

R-81 & 82

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

% Date of Decision: 22nd February, 2010

+ **CRL.APPEAL NO.375/2006**

BHUPINDER KUMAR Appellant
Through: Mr.Harsh Jaidka, Advocate.

versus

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

+ **CRL.APPEAL NO.390/2006**

PRAVEEN KUMAR Appellant
Through: Mr.R.M.Tufail, 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. (Oral)

1. Vide impugned judgment and order dated 31.3.2006, while acquitting accused No.3 Alok Kumar, accused No.1 and accused No.2 i.e., Bhupinder Kumar and Praveen

Kumar have been convicted for the offences punishable under Sections 364/394/302/201/34 IPC.

2. Vide order on sentence dated 7.4.2006, they have been sentenced to undergo imprisonment for life for the offence of murder. For the offence of abduction they have been sentenced to undergo imprisonment for 10 years. For the offence of robbery they have been sentenced to undergo imprisonment for 10 years and for the offence of destroying evidence they have been sentenced to undergo imprisonment for 7 years.

3. It has been directed that all sentences shall run concurrently. We understand this to mean that save and except the sentence for life imprisonment, all sentences would run concurrently and upon undergoing imprisonment for 10 years the sentence for the offence punishable under Sections 201/394/364 would be treated to have been undergone.

4. As we would be proceeding to note the facts of this case pertaining to the investigation and the evidence led, it is apparent that the same profiles a very gloomy picture of how a crime has been treated by the police, not only in the Union Territory of Delhi but even in the State of Uttar Pradesh.

5. But before that, we may note that in convicting the appellants, the learned Trial Judge has held that the testimony

of Anubhav Rana PW-3 proved the fact that the appellants were a group of 3 persons who had hired a Tata Indica car used as a taxi bearing registration No.DL-9CC-5521 in the early hours of the night of 15.5.2002. The driver of the taxi Kamakhya Mahato was found murdered en-route to Aligarh, the destination as per Anubhav Rana PW-3. After the appellants were apprehended they made disclosure statements and pursuant to the disclosure statement of the appellant Bhupinder, three documents, being photocopies of the registration certification, certificate of insurance and the insurance policy of the car were got recovered by him from his house. After Praveen was apprehended and even he having made a disclosure statement, got recovered the key of the car as also the battery thereof. Thereafter, both appellants jointly got recovered the number plate of the car as also a belt used to strangulate Kamakhya Mahato. In a nutshell, the conviction of the appellants has been sustained with reference to the last seen evidence and the recoveries afore-noted. The recoveries being linked to the car in question. It is apparent, the motive for the crime was to steal the car and thereafter sell the same.

6. It is interesting to note that while deposing in Court Anubhav Rana PW-3, also stated that co-accused Alok was the

third person seen by him in the company of the appellants when they hired the taxi, but on account of no recoveries being effected pursuant to the disclosure statement of Alok, on the sole evidence of his being last seen, the learned Trial Judge has given him the benefit of doubt.

7. That a crime was committed within the jurisdiction of PS Dadri in the State of UP finds official mention for the first time on 3.7.2002 when pursuant to a written complaint Ex.PW-7/1 signed by Rajender Yadav S/o Mool Chand PW-2, a '0' FIR No.256/2002 was registered. Prior thereto, some DD entries, not proved at the trial, must have been recorded at the said police station on 16.5.2002 for the reason on said date the dead body of a male was found in an open area in the jurisdiction of PS Dadri. From the pocket of the dead body a visiting card was found and as deposed to by Rajender Yadav PW-2, the visiting card was his. Somebody from PS Dadri informed him that a dead body had been found, having in the pant pocket, his visiting card. He went to PS Dadri and identified the dead body as that of his driver Kamakhya Mahato.

8. Post-mortem was got conducted of the dead body of Kamakhya Mahato on 17.5.2002 at the District Hospital Ghaziabad. As deposed to by Ashutosh Mishra PW-1, he found

5 injuries on the dead body caused by a sharp edged weapon as also a blunt object. Injury No.4 was the most dangerous injury. The frontal and the parietal bones of the skull were depressed. Brain matter was lacerated. Cause of death was shock due to laceration of the brain as recorded in the post-mortem report Ex.PW-1/1. No evidence of strangulation with a ligature material has been noted.

9. One would have expected that an FIR for the offence of murder was registered at PS Dadri on 16.5.2002. No FIR was registered till 3.7.2002 when Rajender Yadav made a written complaint Ex.PW-7/1 to the SHO PS Dadri. It was only on 3.7.2002 that FIR No.256/2002 was registered at PS Dadri and that too a '0' FIR.

10. It appears that Rajender Yadav PW-2 kept on running here and there. The police at Uttar Pradesh washed its hands off for the reason he had informed them that his motor vehicle, a Tata Indica car bearing registration No.DL-9CC-5521 was being used as a taxi and on 15.5.2002, 3 persons had hired the same from Delhi to go to Aligarh.

11. As deposed to by HC Dashrath Singh PW-9, when he was posted at PS Vasant Kunj (Delhi), on 14.9.2002 he registered FIR No.495/2002 pertaining to the offence in question.

