

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

% *Date of Decision :16th February, 2010*

+ **Crl. A. No. 15/2006**

ASHISH Appellant
Through: Ms.Sharadha Bhargava,
Advocate
versus

STATE 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. The appellant, who is in jail had given in writing on 24.12.2009 that he does not desire the services of a legal aid counsel and that he would ensure that his counsel Sh.Ravinder Chadha and Sh.A.S.Rathore would appear when the appeal is called out for hearing. In the said writing the appellant signed that he was aware of the fact that his appeal was at serial No.72 in the list of 'Final Hearing Matters' and is likely to be heard in the month of January,2010.

2. Notwithstanding the aforesaid writing by the appellant, the Registry of this court sent notices to Sh.Ravinder Chadha and Sh.A.S.Rathore, Advocates intimating the learned counsel that the appeal is listed at serial No.72 in the list of 'Final Hearing Matters'.

3. Both counsel have been served. Unfortunately, when the appeal has been called for hearing today, neither counsel has bothered to appear.

4. We note that the cause list was circulated to the Members of the Bar on 02.01.2010, meaning thereby, the Members of the Bar have adequate advance notice of the appeals filed by them being listed at different serial number in the cause list.

5. Accordingly, we have appointed Ms.Sharadha Bhargava, Advocate, who is present in court as the Amicus Curiae to argue the appeal on behalf of the appellant. We fix her fee in sum of Rs.5500/- to be paid by the Delhi High Court Legal Services Committee.

6. Vide impugned judgment dated 25.10.2005 the appellant has been convicted for the murder of Sapna. It has been held that the testimony of PW-3, the father of Sapna establishes a motive for the crime. It has been held that the recovery of a knife at the instance of the appellant which was

opined to be the possible weapon of offence, on which knife human blood of the same group as that of the deceased was detected as also the fact the human blood of same group was detected on the two shirts got recovered by the juvenile co-accused of the appellant after he was arrested, establish the appellant being the architect of the crime.

7. We note that as per the prosecution a junior co-accused named Sandeep was also involved in the commission of the crime, whose trial was referred to the Juvenile Court.

8. In the instant appeal we are concerned with the fate of the appellant Ashish.

9. Since what has been held as incriminating evidence by the learned trial Judge has been briefly noted hereinabove, we refrain from noting the evidence which pertains to Sapna being fatedly assaulted on a public street and her neck being cut. We need not note such evidence which proves the commission of the crime. The reason is obvious. The issue at hand is not whether the crime was committed, but who committed the same.

10. Information about the crime was reported at the police post Garhi, PS Lajpat Nagar at 9:17 P.M. as recorded in DD No.27 that somebody has committed murder in front of House No.D-83, East of Kailash and the assailant has run away.

ASI Jagar Pal PW-18 accompanied by Ct.Sri Ram and Ct.Tej Ram left the police post under the leadership of SI Yudhvir. They proceeded to D-83, East of Kailash where a young girl aged about 21 years was lying dead in front of House No.D-83. The trail of blood was leading to the back of House No.D-66, East of Kailash. A rexine bag was found which contained a telephone diary having written thereon the name: 'Sapna Sahani'. The number was contacted and Shanker, father of Sapna was informed. Shanker the father and Kamal the brother of the deceased came to the spot and identified the dead body as that of Sapna Sahani.

11. Shanker informed the police that his daughter used to work as a sales girl in Rama Gallery, Lajpat Nagar and a week back told him that two boys named Ashish and Sandeep used to harass her asking her to marry them. (We presume that Shanker intended to say that "Ashish had intended to marry his daughter and Sandeep used to help Ashish in troubling his daughter").

12. The statement Ex.PW-3/A of Shanker was recorded and based thereon FIR was registered for the offence of murder, with Ashish and Sandeep being suspects.

13. No eye witnesses could be located by the prosecution.

14. After the appellant was arrested, as usual, (claim of police) he made a confession and informed that he could get recovered the weapon of offence. Even co-accused made a confession and informed that while committing the crime his i.e. Sandeep's shirt and even the shirt of his co-accused i.e. appellant got stained with the blood of the deceased. He volunteered to get the two shirts recovered.

15. As noted hereinabove pursuant to the disclosure statement of Ashish a knife, stated to be the weapon of offence was recovered. Two blood stained shirts were also got recovered at the instance of juvenile co-accused Sandeep. As noted above the knife and the two shirts were found to be having human blood of the same group as that of the deceased.

16. Shanker PW-3 has only proved the possible motive of the appellant committing the crime. This would be on the presumption that the deceased was repelling the overtures cheers of Ashish. But, motive is always treated as a weak evidence for the reason it is based on presumptive logic. By its very nature presumptive logic is weak evidence.

17. As regards the recoveries, as held in the decisions reported as JT 2008(1) SC 191 Mani vs. State of Tamil

Nadu; 1999 Crl.LJ 265 Deva Singh vs. State of Rajasthan;
AIR 1994 SC 110 Surjit Singh and Anr. vs. State of Punjab;
AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. vs.
Chhatrasinh & Ors. and AIR 1963 SC 1113 Prabhu vs.
State of UP , the recoveries of ordinary articles such as
knife etc. are treated as weak pieces of evidence.

18. The reason is obvious. Unlike a fire arm which creates distinctive marks on the bullet and the cartridge, a knife can at best be opined to be a possible weapon of offence and not the only weapon of offence.

19. As regards the two shirts got recovered by the co-accused of the appellant, part of the disclosure statement that one shirt was the one which he was wearing and the other was the one which was worn by the appellant is inadmissible in evidence through the route of Section 27 of the Evidence Act. There has to be some other evidence to prove that the appellant and his junior co-accused were wearing one shirt each. That apart, as held in the aforesaid decisions, such kinds of recoveries are treated as weak evidence. Besides, recoveries by the co-accused are not incriminating evidence against the

other.

20. In a nutshell, the mere fact that the appellant was desiring the deceased to marry him and the deceased was refusing the said marriage proposal and the fact that a knife was got recovered by the appellant and two shirts were got recovered by the co-accused, all three articles were stained with human blood of the same group as that of the deceased are insufficient evidence with reference to which it can be said that the chain of circumstances is complete wherefrom the guilt of the appellant can be inferred and innocence ruled out. At best the evidence has reached the level of suspicion. It has remained in the realm of 'could be' and has not reached the level of 'should be'.

21. The appeal is allowed. The impugned judgment and order dated 25.10.2005 is set-aside. The appellant is acquitted of the charge of having murdered Sapna. The sentence imposed upon the appellant is quashed. The appellant is directed to be set free forthwith if not required in any other case.

22. Since the appellant is in Jail, a copy of this order

be sent to the Superintendent, Central Jail, Tihar for necessary action.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

FEBRUARY 16, 2010
'nks'