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

% Judgment delivered on 13.10.2011

\+ **CRL.A. 1225/2010**

VIRPAL @ RAJU @ VIRA … Appellant

- versus -

THE STATE OF NCT OF DELHI … Respondent

Advocates who appeared in this case:
For the Appellant : Mr A. J. Bhambhani with Ms Nisha Bhambhani and Ms Lakshita Sethi
For the Respondent : Mr Sanjay Lao

AND

\+ **CRL.A. 1236/2010**

IBRAHIM @ GUDDU … Appellant

- versus -

THE STATE OF NCT OF DELHI … Respondent

Advocates who appeared in this case:
For the Appellant : Mr Arun Sharma
For the Respondent : Mr Sanjay Lao

AND

\+ **CRL.A. 1426/2010**

MOHD. ANIS AHMED … Appellant

- versus -

THE STATE OF THE NCT OF DELHI … Respondent

Advocates who appeared in this case:
For the Appellant : Mr Rajesh Mahajan
For the Respondent : Mr Sanjay Lao

CORAM:
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE MANMOHAN SINGH

1.	Whether Reporters of local papers may be allowed to see the judgment?	Yes
2.	To be referred to the Reporter or not?	Yes
3.	Whether the judgment should be reported in Digest?	Yes

BADAR DURREZ AHMED, J

1. These three appeals are directed against the judgment dated 11-06-2010 delivered by the learned additional sessions judge-01/South, Patiala house courts, New Delhi in Sessions Case No.107/2006 arising out of FIR No. 233/06 of police station Malviya Nagar under sections 302/394/34 IPC and sections 216A/411/120B IPC whereby the appellants Virpal @ Raju, Ibrahim @ Guddu and Mohd Anis Ahmed were convicted under sections 394/302/34 IPC. The appellants are also aggrieved by the order on sentence passed on 09-07-2010 by the learned Additional Sessions Judge whereby they were sentenced to life imprisonment for the offence under section 302/34 IPC and were also directed to pay a fine of Rs. 2500/- each, in default of which the defaulting convict was required to undergo simple imprisonment for two months. The appellants were also sentenced under section 394 IPC to rigourous imprisonment for 10 years as also to pay a fine of Rs. 2500/- each, in default of which the defaulting convict was to undergo simple imprisonment for two months.

2. The charges framed against the appellants were, ***first of all***, that on 28-02-2006, between 11:30 AM to 12 noon at H.No. J-4/72-B, First Floor, Khirki Extension, Malviya Nagar Extension, New Delhi, the appellants, in furtherance of their common intention committed the murder of Rekha and thereby committed an offence punishable under section 302 IPC read with section 34 IPC and, ***secondly***, that on the above mentioned date, time and place, the appellants, in furtherance of their

common intention committed robbery of cash of Rs. 80,000/- – Rs. 90,000/-, gold and jewellery consisting of one golden set, three gold chains, one gold coin, one silver coin, three other coins, one mobile phone and two bangles and while committing the robbery the appellants voluntarily caused hurt to Rekha and thereby committed an offence punishable under section 394 IPC read with section 34 IPC. It is pertinent to point out at this juncture that two other persons namely Brij Pal and Asgar were also accused of having committed the offence punishable under section 216A IPC. However, by virtue of the said judgment, both these persons were acquitted.

3. The prosecution case, as narrated in the impugned judgment, is that on 28-02-2006 head constable Bir Singh received DD No. 32-B at police station Malviya Nagar which indicated that the duty constable Ajit Kumar at AIIMS hospital had given telephonic information that one Rekha, wife of Banarsi Dass Patil, resident of J-4/72-B, Khirki Extension was brought to hospital by one Manish s/o Madan Mohan and the doctor had declared her dead. The said DD was given to Inspector Nirmal Singh, Incharge, Police Post, Saket. He, along with head constable Jai Kishan, departed from the police station to AIIMS hospital and received the MLC in respect of the deceased Rekha. The dead body had been shifted to the mortuary. Thereafter, Inspector Nirmal Singh along with the other police officers went to the place of the incident at J-4/72-B, Khirki Extension where they were met by Manish who gave a statement.

