in his house for a few days. This is what had happened. So has Surender deposed. As per Surender he had not seen Hemraj in his house for the last 5 or 6 days and had been noticing a foul odour emanating from the house of Hemraj. When he saw Hemraj with a bag and ready to go somewhere on his cycle at 10:00 AM or 10:30 AM it was natural for him to walk up to Hemraj and ask him whether all was well. As he walked up to Hemraj he further noticed another abnormality of Hemraj smelling of alcohol in the morning. It is not the usual habit of people to consume alcohol in the morning. It is an activity reserved for the noon siesta or an evening of fun. It was natural for Surender to ask Hemraj as to why he was drunk in the morning.

29. If the mind is troubled and so many questions are asked simultaneously, all questions being relevant to the occasion and the circumstance, the troubled mind is bound to search for answers and if no ready answer can be fabricated,

to stammer out the truth. It is important to note that as per Surrender when he asked all these questions to Hemraj he started stammering before he blurted the truth.

30. And what was the truth. It was something not known to Surrender. How could Surrender ever think of telling anybody that a man had been murdered and the head and the legs cut off from the torso; how could he tell the place where the torso was thrown and where the head and the legs were thrown, unless somebody told him so or he saw somebody do so.

31. The circumstance under which Surrender claims Hemraj having confessed and made a confessional statement to him is of a kind that credibility thereof emerges of the highest order.

32. Confessions are received in evidence in criminal cases upon same principle on which admissions are received in civil cases; namely on the presumption that a person will not make an untrue statement against his own interest.

33. A man of sound mind and full age who makes a statement in ordinary simple language and has not been the victim of malpractice, threat or inducement in making such statement, must be bound by the language of the statement and by its ordinary plain meaning and the act spoken of must be given its legal consequence.

34. As held way back in the year 1907, in the decision reported as Emperor vs. Narayen (1907) 9 Bom.L.R. 789 (FB), deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in law.

35. *Nemo debet prodere se ipsum* i.e. 'no one can be required to be his own betrayer' requires it to be ensured that before admitted in evidence and relied upon, it has to be ensured that the confession is reliable. Thus, it has long been established as a positive rule of criminal law that no statement by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, in the sense that it has not been obtained from him either by fear of prejudice or hope of advantage exercised.

36. Why people make confessions? None has been able to exhaustively categorize various reasons or motives for a person to make a confession. Remorse, hope that an early admission of guilt might lead to a lighter sentence, putting the conscience to rest, are usually the foundation for a person to make a confession. But, it may happen that a person who is required to explain his conduct, on finding no answer, may blurt out the truth.

37. Since as held in the decision reported as Shankaria vs. State of Rajasthan AIR 1978 SC 1248, confessions, if voluntarily and truthfully made, are an efficacious proof of

guilt, therefore, when in a capital case prosecution demands a conviction of the accused, primarily on the basis of his confession, the Court must apply a double test: (i) Whether the confession was perfectly voluntary? (ii) If yes, whether it was true and trustworthy?

38. Satisfaction of the first test i.e. the confession being completely and perfectly voluntary is a *sine qua non* for its admissibility in evidence. If the first test is satisfied, the Court must, before acting upon the confession, reach the finding that what is stated therein is true and reliable.

39. For judging the reliability of a confession, no rigid canon of universal application can be prescribed. While dealing with reliability of a confession and in particular an extra judicial confession, three factors have to be kept in mind. Firstly: (i) to whom it is made; (ii) the time and place of making it; and (iii) the circumstance, in which it was made. Some decisions have highlighted a fourth factor to be kept in mind; being, the credibility of the witness who speaks to such a confession.

40. Tested on the anvil of law pertaining to confessions as afore-noted, the circumstances under which Surrender claims Hemraj made the confession to him inspires confidence of the highest degree factoring in the circumstance that Surrender has no motive to falsely implicate Hemraj. The

contours of the confession as disclosed to SI Lehna Singh soon after the confession was made confirm the previous events which had transpired in the form of recovery of the body parts of the deceased from two different places on two different dates, not only the manner in which the dead body was cut but even the places where the body parts were thrown were disclosed by Surender to SI Lehna Singh. These conform to the places where the parts of the dead body were recovered as also how the body was cut as disclosed in the seizure memos prepared by SI Lehna Singh on 25.6.2000 and 29.6.2000.

41. That the police officer HC Ramesh Kumar PW-12 has stated that the police learnt about the accused being apprehended by a secret informer and Surender PW-8 has stated that he informed the police after Hemraj made a confessional statement to him is neither here nor there for the reason it is the usual habit of all police officers to claim that every bit of information received by them was from a secret informer. We just cannot understand as to why the police officers tell petty lies and refuse to give credit to the actual informant. May be it has its source in the fund made available to the police to pay secret informers for the reason surveillance and counter-surveillance have to be conducted under cloak of secrecy and these funds are never audited.

