

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

% *Date of Decision: 18th May, 2010*

+ **CRL.A. 534/2010**

RAJ KUMAR @ RAJU Appellant
Through: Mr.Satyavan Kudalwal, Advocate
and Mr.Virender Kumar Verma, Advocate.

versus

STATE Respondent
Through: Mr.M.N.Dudeja, 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?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. In the chain of prolix decisions, which unfortunately have started to be penned by the Court of Sessions in Delhi, we find the impugned decision makes one more grand addition.
2. A simple issue has been dealt with, spanning 136 paragraphs and sweeping 85 pages. As many as 32 decisions, none of which is relevant, have been cited. We get an impression as if a pre-school student, who has been taught some nursery rhymes, is standing on the stage and reciting them one after the other.

3. Court decisions are not nursery rhymes and are not to be parroted. Before a decision can be cited as a precedent, it must be brought out that the situation so demands. If the intention of the learned Trial Judge was to impress the Appellate Court with the vast knowledge of case law possessed by him, we must confess, we are most unimpressed by the manner in which the said knowledge has been used.

4. The first issue which arose for consideration in the present case before the learned Trial Judge was whether the testimony of Anil Kumar PW-3, the brother of the deceased, who deposed that on 29.7.2004 his brother Sanjay left the house at around 10:30 AM to visit the appellant and was carrying with him Rs.9,000/- inasmuch as Sanjay's license to deal as agent with the postal authorities had expired and he had to purchase some tickets from Raju who knew the co-accused Abhimanyu, the person who had to supply the tickets was trustworthy and what was the effect thereof.

5. Dead body of Sanjay was reported lying at a spot adjoining the railway track at Pratap Khand at 5:30 PM on 29.7.2004 when DD No.5A, Ex.PW-16/A was recorded.

6. As deposed to by the investigating officer to whom said DD was assigned for investigation, from the pocket of the deceased he recovered a diary Ex.P-9 which he seized vide memo Ex.PW-2/A which contained personal information and telephone numbers, one of which happened to be that of the brother of the deceased and hence the dead body could be identified as that of Sanjay by late night.

7. Appellant Raj Kumar @ Raju and co-accused Abhimanyu were apprehended the next day morning i.e. 30.7.2004. Needless to state, as is the usual claim of the

police, both of them confessed to have committed the crime and pursuant to the disclosure statement(s) made by them they got recovered: (the appellant), from within his jhuggi he got recovered a sum of Rs.4,500/- in denomination of Rs.100/-, and within the said notes were found two counterfoils of bank deposit slips (Ex.P-2) showing deposits made on 23.3.2004 and 29.3.2004 in the saving account No.4884 maintained by Punjab & Sind Bank in the name of the deceased. The said recovery stands recorded in the memo Ex.PW-4/C. Likewise, Abhimanyu got recovered sum of Rs.3,000/- from his jhuggi and within the same was the counterfoil of the bank deposit slip Ex.P-1 showing deposit made by the deceased in the aforesaid account on 21.5.2004.

8. Raj Kumar additionally got recovered a shirt, a vest and a pant (all marked as Ex.P-6) from within his jhuggi, which were seized vide memo Ex.PW-4/B. He got recovered a hammer Ex.P-3 from near the place where dead body of Sanjay was detected a day prior as entered in the memo Ex.PW-4/D. He additionally got recovered a leather bag Ex.P-4 from near the scene of the crime as entered in the memo Ex.PW-4/K.

9. In respect of the recoveries two issues arose. Firstly whether the recoveries inspired confidence and secondly the effect thereof.

10. Noting further the fact that the blood-stained exhibits i.e. the clothes recovered by the appellant as also the hammer have been opined vide FSL report Ex.PW-1/B to be stained with human blood of the same group as that of the deceased, meaning thereby the shirt, the vest and the pant which were recovered pursuant to the disclosure statement of

the appellant and at his instance were found to be stained with human blood of the same group as that of the deceased and the hammer only with human blood.

11. Let us list the evidence which needs to be discussed. The statement of PW-3 that his brother left the house with Rs.9,000/- to meet the appellant. Secondly, recovery of Rs.4,500/- from the jhuggi of the appellant as also the recovery of a T-shirt, a vest and a pant stated to be worn by the appellant when he committed the crime on which human blood of the same group as that of the deceased was detected. Thirdly, the recovery of the bank deposit slips Ex.P-2 showing deposits in the account of the deceased. Fourthly, the recovery of the hammer at the instance of the appellant from near the scene of the crime which was stained with human blood. Lastly, the recovery of a leather bag Ex.P-4 from near the scene of the crime.

12. The only question which the learned Trial Judge had to pose and answer was: Whether the recoveries inspired confidence and if they do, what is the incriminating value thereof? The learned Trial Judge had to pose and answer the question: What is the effect of the testimony of PW-3 that his brother left the house to meet Raju i.e. the appellant and while so doing, the learned Trial Judge was to take into account the circumstances that the dead body was found adjoining a railway line and was a place accessible to all. The learned Trial Judge had to keep into account the fact that there was no witness to claim having seen the deceased in company of the appellant.

13. We see no scope for a big sermon to be addressed by the learned Trial Judge citing 32 decisions, most of which

deal with the issues of how ocular testimony of eye-witnesses has to be dealt with. In the instant case there is no eye-witness to the incident.