12. Things happened at a fast pace thereafter.
13. The only thing in the knowledge of Delhi Police was that 3 persons had committed the crime. This fact was to the knowledge of the police at Delhi with reference to the written complaint Ex.PW-7/1, which was obtained by the police at PS Vasant Kunj from their counterparts at PS Dadri UP.
14. No description of the three persons was given in the complaint. Their age, their height, their built, their physical features, their complexion; none whatsoever was given.
15. Even the car had not been recovered.
16. Unknown to the police at PS Dadri UP and the police at PS Vasant Kunj (Delhi); as deposed to by Const.Ram Pal Sharma PW-10, the car in question which was found abandoned was deposited in the maalkhana of PS Sihani Gate on 15.6.2002.
17. Who found the car? Who informed the police at PS Sihani Gate? None of these question has been answered for the reason no evidence has been brought on record save and except the fact, as proved by PW-10, that the car was deposited in the maalkhana of PS Sihani Gate on 15.6.2002.
18. It is obvious that three persons had to be caught.
19. But what did the police do at PS Vasant Kunj?
20. One would have expected that at least on

14.9.2002 or soon thereafter the statements of Rajender Yadav PW-2 and that of his employee Anubhav Rana PW-3 should have been recorded under Section 161 Cr.P.C. Nothing of this sort was done.

21. The statement of Anubhav Rana PW-3 should have been immediately recorded for the reason in the written complaint Ex.PW-7/1 dated 3.7.2002, Rajender Yadav had mentioned the fact that the three persons who had taken on hire his car were seen by his employee Anubhav Rana when he had gone with the driver to Vasant Kunj on receipt of a telephonic call that a car be sent at the address C-2/1213 Vasant Kunj. After three persons boarded the car, the driver of the car dropped Anubhav Rana at R.K.Puram, the place where Anubhav Rana resided.

22. Surprisingly, the police at Vasant Kunj did nothing and never recorded the statement of Anubhav Rana PW-3 till 4.10.2002, the date when his statement was recorded under Section 161 Cr.P.C. for the first time.

23. What happened prior thereto is interesting.

24. As claimed by the investigating officer SI Bane Singh PW-11, he was informed that one Manoj who had been arrested in FIR No.602/2002 PS Jahangirpuri had confessed to the crime and had named one Joginder @Joga as his co-

conspirator and co-participator in the crime. He also disclosed that a third person who used to be with Joginder was involved in the crime. SI Bane Singh obtained a copy of the aforesaid confession Ex.PW-11/DA of Manoj.

25. Thinking that he had got the first fish, SI Bane Singh arranged for a test identification of Manoj and brought along with him Rajender Yadav to carry out the test identification.

26. The hopes and aspirations of SI Bane Singh got dashed when Rajender Yadav PW-2 made a categorical statement during test identification proceedings that Manoj was not the boy who was a part of the three who took his car on hire.

27. Obviously, the case had to be started afresh. Manoj and the two other boys named in the disclosure statement of Manoj could obviously not be put in the net.

28. What we wish to highlight is how the police managed to extract a false confession from Manoj. It speaks for the manner in which the investigation, at least in the instant case, proceeded.

29. The next crucial day is 1.10.2001 when as claimed by SI Bane Singh PW-11, on a secret informer giving him information, he arrested appellant Bhupinder and recorded his confession-cum-disclosure statement Ex.PW-3/3 on 1.10.2002

as per which Bhupinder told him that after killing the driver of the car the original registration papers and the insurance papers were handed over to one Davinder PW-4 for car to be sold and that photocopies thereof were retained by him. He also told him that he could get recovered the number plate of the car and a belt with which the deceased was strangled. He thereafter led SI Bane Singh to his house and as recorded in the seizure memo Ex.PW-3/4 got recovered photocopy of the registration certificate Ex.PW-5/1 of the car; photocopy of the policy of insurance Ex.PW-5/2 of the car and photocopy of the certification of insurance Ex.PW-5/3 of the car.

30. Bhupinder disclosed that Praveen and Alok were his co-participants in the commission of the crime. Praveen was the next person to be apprehended as claimed by SI Bane Singh, on 2.10.2002. He made a disclosure statement Ex.PW-5/4 and admitted to the crime. He informed that the key of the car was with him and as also the battery of the car which he had removed. He told that the number plate of the car and the belt used to strangle the deceased could be got recovered by him. He led SI Bane Singh to his house and as recorded in the seizure memo Ex.PW-3/6 got recovered a key Ex.P-3 and a battery Ex.P-4 from his house, both of which were identified by Rajender Yadav PW-2, when he deposed in Court,

as the key of his car and the battery of his car. Thereafter Bhupinder and Praveen led the police to a place near a drain and got recovered the number plate Ex.P-1 which was seized as per memo Ex.PW-2/2 and a belt which was seized as per memo Ex.PW-2/3. The last to be apprehended was co-accused Alok. He was apprehended on 4.10.2002. He made a confessional statement Ex.PW-11/F. He got recovered nothing.