4. Manish stated that he was living in the ground floor at the said address along with his friend Roshan and was preparing for the IIT entrance test. At about 11:30 AM to 12 noon, when he was in his room, he heard a strange noise from the first floor where his landlord resided. He also heard Rekha calling for Roshan. Upon hearing this, he ran up the stairs and called out – "auntie". But in response he heard a strange noise coming from the bathroom which was bolted. He unbolted the door of the bathroom and found that Rekha was lying on the floor and her throat was tied up with a cloth and there were injuries on her throat from which blood was flowing out. He

also noticed some broken bangles lying on the floor. Rekha called out to him and said – "hospital". He then took her in the injured condition, first, to Akash Nursing Home, Malviya Nagar with the help of neighbours – Gaurav and Sanjay – in a Maruti car bearing registration number DL 3CA 8873 and then, on the advise of the officials of Akash Nursing Home, he took her to AIIMS hospital where the doctors reported her as having been brought dead. He also stated that he had noticed that in the room belonging to Rekha the almirah was open and articles were strewn about.

5. Inspector Nirmal Singh received the statement of the complainant and inspected the spot and found that blood had spread in the bathroom. Broken bangles were also lying there. He also found one bloodstained electric wire lying at the spot. There was also one handkerchief on which the image of an eagle was printed and the words – "Fly Eagle" – were written on it. On the kitchen slab he found one plastic toy pistol with the inscription 'made in China'. Below that, broken bangles were found lying. In the bedroom, the steel almirah was lying open and the lockers were open and all the articles were lying spread about. Inspector Nirmal Singh made his endorsement on the statement of the complainant and sent the *ruqqa* through head constable Bir Singh for registration of the case. Thereafter, Inspector Nirmal Singh continued with the investigation of the case with the preparation of the site plan, recording of statements of witnesses, seizing of blood samples, broken bangles, broken pieces of mangal sutra, PVC wire et cetera by virtue of different seizure memos. The site was also inspected by the crime team and the dog squad. The inquest proceedings were completed and thereafter the post-mortem examination of the dead body was conducted at AIIMS hospital, after which the dead body of Rekha was handed over to her legal heirs.

6. As a result of investigation, the appellants Virpal, Ibrahim @ Guddu and Mohd Anis were arrested and the following recoveries were allegedly made from them:-

Virpal	1.	Rs. 38,000/- Cash
	2.	One gold coin
	3.	One Mangal Sutra
	4.	One gold necklace
	5.	One gold chain
	6.	Knife
	7.	Shirt
Ibrahim @ Guddu	1.	Rs. 18,000/- cash
	2.	One gold ring
Mohd. Anis	1.	8 door handles
	2.	6 magnetic door closers
	3.	Rs. 35,000/- cash
	4.	2 coins of silver metal
	5.	One gold ring
	6.	One gold chain
	7.	One broken piece of Mangal Sutra of gold like metal with black pearls
	8.	Shirt

7. The charges framed against the appellants have already been mentioned above. The appellants pleaded not guilty and claimed trial. The prosecution examined 24 witnesses in support of its case. The appellant Ibrahim examined himself as DW1. His wife Shugufta testified as DW2. After considering the evidence on record and the arguments advanced on behalf of the parties, the learned and additional sessions judge delivered the impugned judgment and passed the impugned order on sentence.

8. The learned Additional Sessions Judge convicted the appellants on the basis of the following circumstances – (1) recovery of case property; (2) identification of case property; (3) recovery of the weapon of offence; (4) medical evidence; (5) recovery of bloodstained shirts and FSL report with regard to the blood group; (6) motive of robbery; (7) presumption of robbery and murder by invoking illustration (a) to section 114 of the Indian Evidence Act, 1872; and (8) false explanation provided by the defence being an additional link in the chain of circumstances.

