

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

% *Date of Decision : 11th May, 2010*

+ **CRL.A. 479/2010**

MOINUDDIN Appellant
Through: Mr.J.P.Pandey, 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 Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J. (Oral)

1. During course of arguments in the appeal today and while reading the impugned judgment we find that the learned Trial Judge has not crystallized the incriminating circumstances held established by him against the accused.

2. The discussion in the impugned decision is penned in a most unsatisfactory manner and only after putting in some labour, it could be gathered that the learned Trial Judge has returned the verdict of guilt on the finding that the appellant got infatuated with the wife of the deceased, proved through the letter Ex.PW-8/B held proved to be written by the accused to Rubina, the wife of the deceased through the testimony of

Rubina and the report of a handwriting expert.

3. The second incriminating circumstance emerging, is through the testimony of Rubina that in the morning of 16.9.2006 she saw her husband and the accused together outside Hazi Guest House; the place where she and her husband were staying and this was the deceased last seen alive.

4. The third piece of incriminating evidence which appears to have emerged is through the testimony of PW-1, pertaining to the conduct and the mental condition of the accused when he left Gahlot Guest House, the place where the accused was held proved to be staying till the evening of 16.9.2006.

5. The fourth piece of incriminating evidence which seems to be emerging is through the testimony of PW-11 who has stated that he sold a knife, stated to be the weapon of offence to the accused with link evidence surfacing pertaining to the recovery of the said knife pursuant to the disclosure statement of the accused which was opined to be the possible weapon of offence and on which human blood was detected.

6. One of the strongest incriminating evidence against the accused, in light of proof of motive, would be the evidence of last seen.

7. This in turn would require proof that Rubina and her

husband were indeed staying, as claimed by Rubina at Hazi Guest House till 16.9.2006 for only then can Rubina justify her claim of seeing the appellant in the company of her husband in the morning of 16.9.2006 outside Hazi Guest House.

8. The impugned judgment and the relatable testimony of the witnesses show that there is an entry evidencing the deceased accompanied by his wife checking in Hazi Guest house on 11.9.2006 and making a departure on 12.9.2006. A cryptic finding has been returned by the learned Trial Judge, that as claimed by the witness i.e. Anwar PW-3, the date 12.9.2006 appears to be a mistake. No reasons have been given by the Judge as to why he has concurred that the same is a mistake.

9. We clarify that the Judge's reasons to accept the reason of PW-3 that it is a mistake, have not been stated.

10. It is apparent that the register in question which was exhibited and additionally an entry therein which was exhibited needed to be before the learned Trial Judge when arguments were advanced. Similarly, in the teeth of denial by the accused that he checked into Gahlot Guest House, the register in question and the relevant entry had to be before the learned Trial Judge when arguments were advanced.

11. The Trial Court record which has been sent to this Court does not contain either the visitors register exhibited as

Ex.P-1 during the testimony of Madan Lal PW-1. We note that when Madan Lal PW-1 was examined on 5.7.2007, as stands recorded in his testimony, the MHC(M) produced the register which was exhibited as Ex.P-1 and an entry at serial No.10 at page No.54 was exhibited as Ex.PW-1/B.

12. We are pained to note that neither the said register nor the relevant extract thereof which was got exhibited as PW-1/B have been taken on judicial record. The photocopies have also not been taken on the judicial record.

13. Similarly, when Anwar PW-3 deposed on 9.7.2007 to prove that the register Ex.PW-3/P-1, produced by the MHC(M) was seized from him by the investigating officer and that an entry marked in red i.e. Ex.PW-3/P-2 at page 161 of the register was entered by the husband of Rubina i.e. the deceased when he checked in the guest house on 11.9.2006, neither the register nor the relevant extracts thereof have been taken on record. Even photocopies have not been taken on record.

14. This is not the way to record evidence and note the memorandum thereof, much less deal with the same.

15. It is elementary knowledge, and we expect that a judicial officer of the rank of an Additional Session Judge knows, that where an extract from a register is exhibited, the same has to be photocopied and taken on the judicial record

with a clear order recorded to said effect that the original has been seen and returned and photocopy taken on record under signatures of the presiding officer of the Court, or the register as a whole is to be taken on record.

16. The reason is obvious, at the final stage of arguments, the said document may require to be looked into.

17. Indeed, in the instant case, there is a serious controversy whether at all Rubina and her husband continued to stay at Hazi Guest House beyond 12.9.2006.

18. The controversy had to be resolved with reference to the entry in the register, which we presume would show the room rent and the amount paid at the time of checking out. This would be an important consideration to determine whether Rubina and her husband stayed at the Guest House till 16.9.2006, having checked in on 11.9.2006, or they checked out on 12.9.2006.

19. For the reason neither the two registers nor the relevant extracts thereof have been taken on the judicial file, it is apparent that when the learned Trial Judge heard final arguments, he proceeded to consider the submissions without having before him the relatable evidence. This has vitiated the impugned decision and hence without expressing any further opinion on the controversy on the arguments advanced, we dispose of the appeal setting aside the

impugned judgment and order dated 30.1.2010 by which the accused has been convicted for the offence punishable under Section 302 IPC as also the offence punishable under Section 201 IPC. As a consequence the order of conviction dated 3.2.2010 is also set aside.

20. The matter is remanded back to the learned Trial Judge with a direction that the relevant registers or the exhibited extracts thereof would be first taken on the judicial record after summoning the same from the MHC(M). Thereafter, copies thereof would be supplied to learned counsel for the accused and the State.

21. Arguments would be reheard and dealing with the submissions urged, reasoned decision would be taken.

22. It is hoped and expected that as required by law, after discussing the evidence and the submissions, the learned Trial Judge would clearly indicate what has been found as incriminating evidence against the accused and in what manner the same completes the chain of circumstantial evidence wherefrom the guilt of the accused can be inferred and innocence ruled out if the learned Trial Judge returns a verdict of guilt and vice-versa if the finding is of not guilty, reasons would be stated with clarity.

23. Since the accused is in jail for about 4 years, we direct that the matter would be listed before the learned

Additional Sessions Judge concerned on 17.5.2010, for which date, learned counsel for the accused has undertaken to appear and learned counsel for the State undertakes to inform her counterpart in the District Courts.

24. The learned Trial Judge is directed to hear arguments expeditiously and complete hearing of the arguments latest by 28.5.2010 and thereafter pronounce decision as expeditiously as possible and preferably before the ensuing summer vacations.

25. The Registry is directed to ensure that the Trial Court record is returned to the Court concerned latest by 12.5.2010.

26. Dasti under signatures of the Court Master to learned counsel for the parties.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**May 11, 2010
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