

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

% *Judgment Reserved on : 11th March, 2010*
Judgment Pronounced on: 15th March, 2010

+ **Crl.APPEAL No.679/2007**

SARVIND KUMAR @SONU Appellant
Through: Ms.Charu Verma, 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 Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

PRADEEP NANDRAJOG, J.

1. Vide impugned judgment and order dated 01.07.2007 the appellant has been convicted for the offences punishable under section 394/302 IPC and his brother Hari Chand has been convicted for the offence punishable under Section 411 IPC. For the offence of murder, the appellant has been sentenced to undergo imprisonment for life and for the offence of robbery he has been sentenced to undergo RI for 7 years. Hari Chand has been sentenced to undergo RI for 9 months.

2. Probably for the reason by the time he was convicted, Hari Chand had already undergone the sentence imposed upon him, he has not preferred any appeal challenging his conviction.

3. In convicting the appellant the learned trial judge has held that the testimony of PW-7 and PW-8 proved that the appellant was employed as a helper on the RTV by Anil Raizada PW-8 and that the appellant used to keep his bag in house No.C-1, Arjun Nagar where Smt.Raj Rani the mother of Anil Raizada resided and that the appellant took leave for a few hours at 3:00 PM on 24.03.2004 but never returned. His bag was not found in house of Smt.Raj Rani who was found murdered in her house by PW-7 and PW-8 when they went to the house of Raj Rani at 9:00 AM on 25.03.2004 and a bag containing the valuable of the deceased as also the money which Anil Raizada PW-8 had given to his mother was found missing; after he was apprehended, as recorded in the personal search memo Ex.PW-7/B, Rs.80,000/- in denomination of Rs.1000/- each was recovered from his pocket as also a chocolate colour diary, a passbook issued by Punjab National Bank and an election identity card issued by the Election Commission of India to the deceased were recovered as entered in the memo Ex.PW-7/B; thereafter the appellant made the disclosure statement Ex.PW-7/C informing that he

gave Rs.70,000/- out of the loot to his brother Hari Chand upon whose arrest and pursuant to his disclosure statement Ex.PW-7/G Rs.70,000/- were recovered the notes being in the denomination of Rs.500/-. The learned trial Judge has held that as per Anil Raizada PW-8 he had given Rs.88,000/- to his mother in denomination of Rs.1000/- each as also two bundles of notes in denomination of Rs.500/- each and interestingly the money recovered from the appellant was in denomination of Rs.1000/- each and that from his brother was in the denomination of Rs.500/- each.

4. It is apparent that the fate of the appellant would be decided with reference to the testimony of Anil Raizada PW-8 and Satpal PW-7, an employee of Anil Raizada, as also with respect to the evidence pertaining to the recoveries effected from the appellant at the time of his arrest.

5. Let us deal with the evidence pertaining to the disclosure statement Ex.PW-7/C of the appellant and the recoveries shown in the memo Ex.PW-7/B from him when he was arrested.

6. As per the evidence, when the appellant was apprehended Satpal PW-7 was present; Satpal is a witness to the seizure memo Ex.PW-7/B as also the disclosure statement Ex.PW-7/C. The seizure memo Ex.PW-7/B records the recovery of a diary Ex.P-1, a voter identity card Ex.P-2, a passbook Ex.P-

4 issued by the Punjab National Bank and Rs.80,000/- in denomination of Rs.1000/- from the personal search of the appellant. In the disclosure statement it stands recorded that he can get recovered the jewellery of the deceased from the house of his in-laws. None was recovered. As per further disclosure statement Ex.PW-15/A of the appellant, he informed that the bag containing the jewellery had been thrown by him in a canal in Azamgarh U.P. As deposed to by SI Beer Singh PW-15, on 31.03.2004, the appellant led him to the said spot and pointed out, as recorded in the memo Ex.PW-15/B, the spot in the canal where the bag was thrown, but none was recovered.

7. We note that Anil Raizada PW-8 has deposed in Court that his mother used to keep jewellery and money in a bag, he deposed that he gave Rs.1 lac to his mother in denomination of Rs.500/- each and he gave Rs.88,000/- to his mother in denomination of Rs.1000/- each, but in his complaint on basis whereof the FIR has been registered, he has not stated having given any money to his mother.