14. Pertaining to the testimony of PW-3 we find that the same assumes no incriminating character for the reason what has been stated by PW-3 is that his brother left the house to meet Raj Kumar. The place where the dead body of the deceased was found is accessible to all and sundry. It is next to a railway line. There being no evidence that the deceased was seen with Raj Kumar, there is possibility that anybody could be the assailant.

15. As regards the recovery of counterfoils of bank deposit slips from the appellant and the co-accused it would be of importance to note that the diary Ex.P-9 was admittedly recovered from the pocket of the deceased and there is a possibility that the said counterfoils may have been recovered from the diary and later on planted. Way back in the year 1943, in the decision reported as AIR 1943 Null 5 Shera vs. Emperor the Court had cautioned of such kind of ordinary articles being planted.

16. As regards the recovery of the hammer Ex.P-3 and the leather bag Ex.P-4 from near the scene of the crime, it assumes importance that when the dead body was detected in the evening of 29.7.2004 not only the investigating officer but even the crime team had accessed the place and we find it strange that nobody could detect the said hammer or the leather bag nearby.

17. Now, as the case set up by the prosecution, the appellant runs a tea stall and probably acts as a postal agent, thus his being possessed with Rs.4,500/- is not a fact

wherefrom eye-brows had to be raised; it be noted that with reference to the number on the currency notes nobody has been able to link the same to the deceased.

18. The recoveries of blood-stained clothes at the instance of the appellant have to be viewed in light of various decisions of the Supreme Court where such kind of recoveries have been held to be very weak evidence.

19. In the decision reported as AIR 1963 SC 1113 Prabhu vs. State of U.P. recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as AIR 1977 SC 1753 Narsinbhai Haribhai Prajapati etc. vs. Chhatrasinh & Ors. the recovery of a blood-stained shirt and a dhoti as also the weapon of offence a dhariya were held to be weak evidence. In the decision reported as AIR 1994 SC 110 Surjit Singh & Anr. vs. State of Punjab the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision reported as JT 2008 (1) SC 191 Mani vs. State of Tamil Nadu recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries.

20. We may only add that the part of the disclosure statement of the accused that the clothes which he was wearing at the time when he committed the crime got stained with blood of the deceased and his getting the clothes recovered attracts Section 27 of the Evidence Act limited to the extent that the accused got recovered blood stained clothes. Independent evidence has to be led to prove that the said clothes were being worn by the accused at the time when

the crime was committed and said fact cannot be proved through his disclosure statement.

21. Under the circumstances, we are constrained to hold that the learned Trial Judge ought not to have wasted his energy by referring to 32 decisions, none of which apply. 5 decisions which we have noted herein above are the ones which stand attracted and required to be noted by the learned Trial Judge.

22. Keeping in view the weak nature of incriminating evidence; the probative weight to be attached to the evidence being weak; being a case of circumstantial evidence, we return a verdict that the chain of circumstances required to be established to sustain a conviction in a case of circumstantial evidence being missing the appellant would be entitled to the benefit of doubt.

23. At this stage we may also express our anguish at the finding returned by the learned Trial Judge in para 72 of the decision wherein it has been held:

“Moreover, most of the objects seized in this case are of such a nature, sealing or unsealing of which would not have made such difference. It is not the case of the accused that clothes were not belonging to him. It is also not the case of the accused that the bank slips were not pertaining to the account of the deceased. It is not the case of the accused that police had sprinkled blood on the clothes of the accused. It is not the defence of the accused that blood of deceased was poured/sprinkled on the hammer. It is not the case of the accused that clothes of the deceased were not sent to FSL. The

version of the accused in second statement u/s 313 Cr.P.C. to the effect that his clothes were never recovered by the police is undoubtedly the result of the advice of the Ld defence counsel and no importance can be attached to the same for the reason that after completion of the evidence the defence had become aware of the strong points of the case of the prosecution. All these aspects take out the sheen from the arguments of Ld defence counsel.”

24. The learned Trial Judge has evidenced a very innocent but unfortunately a very bitter knowledge of law pertaining to the requirement of sealing an object lifted by the police and seized. The purpose of sealing an object is to maintain the purity of it being lifted from a place as claimed. If not sealed by the investigating officer and the seal not being parted company with, any investigating officer can pick up anything from anywhere and show it recovered from another place. The object of sealing is not limited to preventing the creation of an object and then planting the same. It appears that the learned Trial Judge has been influenced by the fact that the counterfoils of the bank deposit slips could not be fabricated and thus it hardly mattered whether they were sealed. The Judge forgot that they could easily be planted.

25. The appeal is allowed. The impugned judgment and order dated 15.1.2010 convicting the appellant is set aside. The appellant is acquitted of the charges framed against him. The order on sentence dated 21.1.2010 is thus set aside.

26. Since the appellant is still in jail we direct that a copy of this decision be sent to the Superintendent, Central Jail, Tihar who is directed to forthwith set free the appellant unless he is required in custody in some other case.

27. The Registry is further directed to send a copy of this decision with a covering letter to the District & Sessions Judge, Delhi with a request that the same may be supplied to the learned Trial Judge who has penned the impugned decision and to the learned Trial Judge we have a word of caution; not to be verbose and try and show knowledge of case law as has been shown in the instant case. None of the 32 decisions cited by the learned Trial Judge have any applicability. The decisions applicable which we have noted have been ignored. The learned Trial Judge is advised to focus on the issues and not resort to sermons and cite irrelevant decisions. Before a decision is cited, it must be brought out that a legal issue arises and only then, with reference to the decision should the legal issue be resolved.

28. TCR be returned forthwith.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 18, 2010
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