

i.1 & 5

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Date of Decision: 17th May, 2010

+

CRL.APPEAL No.453/2010 & CRL.M.B.No.563/2010

BRIJESH KUMAR

..... Appellant

Through: Mr.Ramesh Gupta, Sr. Advocate
with Mr.Mukesh Kumar Verma,
Mr.Sumit Arora, Mr.Ankush Saini
and Mr.Tarun Walia, Advocates

versus

STATE

..... Respondent

Through: Mr.M.N.Dudeja, Advocate

CRL.APPEAL No.583/2010 & CRL.M.B.No.682/2010

HITESH KUMAR

..... Appellant

Through: Mr.Ramesh Gupta, Sr. Advocate
with Mr.Mukesh Kumar Verma,
Mr.Sumit Arora, Mr.Ankush Saini
and Mr.Tarun Walia, Advocates

versus

STATE

..... Respondent

Through: Mr.M.N.Dudeja, 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 the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.(Oral)

1. After hearing learned senior counsel for the appellants and learned counsel for the State and on browsing through the evidence led and having perused the impugned decision dated 22.10.2009, we find that as many as 5 definite areas of consideration, in respect whereof determinative finding had to be rendered by the learned Trial Judge have emerged.

2. Needless to state, at the end of a criminal trial, it is duty of the learned Judge to distinctly identify the areas of dispute and render a determinative finding on each one of them. This enables the Appellate Court to have a focused look at the impugned decision and thereafter reflect upon the same.

3. We are noticing a most unfortunate trend of extremely prolix decisions being penned by learned Trial Judges. The result is a total non focused approach. As would be highlighted in this case, one issue which arose has not even been noted. Another has been noted but not answered. Qua the third, a most inconclusive finding has been rendered. Only two issues have been determinatively dealt with.

4. It is not in dispute that Vikas was fatally shot in the intervening night of 14th and 15th October 2004 and was removed to Sushruta Trauma Centre where he was admitted at

one hour past midnight in the intervening night of 14th and 15th October 2004. Though conscious, he was unfit to make any statement, as recorded on Vikas's MLC.

5. The question arose, as to whether the appellants were the offenders.

6. The appellants are real brothers being the sons of Prem Singh and were charged with the offence of acting in concert to cause bullet injuries to Vikas.

7. A perusal of the evidence shows that the wife of the deceased i.e. Ms.Suman Chauhan who deposed as PW-5, claimed to be an eye witness. As per her, she knew both the accused. As per her accused Brijesh had caught her husband from his neck and exhorted his brother to kill her husband and at that point of time, when the exhortation was given, Hitesh fired at her husband and both accused fled.

8. Santosh Chauhan PW-6, the mother of the deceased, claimed that she spoke to her son from her house at the mobile phone of her son and that her son told her that he had been shot by the appellants and was being taken to the hospital by the police.

9. 4 police officers PW-16, PW-20, PW-25 and PW-32 deposed to the deceased reaching the police post, J.J.Colony,

Wazir Pur at 11:00 PM and collapsing after saying that the appellants have shot him.

10. The wife of the deceased as also two brothers-in-law of the deceased; namely, Rajesh Chauhan PW-7 and Chander Prakash PW-31 claimed that when they reached the hospital and met the deceased, he made a dying declaration before them inculcating the appellants.

11. It is apparent that 4 issues requiring a determinative finding on each, arose for consideration; being that: (i) whether PW-5 was an eye witness and has deposed truthfully, (ii) whether the deceased made a dying declaration to his mother over the telephone when he was being removed to the hospital by the police, (iii) whether deceased made a dying declaration to the police at the police post and (iv) whether the deceased made a third dying declaration at the hospital before his wife and two brothers-in-law.

12. Another issue arose for consideration in view of the testimony of an independent witness Atul Mittal PW-9, as per whom he had gone to the market to purchase goods and saw a commotion in the market. He saw 3-4 boys running away. He also saw the deceased in his Indica car and when he reached the car, the deceased told him that he had been fired upon.

