

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

% *Judgment Reserved on: 12th April, 2010*
Judgment Pronounced on: 15th April, 2010

+ **CRL.APPEAL No.433/2008**

AAS MOHD. Appellant

Through: Mr.S.C.Sagar, Advocate with
Ms.Mamta Mayer, Advocate.

versus

STATE Respondent

Through: Ms.Richa Kapoor, A.P.P.

+ **CRL.APPEAL No.542/2008**

CHANDER PRAKASH Appellant

Through: Mr.K.K.Manan, Advocate with
Mr.S.Saron, Advocate.

versus

STATE Respondent

Through: Ms.Richa Kapoor, 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? Yes

PRADEEP NANDRAJOG, J.

1. On 15.11.2004 Ashok Kumar PW-2 went to PS Sangam Vihar and met Const.Suresh Chand PW-1 posted as a DD Writer and at around 9:10 PM got recorded DD No.37-B, Ex.PW-1/A, that his son Anurag aged about 22 years wearing a

red coloured T-shirt and blue coloured jeans had left the house at 7:30 PM on 13.11.2004 on his motorcycle bearing registration No.DL3SAA 2790 (Hero Honda Passion) and had not returned home since then.

2. The investigation was entrusted to SI Manoj Kumar PW-7 who could not achieve any breakthrough till on 22.11.2004 Neeraj Kumar PW-3, the brother of Anurag met him at around 10:00 AM and informed him that as per his information people had seen his brother in the company of the appellants and one Manoj Kumar in the evening of 13.11.2004. SI Manoj Kumar recorded the statement Ex.PW-3/A of Neeraj Kumar noting aforesaid fact as also that when Neeraj Kumar went to the house of the appellants and Manoj Kumar, their family members gave evasive answers. Making an endorsement Ex.PW-7/A beneath the statement Ex.PW-3/A, SI Manoj Kumar got recorded FIR Ex.PW-4/A for the offence of kidnapping.

3. As claimed by SI Manoj Kumar PW-7, on 23.11.2004 he received secret information that appellant Aas Mohd. would be visiting his house at Devli Extension, New Delhi. Therefore, accompanied by HC Omkar, Const.Ishwar and Const.Sanjeev he went to the house of Aas Mohd. in Devli Extension where he found Chander Prakash in the company of Aas Mohd. He arrested them as recorded in the arrest memos Ex.PW-5/D and

Ex.PW-5/E and interrogated them. He recorded statement Ex.PW-5/B of Aas Mohd. and Ex.PW-5/A of Chander Prakash as per which both told him that along with Manoj they had got Anurag intoxicated and thereafter they took him to a dilapidated house where Aas Mohd. and Manoj assaulted Anurag with a brick and Chander Prakash with a knife. As Anurag fell, Aas Mohd. took the knife from Chander Prakash and further stabbed Anurag to make sure that Anurag was dead. After wrapping the dead body of Anurag in a plastic cover they put it inside a gunny bag and carted the body on the National Highway in Haryana towards Hodal, using the motorcycle of Anurag and dumped the body in the bushes near Hodal abutting the Highway. Chander Prakash disclosed that he could get recovered the knife used in commission of the offence and could point out the place where Anurag was killed as also the place where his body was thrown. Aas Mohd. informed that even he could take the police to the place where the crime was committed and body of Anurag was thrown. He additionally informed that to scare people he had procured a country made firearm which he could get recovered.

4. After their arrest and recording their disclosure statements, as deposed to by Insp.A.S.Parmar PW-19, Const.Ishwar Singh PW-5, ASI Narain Singh PW-12, Const.Mubarak Ali PW-13 and Ashok Kumar PW-2 father of the

deceased, accused Aas Mohd. and Chander Prakash jointly led the police team to a place at a distance of 250 meters from highway patrolling office, Hodal Haryana Highway and from beneath some bushes got recovered a dead body wrapped in a gunny bag. The dead body was seized vide seizure memo Ex.PW-5/C.

5. As claimed by Ashok Kumar PW-2 the body was clad in a red T-shirt and blue jeans and since his son was wearing the same clothes when he was last seen on 13.11.2004, Ashok Kumar identified the said dead body as that of his son.

6. There is conflicting evidence qua the recovery of the motorcycle bearing No. DL 3S AA 2790. As per Ashok Kumar PW-2 the motorcycle with number plate bearing registration No.DL 3S AA 2790 in which Anurag had left his house was also found parked at a distance of about 6 to 7 meters from where the dead body was recovered. However, Insp.A.S.Parmar PW-19 and the other police officials have not deposed to about any recovery of the motorcycle from near the place of recovery of the dead body. SI Manoj Kumar has specifically denied having recovered any motorcycle from near the dead body. As per them the motorcycle was recovered the next day after Manoj was arrested and made the disclosure statement Ex.PW-7/D.