May be to ensure that adequate money flows into the said fund, the police officers claim to be having a lot of secret informers and receive money to be paid to the secret informers; some of which may be pocketed by the police officers themselves. We highlight that SI Lehna Singh PW-13 has not claimed that he received information through a secret informer. He has simply stated that on receiving information that the killer had been apprehended, he left for the house of Surender. How did SI Lehna Singh and HC Ramesh Kumar proceed to the house of Surender PW-8? They did not know his address. It is obvious that as claimed by Surender he furnished his address. That no foul smell has been proved emanating from the house of Hemraj does not mean that the claim of Surender that he smelled foul odour from the house of Hemraj is false. We note that the testimony of Surender to this effect has not even been challenged during cross-examination. Besides, how can anyone prove that on a particular time, on a particular date foul smell was noted? Obviously through the testimony of somebody who so claims. That the police officers have not deposed that even they smelled foul odour from the house of Hemraj does not mean that no foul odour was emanating from the house. Well, they did not say so, because nobody questioned them on the issue. A person answers what he is questioned. It depends upon

person to person. Somebody is alive to a situation and volunteers further information with reference to the questions put to him as he thinks that the further information would be relevant while considering his answer and somebody remains lazy and satisfied to answer the question put to him without volunteering further information.

42. Neither the bag nor the cycle of Hemraj had anything to do with the crime and we see no reason why the investigating officer should have seized the same. The argument that neither the bag which Surender claims having seen with Hemraj and the cycle of Hemraj were not seized is meaningless. Relevant evidence is a thing or a state of thing connected with a fact in issue and not just about everything. If the argument of learned counsel for the appellants is to be accepted, it would mean that if a crime is committed in a house, every household article would be required to be seized. It is settled law that only such article or object which is incriminating or which possibly can be incriminating has to be seized and no more.

43. The various documents proved at the trial pertaining to the disclosure statement of the appellant and the statement of Surender in which he gives the contours of the confessional statement of Hemraj and the various recovery memos prepared on 1.7.2000 show that when SI Lehna Singh

reached the house of Surender he recorded the statement of Surender as also the confessional-cum-disclosure statement of Hemraj. On the same day Hemraj was produced before the Magistrate and an application seeking police custody was filed and orders obtained. On the same day recovery memo Ex.PW-6/A showing the recoveries as noted in para 5 above was drawn.

44. Just because Surender PW-8 has deposed in a continuous narrative and two distinct happenings on the same day have been narrated by him in a manner as if everything happened continuously i.e. after his i.e. Surender's statement was recorded by SI Lehna Singh, the confessional-cum-disclosure statement of Hemraj was recorded followed by the recoveries does not lead to the only conclusion that SI Lehna Singh has deposed falsely or has fabricated the record.

45. It is true that on the disclosure statement of Hemraj the caption has been written '*Case FIR No.240/2000 dt 25-6-2000 u/s 302/201/120-B IPC, P.S. Sangam Vihar, New Delhi*', which could not have been so written for the reason by that time the FIR registered was only for the offences punishable under Section 302/201 IPC. The conspiracy was disclosed for the first time to SI Lehna Singh when Surender informed SI Lehna Singh about the confessional statement made to him by Hemraj. But, we find that SI Lehna Singh has not been

questioned with respect to said aspect of the caption on the statement of Hemraj. We do not know what answer he would have given. May be he would have said that he forgot to write the caption and simply recorded the disclosure statement and later on realizing that he ought to have made a mention of the FIR to which it related, later on wrote the particulars thereof, by which time the offence of conspiracy stood added in the FIR. It is settled law that if an adverse inference has to be drawn with reference to a document prepared by the witness or on a discrepancy in something deposed by the witness, his attention has to be drawn thereto and an opportunity granted to the witness to give an explanation and only where he is unable to give a satisfactory explanation can an adverse inference be drawn. The decisions reported as AIR 1975 SC 290 Rahim Khan vs. Khurshid Ahmed, 1988 Supp. SCC 686 State of U.P. vs. Anil Singh and (2005) 9 SCC 298 Sunil Kumar vs State of Rajasthan may be noted.

