

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

% Date of Decision :09th February, 2010

+ **Crl. A. No. 347/2008**

MURARI LAL CHAUDHARY Appellant
Through: Mr.V.N.Jha, Advocate with
Appellant in person

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. Vide impugned judgment and order dated 15.02.2008, the appellant has been convicted for the offence of having murdered Jag Narain in the intervening night of 10th and 11th April, 2003 at house No.721, Second Floor, Punjabi Basti, Anand Parbat, New Delhi.

2. With respect to the testimony of Dolly PW-2, her mother Smt.Sangeeta PW-4, Kundan Lal PW-5, Kishan Kumar

PW-6 and Ajay Mishra PW-16 the learned trial Judge has returned a finding that the testimony of said witnesses proves that the appellant along with deceased Jag Narain and Ajay Mishra (PW-16) were sharing a single room in building bearing No.721, Punjabi Basti, Anand Parbat, New Delhi on the second floor thereof.

3. With reference to the testimony of PW-2 and PW-3, the learned trial Judge has returned a finding that their testimony establishes that around 9:00 or 9:30 P.M. in the night of 10th April, 2003, the appellant was seen in the room which was taken on rent by the appellant, the deceased and PW-16. With reference to the testimony of PW-2 and PW-5 the learned trial Judge has held that their testimony establishes that from the room in question sound of a blunt object being impounded was emanating. With reference to the testimony of PW-2 the learned trial Judge has held that the same establishes that soon after the sound of a blunt object being banged coming from the room in question, the appellant was seen coming out and proceeding towards the common toilet. Thereafter, he was seen washing a towel and a vest. Since the post mortem on the dead body of the deceased was conducted at around 1:30 P.M. on 14.04.2003; the dead body was recovered from the room at around 7:30 A.M. on 11.04.2003,

there being a delay of over 3 days in conducting the post mortem, it is apparent that the probable time of the death of the deceased could be stated only in the broadest terms and not with even a rough estimation of the likely hour when the deceased died. Thus, with reference to the testimony of PW-2 and PW-5, who claim to have heard a banging sound emanating from the room in question, the learned trial Judge has held that the same probabalizes the fact that the deceased was murdered in his room anywhere between 9:00 P.M. to 10:00 P.M.

4. The towel and the vest recovered from the room as also a bat recovered from the room where the crime was committed; the recovery being pursuant to the appellant confessing his guilt and stating that the towel and the vest in question were the clothes worn by him when he committed the crime and the bat was the weapon of offence; human blood of Group 'B' i.e. the same group of the deceased being detected save and except on the vest on which human blood could be detected but group thereof could not be ascertained, as per report Ex.PW-20/F, the learned trial Judge has held that the chain of circumstances was complete wherefrom the guilt of the appellant could be inferred.

5. To rule out the possibility of an outsider accessing

the place of crime, the learned trial Judge has referred to the topology of the building as revealed to the court by means of the site plan to scale Ex.PW-12/A. The learned trial Judge has been influenced by the fact that with so many rooms in the building and there being so many occupants in the building, it was not possible for an outsider to enter from the ground floor on to the second floor, the place where the crime was committed. The learned Judge has held that if an outsider came, he would have been noticed.

6. When examined under Section 313 Cr.P.C., the appellant sang the song "*I do not know*" or "*It is wrong*".

7. With reference to the testimony of PW-2, her mother PW-3 as also the testimony of PW-5, PW-6 and PW-16, learned counsel for the appellant concedes that it stands established that the appellant, the deceased and PW-16 were sharing a room i.e. the place where the deceased was found murdered and that the appellant was present in the said room at around 9-9:30 P.M. on 10th April, 2003.

8. But, it is urged by learned counsel for the appellant that as noted in the DD Entry No.33-A, Ex.PW-13/A at 7:30 A.M. on 11.04.2003 it was the appellant who reported the crime to the duty officer further informing that he saw his friend murdered after he returned to the room in the morning after

completing his night duty.

9. We do not find that the Investigating Officer has bothered to visit the place where appellant was working to find out whether the appellant was on night duty or not. The place where the appellant was working has not only been disclosed by the appellant to the Investigating Officer but Ajay Mishra PW-16, the third person sharing the room has also informed the Investigating Officer that the appellant was working with Overnight Express, New Rohtak Road.

10. Dolly PW-2, after deposing the facts of having seen the appellant in his room at around 9-9:30 P.M. and that after sometime she heard the sound of "DHUM DHUM" deposed that she saw the appellant washing clothes in the common bathroom. She went on to depose; *"Next day in the morning accused returned to his room and at that time was carrying a bag of rice. After opening Kundi of his room accused told my mother "Bhabhi Kamre Mein Blood Para Hai'."*

11. The testimony of Dolly brings out an important fact of her seen the appellant returning in the morning with a bag of rice.