7. As deposed to by Insp.A.S.Parmar PW-19 and SI Manoj Kumar PW-7 they arrested accused Manoj on 24.11.2004

from B Block, Main Market, Sangam Vihar and interrogated him and recorded his disclosure statement Ex.PW-7/D as per which he could get recovered the motorcycle of the deceased as also could point out the place where the crime was committed.

8. As deposed to by Insp.A.S.Parmar, after Manoj's disclosure statement was recorded all the three accused led the police to a dilapidated shop in Amar Singh Market, Shane Ilahi Masjid Road and jointly pointed out as recorded in the joint pointing out memo Ex.PW-7/E the same as the place where they murdered Anurag. As deposed to by Insp.A.S.Parmar he lifted some blood stained hair sticking in the wall of the said shop, a palm imprint on the wall stained with blood, a blood stained brick having hair on it, a brick piece and a blood stained stone from the said shop as recorded in the seizure memo Ex.PW-7/F. Thereafter Aas Mohd. pointed out a spot outside the shop and after removing the earth got recovered a country made pistol which was seized vide memo Ex.PW-7/G. Thereafter Chander Prakash took the police to a spot at a distance of 30 yards and pointed out the same and after removing the earth got recovered a knife which was seized vide seizure memo Ex.PW-7/H.

9. As deposed to by Insp.A.S.Parmar PW-19 and SI K.P.Sha PW-11 who joined the investigation of the case on 25.11.2004, on said date accused Manoj led the police team to

plot No.B-905, Sangam Vihar, New Delhi and got recovered the motorcycle bearing registration No.DL 3S AA 2790 lying stray on the said plot which was seized vide memo Ex.PW-11/A.

10. Noting the conflicting evidence pertaining to the recovery of the motorcycle bearing registration No.DL 3S AA 2790 on which Anurag left his house, the learned Trial Judge has held that the recovery of the same cannot be attributed to co-accused Manoj.

11. Manoj has been acquitted and we have no appeal filed by the State against Manoj's acquittal, which acquittal has attained finality.

12. Neeraj PW-3, brother of Anurag, deposed that on making enquiry from the people in the market he learnt that his brother was seen in the company of Aas Mohd., Chander Prakash and Manoj and in view of said testimony of Neeraj, the learned Trial Judge has held that the prosecution has successfully established that the appellants as also Manoj were last seen in the company of the deceased who was then alive in the evening of 13.11.2004 i.e. when the deceased left his house. Holding further that the dead body was recovered at the joint pointing out by Aas Mohd. and Chander Prakash after they made the disclosure statements the learned Trial Judge has held that the said recovery of the dead body made admissible their confessional statement to the police pertaining

to their knowledge of the place where the dead body could be found. Lastly, learned Trial Judge has held that the fact that the appellants and Manoj led the investigating officer to the dilapidated shop in Amar Singh Market, Shane Ilahi Masjid Road wherefrom blood stained hair sticking on the wall, a blood stained brick having hair on it were recovered on which as per FSL Report Ex.PW-18/A and serological report Ex.PW-18/B human blood of group B was detected was incriminating evidence pertaining to the place of the crime which hitherto fore was not in the knowledge of the police and hence said knowledge became attributable to the appellants. Holding that the recovery of the country made pistol at the instance of Aas Mohd. and the recovery of a knife at the instance of Chander Prakash, which knife was opined to be possible weapon of offence by Dr.S.K.Dhattarwal PW-16, was further incriminating evidence, qua the appellants finding returned is that the chain of circumstance was complete wherefrom their guilt could be inferred.

13. An argument was advanced before the learned Trial Judge that so decomposed was the dead body recovered, it was incapable of being identified as that of Anurag. The same has been repelled with reference to the testimony of Ashok Kumar PW-2, the father of Anurag that he identified the dead body as that of his son with reference to the T-shirt and the

pant on the body which was recovered. But, surprisingly the learned Trial Judge has gone on to refer to case law that in a case of murder it is not essential that the dead body should be recovered. We are surprised for the reason the learned Trial Judge has used as incriminating evidence the fact that the dead body of Anurag was recovered from a place knowledge whereof was with the appellant and they took the investigating officer to the said place. Indeed, if the dead body was not that of Anurag, the disclosure statements of the accused would have been rendered meaningless.

