

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

% Date of Decision : 15th January, 2010

+ **CRL. A. No. 444/2006**

PINTOO Appellant
Through: Mr.Sumeet Verma, 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. Majid's (PW-1) statement Ex.PW-1/A on basis whereof the FIR in question was registered was recorded by SI S.N.Rajora PW-16 at around 11.00 A.M. on 28.10.2001. It was dispatched at around the same time and the FIR in-question was thereafter registered at the police station.

2. As per the prosecution, the crime i.e. the murder of deceased Rakesh @ Mota was committed at around 11.30-12.00 in the intervening night of 27th and 28th October, 2001.

3. It is apparent that there is considerable delay in the registration of the FIR. We note that the learned trial Judge has discussed the same in para 10 of the impugned decision, wherein it has been recorded as under:-

“10. Although, there is some delay in lodging the report, this fact single handedly does not go to demolish the prosecution case root and branch. There must be some evidence to show that due to the above said delay the prosecution had occasion to involve the accused falsely in this case. In absence of this evidence the value of prosecution does not enervate. However, the eye witnesses have well explained that the action of the accused had thrown a scare in their mind and, therefore, they waited till the morning, informed the brothers of the deceased and thereafter the brother of the deceased lodged the report.”

4. Before noting the relevant relatable evidence on the issue as to who had committed the crime, we note that the learned trial Judge, in para 1 of the impugned decision, has commenced his journey as under:-

“1. The facts of the prosecution case are these. Deceased Rakesh @ Mota, accused Pintoo, PWs Majid, Dalip, Mantoo Sada and others used to reside in Ghazipur Khatta near road No.24, Delhi within the bounds of P.S.

Kalyan Puri. All of them are junk-dealers. On 28.10.2001, during the evening time at about 7.30 p.m. there was a wrestling competition between PW Dalip and accused. Dalip defeated Pintoo. Due to defeat, accused Pintoo got annoyed. He shouted who was saying that he was defeated and made a scurrilous attack on all of them. In the meantime, deceased Rakesh @ Mota intervened and asked Pintoo not to abuse. He also gave him 2/3 slaps. After sometime both the accused and the deceased buried the hatchet and became friends."

5. A perusal of the impugned judgment reveals that the appellant has been convicted by the learned trial Judge who has believed the testimony of Majid PW-1, who claimed to be an eye-witness.

6. With reference to para 1 and para 10 of the impugned decision, contents whereof have been noted by us hereinabove, it is apparent that the learned trial Judge has referred to an incident which took place at around 7.30 P.M. i.e. the evening of 27.10.2001. It may be recorded that the date 28.10.2001 noted in para 1 of the impugned decision is a typographic error as the date actually is 27.10.2001. As per the learned trial Judge, at 7.30 P.M. there was a wrestling competition between Dalip and the accused in which the

accused was defeated and he got annoyed. He shouted on being defeated and made a scurrilous attack. Rakesh @ Mota intervened and ask the accused not to abuse. 2-3 slaps were also given but the dispute was buried.

7. As per the learned trial Judge, to seek revenges of his humiliation in the evening, it appears that the appellant killed Rakesh @ Mota.

8. With reference to the delay of PW-1 getting recorded his statement as also the belated information given to the police as recorded in para 10 of the impugned decision, the learned trial judge has held that the eye witness have well explained that the action of the accused had thrown a scare in their mind and therefore they waited till the morning.

9. Wherefrom has the learned trial Judge referred to plurality of eye witnesses? We are left bewildered, for the reason we find that only Majid PW-1 has claimed to be an eye witness.

10. Let us now note the testimony of Majid PW-1.

11. He deposed in court on 10.02.2003. He stated that about a year back, we was going to Murga market to take food at around 7.30 P.M. The accused and 2-3 other persons were sitting at the road side and the accused invited somebody for

wrestling. A boy replied that since the accused was drunk therefore the wrestling would take place next morning. But, another boy Dalip asked accused to wrestle with him. The first wrestling round took place and was declared a draw. In the second round Dilip defeated the accused who did not accept defeat and abused. The deceased who was present asked the accused not to abuse and the deceased gave 2-3 slap blows to the accused. The accused apologized. The deceased threatened the accused that he will kill the accused but the matter was compromised. He i.e. Majid proceeded to take his meals and returned at about 9.00-9.30 P.M. and went to sleep. The deceased used to sleep with him. At around 11.30-12.00 in the night he heard noise of 'DHUM DHUM'. He saw the accused abusing the deceased and striking blows with a scale. He chased the accused who ran away from the spot. He came back with fear and raised hue and cry. He woke up persons in the neighbourhood but on being scared nobody came near the dead body and he went away. He returned in the morning and saw the dead body. The brother of the deceased came in the morning and the matter was reported to the police and that his statement Ex.PW-1/A was recorded by the police. He deposed that the weight Ex.P-1 was used by the accused to assault the deceased.