12. The coming back of the appellant and not fleeing from justice and being seen returning to his room the next morning with a bag of rice and his informing the police

suggests his innocence.

13. We do not wish to comment on the attempt made by the Investigating Officer to show as if the appellant was absconding by showing his arrest by dating the same on 14.04.2003. This runs in the teeth of the testimony of not only PW-2 but even in the teeth of DD No.33-A as per which the appellant was the one who had reported the crime at the local police station.

14. Pertaining to the towel and the vest purportedly recovered on the pointing out of the appellant, it may be noted that the place of recovery is none else other than the room commonly shared by the appellant, the deceased and PW-16.

15. It also assumes importance to note that when cross-examined PW-16 admitted: *"We all three used to wear vest and towel in the room. We used to keep the towel and the vest on the cot itself before leaving our room for going to our service."*

16. The learned trial Judge, while considering the circumstances, has not factored the conduct of the appellant which tends to show his innocence as also the admission aforesaid by PW-16 on being cross-examined which relates to the incriminating value of the vest and the towel got recovered. The learned trial Judge has also ignored that the

place of recovery was the room which was assessed by the Investigation Officer in the morning of 11.04.2003 and the recovery being shown on 14.04.2003.

17. That the topology of the place of crime shows the building to be densely inhabited is a matter of fact emanated not only from the testimony of the residents of the area and the site plan. But, the learned trial Judge has omitted to consider a very vital admission made by SI Narender Singh PW-15 who was the first senior police officer to reach the place of crime in the company of Ct.Maha Singh and Ct.Avdesb. He admitted on being cross-examined: *"It is correct that in the night intervening 10-11.04.2003 a Jagaran was going on near the spot."* In the din of the Jagaran and devotees visiting the site of the Jagaran; there being a constant flow of people in and out from the area in question, the possibility of any outsider entering and committing the crime and thereafter leaving cannot be ruled out.

18. Before concluding we may note that the alleged motive sought to be proved for the crime has fallen. The prosecution intended to prove through the testimony of PW-16 that the appellant lend money to the deceased and committed the crime for the probable reason that the deceased was not returning the money. PW-16 has denied having oversight the

said facts before or to the Investigation Officer.

19. It is settled law that in a case of circumstantial evidence the four principles which have to be adopted are:

- I. *“That the circumstance from which the conclusion is drawn be fully established;*
- II. *That all the facts should be consistent with the hypothesis of guilt;*
- III. *That the circumstances should be of a conclusive nature and tendency;*
- IV. *That the circumstances should, by a moral certainty, actually exclude every hypothesis but the one proposed to be proved.”*

20. Though, after the decision reported as AIR 1984 SC 1622, Sharad Birdhichand Sarda Vs. State of Maharashtra the courts have enumerated five principles as under:

- (1) *“The circumstances from which the conclusion of guilt is to be drawn should be fully established.*
- (2) *The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty.*
- (3) *The circumstances should be of a conclusive nature and tendency;*
- (4) *They should exclude every possible hypothesis except the one to be proved, and*
- (5) *There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.”*

21. But, we note that in the instant case even four principles of circumstantial evidence which have to be fulfilled before the guilt of the accused can be inferred have not been established. The evidence does not rule out the possibility of an outsider committing the crime.

22. Before bringing the curtains down, we would wish to remind the members of the Bar that where the accused is a poor man, it is the duty of the legal fraternity to raise the level of legal acumen which makes them worthy of the noble profession which they profess.

23. The accused had told the police as recorded in DD No.33-A, that he noticed the crime when he returned in the morning after night duty. The poor accused who is in Jail would hardly be in a position to bring evidence to establish his innocence, but where, as in the instant case, he informs the counsel the place he was working and that the record of said work place would show where he was at the time when the crime was committed, the members of the Bar have to take charge and understand that under the Code of Criminal Procedure, 1973, there exists Section 91, there exists other provisions which the accused can take resort to with the aid of the court to summon his evidence and witnesses. The law crystallizes by the Supreme Court in the decision reported as

AIR 2005 SC 359, State of Orissa vs. D.N. Pandhi has to be remembered as a bible.

24. We note that the standard of defence in the instant case has not been up to the mark. Learned counsel engaged by the appellant has taken no steps to summon the employer of the appellant. The counsel took no steps to even cross-examine the Investigating Officer as to why the Investigating Officer did not visit the working place of the appellant notwithstanding that the DD No.33-A records that the appellant has told the police that he was on night duty.

25. The appeal is allowed. The impugned judgment and order dated 15.02.2008 is set-aside. The appellant is acquitted of the charge framed against him. Directions are issued to the Superintendent, Central Jail, Tihar to release the appellant if he is not required in any other offence.

26. Copy of this order be sent forthwith to the Superintendent, Central Jail, Tihar for compliance.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

FEBRUARY 09, 2010
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