14. What we want to highlight is that Trial Judges ought not to try and show academic knowledge of knowing case law. Having knowledge of law is one thing. Applying it correctly is another. In the instant case the disclosure statements of the appellants pertaining to the place where dead body of Anurag could be found would be admissible in evidence under Section 27 of the Evidence Act upon proof that Anurag's dead body was found from the spot which was disclosed by the appellants and no vacillating reasoning as advanced by the learned Trial Judge is acceptable.

15. Be that as it may, it assumes importance that in his statement Ex.PW-1/A made by Ashok Kumar PW-2, on 15.11.2004, much before when Anurag's dead body was recovered, he had disclosed that his son was wearing a red

coloured T-shirt and a blue coloured pant. Indeed, the dead body recovered on 23.11.2004 had a red coloured T-shirt and a blue coloured pant and the claim of Ashok Kumar PW-2 is that he recognized the dead body of his son with reference to the T-shirt and the pant. Thus, we conclude, independent of the reasoning of the learned Trial Judge that the dead body recovered as entered in the memo Ex.PW-5/C is that of Anurag.

16. The testimony of Neeraj PW-3 cannot be accepted as proof that Anurag was last seen alive in the company of the appellants and Manoj in the evening of 13.11.2004, for the reason Neeraj does not claim to have seen the four in the company of each other. He claims that people in the market told him so. It is obvious that testimony of Neeraj is hit by the rule against admitting hearsay evidence.

17. Pertaining to the recovery of a brick stained with blood having human hair thereon as also blood being detected on the walls of the shop in Amar Singh Market, it can only be said that the police learnt about said spot from the mouth of the appellant and that the scene inside the shop shows that some human being was injured. There being no link evidence in the shape of opinion of an expert that the hair on the brick was that of the deceased and in the absence of any evidence as to what was the blood group of the deceased, the fact that human blood of group B was detected on the brick recovered

from the room, renders said evidence as a very weak kind of evidence.

18. Thus, the only evidence against the appellants is that the dead body of Anurag was recovered pursuant to the disclosure statement and on the appellants leading the police to the spot from where the body was recovered as also the recovery of the knife at the instance of appellant Chander Prakash which was opined as the possible weapon of offence on which human blood was detected.

19. The evidence pertaining to the recovery of the dead body of Anurag needs to be highlighted a little more. When the appellants were arrested, nobody knew that Anurag had been killed. For the first time, after the appellants made their disclosure statements, was it learnt that Anurag was no more. Further, nobody knew the manner in which Anurag was killed. It was only when the appellants disclosed that Anurag was first hit on the head with a brick and then was assaulted with a knife, did it first come to light that Anurag would be having an injury on his head and stab wounds on the body.

20. The post-mortem report Ex.PW-16/A of Anurag shows that there was a depressed fracture of skull on right side of occipital region and there were as many as 7 stab wounds on his person. Thus, the statements of the appellants showing their knowledge that Anurag was hit with a blunt object i.e. a

brick on the head and was stabbed with a knife are also admissible in evidence under Section 27 of the Evidence Act. After all, a dead body is akin to an object. Thus, the description of the nature of injuries on the dead body, if subsequently confirmed to be true through independent evidence, would render creditworthy the acceptance of confessional statements made to the police followed by recovery of the dead body.

21. In the decisions reported as AIR 1947 PC 67 Pulukuri Kottaya & Ors. Vs. Emperor, 1989 Cri. LJ (NOC) 200 (Gauhati) Chakidhar Paharia Vs. State of Assam, 1986 Cri. LJ 220 Parimal Banerjee Vs. State and AIR 1963 SC 1074 Ram Lochan Ahir Vs. State of West Bengal recoveries of dead bodies pursuant to disclosure statements were held to be not only admissible incriminating evidence but of a very lethal variety against the maker of the statement.

22. Though recovered from an open field, it needs to be noted that the place of recovery was about 250 meters from the main highway where highway patrolling office of Haryana Police was situated. The body was concealed in a gunny bag, which in turn was concealed in bushes. No suggestion has been given to any witness to the recovery that the gunny bag was visible from the road. The expression 'fields' is actually a misnomer for the reason the place is an uncultivated parcel of

land akin to a jungle and the gunny bag containing the body was lying concealed in the bushes.

23. Thus, qua the appellants, though on a different process of reasoning, we conclude with the ultimate view taken by the learned Trial Judge.

24. The appeals are dismissed.

25. Since the appellants are in jail we direct that two copies of this decision be sent to the Superintendent Central Jail Tihar, to be made available to the appellants.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**APRIL 15, 2010
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