12. We have read and re-read the examination-in-chief of Majid PW-1 and wonder as to wherefrom has the learned trial Judge recorded in para 1 of the impugned decision that the accused made a scurrilous attack on all of them.

13. Nothing of this kind happened. On the contrary, since the appellant had abused the persons who were saying that he had been defeat by Dalip, Rakesh @ Mota had slapped the accused and not vice versa.

14. We have highlighted the said fact for the reason it shows traces of a pre-determined view taken by the Judge to appreciate the evidence with a taint and that the learned trial Judge has gone to the extent of incorrectly narrating the facts as deposed to by the witnesses of the prosecution. This is not expected at a criminal trial, more so where the accused is charged of a serious offence which may even entail the punishment of death.

15. Be that as it may, it is apparent that the only issue which needs to be considered by us is whether Majid PW-1 was an eye witness to the incident as claimed by him.

16. Before we answer the question, we need to note certain parts of the answers given by Majid PW-1 on being cross-examined.

17. In the cross-examination he admitted that the room (referred to as Khatta) in which the crime took place was occupied by 10-12 persons and that he and the deceased were sleeping on the same bed and that when blood oozed out from the body of the deceased, his clothes got stained by blood but the police did not take possession of the said clothes.

18. As noted above, in his examination-in-chief he stated that he chased the accused when the accused was running away from the spot. He reiterated the said fact when he was cross-examined. On being further examined as to who were the persons sleeping in the room i.e. Khatta, he disclosed that Munna, Shakeel, Zakir and Soni besides he and the deceased were sleeping in the room.

19. Learned trial Judge, in para 10 of the impugned decision has held that the delay in reporting the crime to the police and the delay in Majid getting recorded his statement before the police stand well explained inasmuch as the eye witness has clearly stated that the accused had thrown the scare in his mind and therefore he waited till the morning.

20. We wonder at the finding returned. It runs in the teeth in the testimony of PW-1 Majid. Majid has clearly stated that he chased the accused who ran away from the spot. It is no

doubt that in the very next sentence he says that he came back with fear and raised hue and cry.

21. The fact that he chased the accused shows that Majid was not scared. The fact that there were as many as 4 other persons in the room rules out the scope of any fear in the mind of Majid.

22. Where does this lead us to? Obviously, to a serious doubt about the presence of Majid as he claims and Majid being the eye witness.

23. Conduct of persons who claims to be the eye witnesses has always weighed with courts while appreciating the question: Whether at all they were eye witnesses or not.

24. Majid's admission that in the same room Munna, Shakeel, Zakir and Soni were sleeping, casts a serious doubt that the appellant committed the crime and managed to run away and that 5 persons can be scared that they waited till dawn to report the matter to the police.

25. We may note that Majid has admitted in his cross-examination that the police barrier was at a mere distance of 500 metres from the room (Khatta) in which the crime was committed.

26. We hold that the finding returned by the learned trial Judge para 10 that Majid's presence at the spot could not be doubted merely on the fact that the incident was reported to the police after nearly 8 hours is explainable since Majid has explained by claiming to have got scared, is completely falsified when we read the testimony of Majid.

27. We reiterate that the claim of Majid who claims to have chased the accused, shows that far from being scared, Majid took up courage to apprehend the assailant. This is unbelievable vis-à-vis his conduct of not reporting the matter to the police which was available at a mere distance of 500 metres. It has to be highlighted that Munna, Shakeel, Zahir, and Soni were also sleeping in the same room.

28. The possibility of Majid falsely naming the appellant as the accused with reference to the incident which took place in the evening cannot be ruled out.

29. The quality of evidence lead by the prosecution and the testimony of Majid has failed to reach the standard of proof required at a criminal trial. We have a serious doubt in our mind whether at all Majid has deposed truthfully. We are constrained to give the benefit of doubt to the appellant whose false implication is within the realm of possibility.

30. The appeal is allowed. The judgment and order dated 26.05.2003 convicting the appellant for the offence of murder of Rakesh @ Mota is set-aside. The appellant is acquitted of the charge framed against him.

31. We note that the appellant is in Jail. The appellant shall be set free forthwith if not required in custody in any other case.

32. A copy of this order be sent to the Superintendent, Central Jail Tihar for compliance.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

JANUARY 15, 2010
'nks'