8. That Anil Raizada claims for the first time while deposing in Court that he gave Rs.1,88,000/- to his mother a few days prior to when her dead body was found on 25.03.2004 and he not having given said information in his statement Ex.PW-8/C to the Investigating Officer who reached

the house of his mother on being informed about his mother's death, throws considerable doubt whether at all he spoke the truth. Rs.1,88,000/- is not so small amount and could not have been ignored by Anil Raizada when he gave the statement Ex.PW-8/C to the Investigating Officer in the morning of 25.03.2004. There is every possibility that the recovery from the appellant and his brother of Rs.80,000/- and Rs.70,000/- respectively was planted with Anil Raizada actively participated in the plant. It is in this connection it is relevant that Anil Raizada's servant Satpal PW-7 is a witness to both the recoveries.

9. Anil Raizada has given no explanation as to why he gave Rs.1,88,000/- to his mother. He has given no proof of being possessed with so much money. His claim that he sold a vehicle a few days prior, without any particulars of the vehicle and his claim that he gave the money to his mother is doubtful for the reason why would he do so, assuming he sold the vehicle? His mother, as per him was staying alone and why would Anil Raizada entrust so much money with his old mother and not keep the money with him in his house which was better fortified as his wife was in the house. His house was better guarded than his mother's.

10. That apart, we find it strange that the appellant would go to Azamgarh and throw the stolen jewellery articles

in a canal and retain with him useless but highly incriminating articles such as the identity card issued by the Election Commission of India, the personal diary of the deceased and the passbook issued by Punjab National Bank in the name of the deceased.

11. Qua the recoveries attributable to the appellant and his brother, we hold that the same do not inspire any confidence for the reasons noted hereinabove. It is unfortunate that the learned trial Judge has ignored that in his statement Ex.PW-8/C Anil Raizada did not tell the Investigating Officer that he had given Rs.1,88,000/- to his mother. Further, the learned Trial Judge has not even bothered to discuss as to why appellant would retain with him useless incriminating articles and would throw in the canal the valuable jewellery items.

12. No doubt, the testimony of Satpal PW-7 and Anil Raizada PW-8 establishes that the appellant was employed by Anil Raizada as a helper in the RTV van owned by Anil Raizada and that his employment was about two months old and that he took leave on 23.03.2004 and probably never came back, but we find it strange that the appellant would be keeping his bag in the house of the deceased with whom the appellant had nothing to do. As per Anil Raizada, the appellant used to keep his i.e. the appellant's bag in the house of his i.e. Anil

Raizada's mother. Why would the appellant do so? Appellant's brother Hari Chand, as per the evidence led by the prosecution, was a resident of Sangam Vihar, Delhi.

13. Sangam Vihar is a colony in South Delhi. As per Anil Raizada, his RTV van was attached with the DAV School Yusuf Sarai, New Delhi, which is a colony in South Delhi. Thus, the natural place for the appellant to keep his personal belongings was the house of his brother in Sangam Vihar. It is not that the work place of Anil Raizada was far removed from Sangam Vihar. Had this been so, we could have understood the necessity for the appellant to keep his personal belongings not in the house of his brother but elsewhere.

14. Under the circumstances the sole incriminating evidence against the appellant of being the employee of Anil Raizada and the appellant absconding since the afternoon of 23.03.2004 needs to be weighed with reference to the claim of the appellant that he left employment on 20.03.2004 because Anil Raizada was not paying his salary.

15. Conscious of the fact that Anil Raizada is a small time transport operator and was probably carrying on business inofficiously and was not maintaining the record of his business as required by the Income Tax Laws, but not even an unofficious document being proved that he gave salary to the appellant, if not more, requires the benefit to be given to the

appellant of the finding that he told the truth of having left employment inasmuch as he was not given proper wages. We note that as per Satpal PW-7 and Ani Raizada PW-8, the appellant was employed on 10.02.2004 and one would expect that after one month, some money would be paid by way of wages to the appellant and an informal receipt obtained if not a formal one.

16. Even otherwise said evidence of the appellant absconding after 24.03.2004 would be insufficient evidence wherefrom it can be said that the chain of circumstances is complete from which circumstances the inference of guilt alone and innocence being ruled out can be inferred.

17. It would be interesting to note that when the Investigating Officer deposed and the requirement of identifying the money recovered from the appellant and his brother as claimed by the prosecution arose, it was reported that from the Malkhana of the police station the money which was recovered had been stolen.

18. Well, we can only sympathize with Anil Raizada and hope that in future he would not help in planting, if indeed he has done so in the instant case.

19. The appeal is allowed. The impugned judgment and order dated 01.02.2007 convicting the appellant is set

aside. The appellant is acquitted of the charge framed against him.

20. Since the appellant is in jail we direct that a copy of this decision be sent to the Superintendent Central Jail, Tihar for necessary action.

PRADEEP NANDRAJOG. J

SURESH KAIT. J

MARCH 15, 2010
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