

R-73 to 76

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

% Date of Decision: 16th February, 2010

+ **CRL A 68/2006**

BHAIRO Appellant
Through: Mr.Sudhakar Singh, Advocate for
Ms.Rakhi Dubey, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL A 466/2005

SITA Appellant
Through: Ms.Shraddha Bhargava, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL A 504/2005

SHYAM RAJ SINGH Appellant
Through: Ms.Shraddha Bhargava, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL A 457/2005

SHANKER @ RAMRAJ SINGH Appellant
Through: Ms.Shraddha Bhargava, 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. (Oral)

1. Noting that counsel appears only for Bhairo and none appears for any other accused, we appoint Ms.Sharddha Bhargava Advocate who is present in Court as the Amicus Curiae on behalf of appellants Sita, Shyam Raj Singh and Shanker. We fix her fee in sum of Rs.7,500/-, to be paid by the Delhi High Court Legal Services Committee.
2. Arguments have been heard.
3. We proceed for judgment.
4. 12.12.2000 was a most unlucky day in the life of Late Smt.Gursharan Kaur. She was a happy housewife living with her husband Shehbaz Singh PW-1 and her children on the first floor of house bearing Municipal No.A-16, Mansarover Garden, Delhi.
5. As per his daily schedule, Shehbaz Singh left his house for his factory at around 11:30 AM. His son Inderpal Singh and daughter Harpreet Kaur had already left for school.

His elder son Amitpal Singh had departed for the factory before Shehbaz Singh left for the factory.

6. Inderpal returned from school at around 2:30 PM and got no response in spite of ringing the door bell for considerable time. He contacted his father and informed him of getting no response from inside. Shehbaz advised him to wait for his mother at the house of his brother, thinking that probably Gursharan Kaur may have gone somewhere. At around 4:30 PM his brother's wife rang up to enquire whether his wife had told him that she would be visiting some place. Shehbaz replied in the negative. Sensing something amiss he requested his sister-in-law to break the windowpane and enter the house and find out what the matter was. Within 5 minutes he received a call back informing that a mishap had taken place in his house. Obviously, he understood what the mishap was. It had to do something concerning his wife. He reached home and found his wife murdered.

7. Information was given to the police and noted at the police station Kirti Nagar. Insp.Babu Lal PW-18 was handed over copy of DD No.15A, Ex.PW-12/A, and accompanied by SI Deepak Malik and SI Vijay he reached the first floor of A-16, Mansarover Garden and found a lady named Gursharan Kaur lying dead on the floor with slit injuries on her

throat as also stab injuries on the various parts of the body. Shehbaz Singh PW-1 the husband of the deceased identified himself and make the statement Ex.PW-1/A in which he named no suspect but stated that only yesterday he had brought cash from Gwalior which he had kept in his house and that when he came to his house he found the door of the almirah opened and the cash was missing. He also found that some jewellery of his wife was missing, details whereof he volunteered to give later on.

8. Making an endorsement Ex.PW-18/A beneath the statement, Ex.PW-1/A FIR was got registered by Insp.Babu Lal who summoned the crime team, a photographer and the dog squad. In the meanwhile he prepared the rough site plan Ex.PW-18/B. He recovered a chura from the room where the crime was committed. He also lifted blood sample of the deceased and blood stained shawl and a rumal which was seized vide memo Ex.PW-10/A. Sketch Ex.PW-18/C of the chura was drawn. He initiated the inquest proceedings by filling up the requisite documents Ex.PW-18/D and Ex.PW-18/E and along with letter of request Ex.PW-18/F sent the dead body for post-mortem.

9. The dog squad could pick no clues. The crime team lifted some chance prints, which later on, with reference to the

fingerprints of one Lalji and Raj Kumar were opined to be theirs.

10. The first person to be apprehended was Shanker @ Ramraj Singh. How he became a suspect has not surfaced. As claimed by the investigating officer on the basis of secret informer giving him some information Shanker was apprehended the next day i.e. on 13.12.2000.

11. Thereafter appellant Sita was apprehended on the same day. Raj Kumar was the next to be apprehended on 15.12.2000 followed by Shyam Raj who was apprehended on 18.12.2000 and lastly Bhairo who was apprehended on 22.12.2000. A juvenile co-accused Lalji whose date of apprehension is not on record was also arrested and he was sent for trial before the Juvenile Board.

12. After Shanker was apprehended he made a disclosure statement Ex.PW-18/G and took the investigating officer to his jhuggi bearing No.442, Nehru Camp and from inside the jhuggi got recovered 5 articles which were seized as recorded in the memo Ex.PW-18/H being: (i) Blood stained Handkerchief Ex.P-66 (ii) Shampoo bottle Ex.P-60 (iii) Ladies wrist watch Ex.P-62 (iv) Blood stained Cash Rs.6000/- (6 x Rs.100/-) Ex.P-65 and (v) Blood stained Ladies Bra Ex.P-70.

13. It may also be noted that the wrist watch which has

been recovered is in a non-working condition showing the time 10 minutes past 2 as recorded in the seizure memo Ex.PW-18/H.