31. Surprisingly, after apprehending the three accused and after recording their disclosure statements, SI Bane Singh recorded statement of Anubhav Rana PW-3 under Section 161 Cr.P.C. It is interesting to note that the said statement is a narrative of the past events which had already transpired including the narrative of the fact that the three accused were shown to him in the police station and he had identified them as the ones who had taken on hire the TATA Indica Car.

32. Rajender Singh PW-2, who has stated in his written complaint Ex.PW-7/1 that he and Anubhav Rana PW-3 had gone to Vasant Kunj after they had received a telephone call to send a taxi has deposed at variance in court. He does not claimed to have gone to Vasant Kunj when a call was received at his office to send a taxi. He stated that only Anubhav Rana went with the driver to the Vasant Kunj after the call in question was received. Anubhav Rana PW-3 deposed that he

went along with the driver to C-2/1213, Vasant Kunj to deliver the taxi to the caller who has desired to go Aligarh and that when they were looking for the flat in question accused Bhupinder met them and said that he had rang up. He had desired to hire a taxi and that appellant Praveen and co-accused Alok were with him. The three sat in the car. Even he sat in the car. He was dropped at Sector-1, R.K.Puram.

33. But, we cannot lose sight of the fact that the statement of this witness was recorded under Section 161 Cr.P.C. on 04.10.2002 i.e. after all the accused were apprehended and their disclosure statements-cum-confessional statements were recorded.

34. It is apparent, in any case, this probability cannot be ruled out that Anubhav Rana's statement under Section 161 Cr.P.C. was recorded to tailor make the same to suit the convenience of the prosecution.

35. Under the circumstances, it would be most unsafe to rely upon the testimony of Anubhav Rana, who has incidentally, on being cross-examined made hesitating statements regarding his identifying appellant Praveen, for the reason he stated that when he and the driver reached Vasant Kunj, it was dark and that the person whom he was identifying as Praveen in court was on the other side. We understand that

what he intends to say was that Praveen sat in the rear seat of the car by opening the door from the other side of the car.

36. Thus, the evidence of last seen would be very shaky.

37. On the issue of recoveries, suffice would it be to state that 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 Surjeet Singh 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 recovery of ordinary objects is treated as very weak evidence.

38. We find it strange that Bhupinder would be retaining with him photocopies of useless documents. We find it strange that Praveen would be retaining with him the battery of a car. The battery Ex.P-4 has been identified by Rajender Singh Yadav PW-2 as the battery of his car. We wonder how? The prosecutor has not brought on record the fact that the battery had any distinct mark thereon, in relation to which, Rajender Singh Yadav could have said with some degree of assurance that the battery was of his car. Further, no Test Identification Proceedings were conducted with respect to the battery. As regards the key Ex.P-3 got recovered from

Praveen, the possibility of the same being planted cannot be ruled out. We take judicial notice of the fact that whenever a motor vehicle is purchased, two keys thereof are handed over to the owner. Thus, the key in question being the second key with Rajender Singh Yadav PW-2 and the same being planted cannot be ruled out.

39. As regards the recovery of the number plate Ex.P-1 of the car as recorded in the seizure memo Ex.PW-2/2 and the recovery of the belt as entered in the seizure memo Ex.PW-2/3; both being recovered at the joint instance of Praveen and Bhupinder, we note that both recoveries are from an open space accessible to all. The date of recovery is 02.10.2002. The crime was committed on 15.05.2002. The time lag and the place of recovery as also nature of the articles recovered would render it most unsafe to sustain the conviction of Bhupinder and Praveen with reference to the said recoveries.

40. It is also of importance to note that the car was abandoned and recovered on 15.06.2002. It is obvious that those who had stolen the car had abandoned it and had not desired to sell the same. Under the circumstances, what use would be the title documents of the car or their photocopies or the key of the car to any person? We note that Davinder PW-4 has not admitted to have received any papers of the car.

41. Unfortunately, the learned trial Judge has ignored the aforesaid circumstances and especially the fact that there are traces of a desperate police force attempting to nab someone or the other. The confession got recorded from Manoj highlights the aforesaid supposition which is in the realm of a probable reality.

42. It is settled law that pertaining to serious crimes, the standard of proof has to be higher, for the reason even death may be the penalty which the court can impose in a case of abduction followed by murder.

43. It is unfortunate that a crime has gone unpunished but the same is due to the callous manner in which the crime was treated and investigated.

44. The appeals are allowed. Impugned Judgment and order dated 31.03.2006 convicting the appellants for the offences for which they were charged is set-aside. The order of sentence dated 07.04.2006 is quashed. The appellants are acquitted of the charges punishable under Sections 364/394/302/201/34 IPC.

45. Since the appellants are in jail, we direct that a copy of the present decision be sent to the Superintendent, Central Jail, Tihar for compliance. Needless to state if not required in custody in any other case, the appellants are

directed to be set free forthwith. The fine, if any, deposited by the appellants pursuant to the sentence imposed is directed to be returned to the appellants.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

February 22, 2010
dkb / nks