46. The applicability of the ratio of law laid down in the aforesaid decisions is best illustrated when we consider the argument of learned counsel for the appellants that the various exhibits were sent to the FSL Laboratory for report of the serologist with reference to the blood sample of the deceased and as per the charge-sheet filed the IO claimed to have sent the samples to the FSL Laboratory before the

charge-sheet was filed. Drawing our attention to the fact that the charge-sheet was filed on 9.9.2000 learned counsel referred to the report Ex.PW-13/L of the FSL Laboratory which referred to the letter dated 26.12.2000 written by the SHO; the covering letter to the report Ex.PW-13/L being dated 31.1.2001. Learned counsel urged that it was apparent that the exhibits and the blood sample of the deceased was obviously not sent to the FSL Laboratory when the charge-sheet was filed. We note that SI Lehna Singh, the investigating officer was not cross-examined on this issue. But had he been, his response would have been, with reference to the record of the learned Magistrate before whom committal proceedings were conducted. The record of the learned Magistrate is a part of the Trial Court Record and it shows that on 31.7.2000 SI Lehna Singh moved an application to the Court during investigation praying that orders be passed directing the FSL laboratory to receive the exhibits recovered during investigation on priority basis. The learned Magistrate not only passed an order but directed a letter in the month of August 2000 to the Director, FSL to do the needful. SI Lehna Singh would have explained that in the year 2000 there was only one FSL laboratory in Delhi and being over-worked, the laboratory was not receiving exhibits for analysis except on priority basis if directed by the Magistrate concerned; exhibits were being

received as and when the laboratory completed the pending work and wrote to the SHOs of the police stations to send further exhibits for expert evaluation. SI Lehna Singh would have explained that in the instant case the exhibits were sent to the laboratory along with the covering letter of the learned Metropolitan Magistrate in August 2000 and thus he correctly wrote in the charge-sheet in September 2000 that the exhibits had been sent to the FSL Laboratory. He would have explained that the reference in the letter of the FSL laboratory to the letter of the SHO was when the SHO sent a reminder for report to be submitted. The instant illustration is an apt application and the result thereof with reference to the requirement of putting a discrepancy to a witness and eliciting his response thereto.

47. That Surender has not signed as a witness on the disclosure statement of Hemraj does not mean that his claim of being present when Hemraj was interrogated is false. There is no law to obtain signatures of all those who have witnessed the recording of a disclosure statement.

48. Pertaining to the submissions that the recoveries of the personal effects of the deceased being planted cannot be ruled out, no doubt the sheet in which the head and legs of the deceased were lying wrapped and which was seized has disappeared and there may be substance that SI Lehna Singh

planted the same as also that the photographs of the head and the legs show a grey coloured pant in the vicinity and the fact that a grey coloured pant has been shown as recovered from the house of Hemraj could also be a possible plant. But, what about the other personal effects of the deceased which have been identified by the wife of the deceased as belonging to the deceased which find a mention in the seizure memo Ex.PW-6/A. No suggestion has been given to the wife or the brother of the deceased who appeared as witnesses that either they handed over the personal effects of the deceased to SI Lehna Singh or that SI Lehna Singh picked up some personal effects of the deceased from the house. No suggestion has been given to SI Lehna Singh that he picked up the grey coloured pant seen in the photograph when he seized the head and the legs of the dead body on 29.6.2000. No question was asked to him as to what happened to the sheet in which he sent the body for post-mortem. We find that the doctor who conducted the post-mortem has not said that after the post-mortem he handed over the sheet in which the dead body was sent to him. It is possible that being a useless sheet, after the post-mortem it was thrown in the garbage and then into the incinerator. In any case, nobody being cross-examined on the issue it would be wrong to say that the recoveries have been

planted. But, we would prefer to apply the rule of prudence and ignore the said recoveries.

49. For the law pertaining to extra-judicial confessions discussed by us in paras 32 to 39 above and as held in the decision reported as 1985 SCC (Cri.) 105 State of U.P. vs. M.K.Antony, for unexplainable reasons extra-judicial confessions have been treated as a weak piece of evidence but there is no rule of law nor rule of prudence that an extra-judicial confession requires corroboration. If the evidence about extra-judicial confession comes from the mouth of witness who appears to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence.

50. We have already given our reasons as to why we have held the evidence of Hemraj's extra-judicial confession to Surender spoken through the mouth of Surender as passing the test of credibility.

51. Thus, we concur with the view taken by the learned Trial Judge that the prosecution has successfully established the guilt of Hemraj.

52. Crl.Appeal No.920/2005 filed by Hemraj is dismissed. Crl.Appeal No.1/2005 filed by Vijay Kumar is allowed. Vijay Kumar is acquitted of the charge of having murdered Chander Bahadur as also the charge punishable under Section 201 IPC.

53. Since Vijay Kumar has been admitted to bail, in view of his acquittal the bail bond and the surety bonds furnished by him are discharged.

54. Since Hemraj is still in jail we direct that a copy of our present decision be sent to the Superintendent, Central Jail, Tihar to be made available to Hemraj.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 08, 2010
mm / dk