14. Sita made the disclosure statement Ex.PW-18/K and from her jhuggi A-157, Nehru Camp got recovered blood stained cash in sum of Rs.4,700/- Ex.P-67 as entered in the seizure memo Ex.PW-18/L.

15. At the time of Shyam Raj's arrest, his personal search yielded recovery of 14 items of gold jewellery which were seized as recorded in the memo Ex.PW-17/A. Pursuant to his disclosure statement Ex.PW-17/B he led the police to his jhuggi at Nehru Camp and got recovered a pant and a shirt Ex.P-68 which were seized vide memo Ex.PW-17/C.

16. After Bhairo was arrested he made a disclosure statement Ex.PW-18/N and led the police to jhuggi No.A-157 (the same jhuggi where his mother Sita had led the police to on 13.12.2000), and on 22.12.2000 Bhairo got recovered a VCR Panasonic make Ex.P-61 as also a blood stained Pajama and shirt Ex.P-69 which were seized vide memo Ex.PW-18/P.

17. Co-accused Raj Kumar also made a disclosure statement after he was apprehended on 15.12.2000 and got recovered a fair amount of gold jewellery which was seized.

18. We are not noting the exhibit marks pertaining to

the disclosure statement and recoveries got effected by Raj Kumar for the reason during evidence it was established that he was a juvenile and therefore after convicting him, for purposes of sentence, the learned Trial Judge referred his case to the Juvenile Justice Board.

19. What happened to the fate of Raj Kumar is not known. Raj Kumar has not preferred any appeal.

20. Thus, we have two juvenile accused namely Raj Kumar and Lalji regarding whom we have to deal with nothing while deciding the instant appeals.

21. To complete the narratives and the proof of incriminating evidence against the accused it may be noted that Smt.Manjeet Kaur PW-6, the sister-in-law of the deceased participated in the TIP proceedings conducted during investigation before Sh.Sanatan Prasad PW-19 and as per the record of TIP proceedings Ex.PW-19/A successfully identified the jewellery which was recovered as also the shampoo bottle Ex.P-60 and the ladies wrist watch Ex.P-62, both of which have been shown as recovered pursuant to the disclosure statement of Shanker. She also identified them when she appeared as PW-6.

22. We may note that as per evidence led, Sita had been employed as a domestic help by the family of the

deceased and Bhairo is her son.

23. As per the prosecution Shanker, Raj Kumar, Shyam Raj and Lalji participated in the crime at the behest of Bhairo and Sita who were aware that there was a lot of money and the jewellery lying in the house.

24. As noted in para 9 above, chance fingerprints lifted from the house matched those of Raj Kumar and Lalji. Other unidentified chance prints did not match those of any other accused.

25. Since we are not concerned with Raj Kumar and Lalji we ignore the incriminating evidence pertaining to the lifting of the chance fingerprints as the same relates to Raj Kumar and Lalji.

26. The only other incriminating evidence which we need to notice is the report of the serologist Ex.PX as per which human blood of group AB i.e. the group of the deceased was detected on all the blood stained articles recovered from the spot or from the person of the deceased or on such blood stained article which was recovered pursuant to the disclosure statements made by the accused, save and except a pant Ex.11-B and nail clippings Ex.2 of the deceased.

27. It is apparent that the learned Trial Judge, and indeed it is the reasoning given by the learned Trial Judge, has

returned a finding of guilt against the appellants holding that the recoveries effected pursuant to the disclosure statements of the appellants were proved to be articles which were stolen when the crime was committed. Since the appellants were found to be in possession of a part of the fruit of the crime, the learned Trial Judge has held that the same establishes the involvement of the appellants in the crime.

28. Learned counsel for appellant Sita urges that the recovery of Rs.4,700/- at her behest is a planted recovery. In any case, learned counsel urges that the question of anybody proving that said notes were stolen property does not arise. Counsel urges that there is no evidence to show with reference to the numbers on the notes that it stands proved that they were in the house of the deceased.

29. Learned counsel for Bhairo urges that it is strange that recovery of money was made on 13.12.2000 from the jhuggi No.A-157, Nehru Camp and the police recovered nothing more. Counsel urges that Bhairo is the son of Sita and the possibility of the VCR Ex.P-61 being shown as a planted recovery on 22.12.2000 is within the realm of a possibility.

30. Learned counsel arguing the appeal for Shanker urges that it is surprising that an ordinary bottle of shampoo Ex.P-60 could be identified by the sister-in-law of the deceased

as belonging to the deceased. Counsel urges that why would Shanker pick up blood stained handkerchief and a ladies bra. Counsel wondered as to why would Shanker steal a shampoo bottle. Counsel urges that Rs.600/- got recovered from Shanker have not been proved as stolen money and for the logic of the argument, learned counsel urges the same as that urged pertaining to the recovery of money as the behest of Sita.

31. Arguing the appeal for Shyam Raj from whom 14 jewellery items consisting of ear tops, bangles and payjabes have been effected, learned counsel urges that their recoveries on 18.12.2000 are far removed from 12.12.2000 and possibly could be planted.