Police officials reached there and removed the deceased in an auto rickshaw to the hospital.

13. From the testimony of Atul Mittal, a 5th issue arose, whether the assailants were 3 or 4.

14. Needless to state, the testimony of Atul Mittal had to be considered while discussing the claim of the wife of being an eye witness as also the claim of PW-16, PW-20, PW-25 and PW-32 that the deceased reached the police post and at the police post made the stated dying declaration as claimed by them.

15. A perusal of the impugned decision shows that the learned Trial Judge has returned no finding whether the Trial Judge has accepted claim of PW-5 i.e. the wife of the deceased to be an eye witness.

16. The learned Trial Judge, without discussing the testimony of Atul Mittal has returned a definite finding that the deceased reached the police post and indeed made the dying declaration as deposed to by PW-16, PW-20, PW-25 and PW-32. In respect of the stated conversation between the deceased and his mother, as claimed by the mother, a definite determinative finding has been returned believing the mother.

17. Whether the deceased made a dying declaration at the hospital to his wife and two brothers-in-law, we find no determinative decision being taken. Midway between the discussion, the learned Trial Judge has, using the expression '*even if it is assumed that the deceased did not make any dying declaration*' held that it does not demolish the prosecution case.

18. There is just no highlighting of the 5th issue which emerges from the testimony of Atul Mittal and hence the said issue has not even been touched.

19. In our opinion, this is not the way decisions have to be penned by the Court of first instance pertaining to a murder trial. Each and every issue has to be dealt with and determinative findings have to be rendered. It is of no use being verbose and inchoate and inconclusive. One pitfall of verbosity is that half way down the sermon, the mind loses track of what has to be focused and considered.

20. Under the circumstances, without expressing any opinion on the merit of the case, we dispose of both appeals setting aside the impugned judgment and order dated 22.10.2009 convicting the appellants for the offence they were charged of. The order on sentence dated 23.10.2009 is also set aside.

21. The matter is remanded back to the learned Trial Judge with a direction that clear cut findings be returned by the learned Trial Judge pertaining to the issue, whether wife of the deceased was an eye witness as also to whether the deceased made a dying declaration at the hospital to his wife and two brothers-in-law. The learned Trial Judge would specifically deal with the issue whether Atul Mittal is to be believed or disbelieved and reasons in support of the conclusion would be given. If the learned Trial Judge hold that Atul Mittal is to be believed, the effect of his testimony vis-à-vis the claim of the wife of the deceased of she being an eye witness as also the claim of the police officers that the deceased reached the police post would be discussed.

22. We make it clear that we are rendering no opinion whatsoever on the merits of the finding returned by the learned Trial Judge on the two issues qua which we find determinative findings. But, we clarify that at the remanded stage, said issues would be dealt with afresh in light of the arguments advanced and with respect to the finding to be returned qua the testimony of Atul Mittal.

23. At the remanded stage, it is hoped and expected, that the learned Trial Judge would expeditiously rehear

arguments and render fresh opinion latest by 13th August, 2010.

24. Learned senior counsel for the appellants prays that since the trial is over and considering the fact that the appellants have remained in custody for 5 years and 7 months, they be admitted to bail especially for the reason the appellants have no history of being involved in any crime.

25. We accordingly direct that pending fresh decision, on the appellants furnishing a personal bond in sum of Rs.10,000/- each with two sureties each in the like amount to the satisfaction of the learned Trial Judge, the appellants would be released on bail till the matter is finally re-decided by the learned Trial Judge.

26. We direct the Registry to forthwith return the TCR and ensure that it is made available to the learned Trial Judge latest by 19th May, 2010.

27. We direct the matter to be listed before the learned Trial Judge on 21st May, 2010. The said date has been noted by learned counsel for the appellants and learned counsel for the State, who submits that he would intimate the same to his counterpart before the learned Trial Court.

28. The learned Trial Judge would fix a date of arguments not beyond 5th July, 2010 and after completing rehearing of the matter would pronounce fresh decision.

29. Dasti to parties under signatures of the Court Master.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**MAY 17, 2010
mm**