32. From a perusal of the evidence led we note that very heavy recoveries of stolen property has been effected from Raj Kumar and Shyam Raj as also from Lalji.

33. The proof of the jewellery belonging to the deceased, is the test identification conducted by the sister-in-law of the deceased, who also identified the stolen jewellery when she deposed in Court as PW-6.

34. We are satisfied with the proof of the jewellery in question being proved to be that of the deceased. We are satisfied with the purity of the recoveries pertaining to the

jewellery at the instance of Shyam Raj. We eschew any reference to Raj Kumar and Lalji whose appeals are not before us.

35. The reason why Raj Kumar and Lalji appear not to have filed any appeal is that they were juvenile and as per law the maximum period for which they could be kept in observation in a children's home is 3 years.

36. Thus, there is no merit in the appeal filed by Shyam Raj notwithstanding the fact that the recoveries effected from him are on 18.12.2000. As noted above the recovery was on his personal search when he was arrested.

37. It is settled law that where the value of the stolen articles is heavy, it leans towards a presumption that the same is the fruit of the crime and not that the accused has subsequently acquired the same through somebody else.

38. Shyam Raj lives in a jhuggi and is not expected to purchase 14 gold jewellery articles. In any case, it was a fact with his special knowledge as to how he acquired the same. He has not discharged the said duty by telling the Court the source of his acquisition.

39. Qua Shanker, we find merit in the submission as to why would he steal a blood stained handkerchief and a ladies bra, both useless articles. We see no reason why he would

keep them knowing their incriminating value but no money worth. We also wonder wherefrom the sister-in-law of the deceased could have identified the shampoo bottle Ex.P-60 as that of her sister. We find no evidence of there being any distinctive mark on the shampoo bottle.

40. No doubt the sister-in-law of the deceased, has during TIP proceedings, identified the ladies wrist watch Ex.P-62 as belonging to the deceased and also when she deposed in Court, but noting that there is no evidence of the said ladies wrist watch having any distinct characteristics as also the disproportion in the value of the booty recovered (maximum recoveries being from Raj Kumar, Shyam Raj and Lalji) we are of the opinion that Shanker deserves to be given the benefit of doubt of either being a recipient of the wrist watch which he may have unknowingly acquired or the same being planted upon him. We would be failing if we do not note that pertaining to the TIP proceedings, whereas relatable to the VCR Ex.P-61 it has been recorded that the same was mixed up with those other similar VCRs, in respect of the ladies wrist watch it has not been so mentioned. The only expression used is that similarly the ladies wrist watches have been mixed up. It is also relevant to note that the wrist watch was not even in a working condition.

41. Qua appellant Bhairo, the only recovery shown at his instance is that of the VCR Ex.P-61. Bhairo was arrested on 22.12.2000 on which day he not only made the disclosure statement but got recovered the VCR. The place wherefrom the VCR was recovered is jhuggi No.A-157, the same jhuggi wherefrom on 13.12.2000 i.e. 9 days prior the police had made a recovery of Rs.4,700/- at the instance of Sita who is the mother of Bhairo. There is evidence that the police has accessed the jhuggi on 13.12.2000. The police was investigating an offence of dacoity cum murder and obviously would be looking for the stolen property. A presumption would arise that the jhuggi was searched on 13.12.2000; in any case, it cannot be said that it would be preposterous to presume that the jhuggi was searched on 13.12.2000. Thus, Bhairo would be entitled to a benefit of doubt with respect to the recovery of the VCR Ex.P-61 and since there is no other evidence against him, would be entitled to be acquitted by giving him the benefit of doubt.

42. Pertaining to recoveries, the law is that as the recovery becomes distant in the past the possibility of the same being acquired by the possessor other than by way of fruit of the crime cannot be ruled out and thus recoveries which move further away in point of time vis-à-vis the date of

the offence get diminished in their incriminating character and that recoveries of cheap articles are less incriminating as these articles are likely to change hands very quickly. Thus, both aspect i.e. how distant away is the date of the recovery and what is the value of the article recovered have to be kept in mind. Where the recovery is of a valuable which cannot be expected to be acquired by the accused, unless the accused explains, notwithstanding the recovery being far removed from the date of the crime, its incriminating evidence would be of high degree.

43. Crl.A.No.68/2006, Crl.A.No.466/2005 and Crl.A.No.457/2005 are allowed.

44. Crl.A.No.504/20005 is dismissed.

45. Noting that appellant Sita and appellant Shanker who have been acquitted are on bail we discharge the bail bond and surety bonds furnished by them.

46. Noting that Bhairo is still in custody we direct that copy of this order be sent to the Superintendent Central Jail Tihar with a direction that Bhairo would be released forthwith if not required in custody in any other case.

47. Since Shyam Raj Singh has been convicted, he being on bail, his bail bond and surety bond are cancelled. Shyam Raj Singh would be taken into custody and he would

suffer the remaining sentence.

PRADEEP NANDRAJOG, J.

SURESH KAIT, J.

February 16, 2010
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