9. Mr Bhambani, the learned counsel appearing on behalf of Virpal, submitted that the entire case rests on the recoveries allegedly made. It was contended by Mr Bhambani that the recoveries attributed to Virpal were said to have been made pursuant to a disclosure statement exhibit PW1/G on 22-03-2006. The seizure memos in respect of the alleged recoveries are all dated 25-03-2006 and they are – Exhibit PW20/B in respect of the shirt; Exhibit PW20/C in respect of the jewellery and cash amounting to Rs. 38,000/-; and Exhibit PW20/E in respect of the knife which is the alleged murder weapon. Mr Bhambani pointed out that the date of the incident was 28-02-2006 and the alleged recoveries were made on 25-03-2006, that is, 25 days after the incident. He submitted that the alleged recoveries were made from the appellant Virpal's house in the village. He submitted that it is contrary to natural human conduct that a murderer would preserve his bloodstained shirt and bloodstained knife for 25 days in his own house in the village along with the jewellery and coins inscribed with the word 'Hyatt' which could easily and clearly identify him with the murder of Rekha.

10. Mr Bhambani further submitted that although the entire alleged disclosure statement has been marked as exhibit PW1/G, only that portion of the statement would be admissible in evidence which leads to a discovery of fact. He submitted that when the recoveries themselves are doubtful, the disclosure statement would have no meaning.

11. It was also contended by Mr Bhambani that it is all very well that the articles which were allegedly stolen from the house of the deceased have been identified by PW1 Banarsi Dass but, such identification is meaningless when the recovery itself is in grave doubt. According to Mr Bhambani, the articles allegedly recovered were provided by PW1 Banarsi Dass himself and in such a scenario it is obvious that he would identify the articles.

12. Mr Rajesh Mahajan, the learned counsel appearing on behalf of Mohd Anis Ahmed submitted that Anis comes into the picture only through the disclosure statement of Ibrahim. He is not connected with PW1 Banarsi Dass. He referred to the testimony of PW1 and submitted that though PW1 knew Virpal and Ibrahim, Anis was not known to him prior to the incident and that he had seen Anis for the first time upon his arrest.

13. Mr Mahajan further submitted that Anis is only connected through the alleged recoveries which were allegedly made on 22-03-2006, after a time gap of 22 days from the date of the incident. He further submitted that the learned Additional Sessions Judge fell in error in invoking illustration (a) of section 114 of the Indian Evidence Act, 1872. According to him, the said illustration could only be invoked when a person is found in possession of stolen goods "soon after" the theft. He submitted that the time gap of 22 days cannot be regarded as falling within the expression "soon after". Consequently, he submitted, the presumption which the trial court drew could not have been drawn in the context of the factual matrix of the present case.

14. Mr Mahajan also submitted that the recovery of the shirt, which was allegedly bloodstained and carried the blood group "A", is extremely doubtful. He submitted that the seizure memo Exhibit PW1/J in respect of the said shirt does not mention that it was bloodstained. Even the disclosure statement does not mention that the shirt was bloodstained. In any event, it was submitted that as per natural human conduct the shirt would have been washed in the intervening period of 22 days. Thus the alleged recovery of the bloodstained shirt at the instance of the appellant Anis is not free from doubt. He submitted that similarly the other recoveries at the instance of the appellant Mohd Anis are extremely doubtful, to say the least.

15. With regard to the recovery of the cash amounts from the three appellants, Mr Mahajan submitted that as per PW1 Banarsi Dass a sum of Rs. 91,000/- was found

missing. The prosecution has alleged that a sum of Rs. 35,000/- was recovered from Mohd Anis, Rs. 38,000/- was allegedly recovered from Virpal and Rs. 18,000/- from Ibrahim. The total of the three amounts comes to Rs. 91,000/-, which is exactly the amount which PW1 Banarsi Dass stated to be missing. Mr Mahajan submitted that it is astonishing that after three weeks none of the appellants spent a single rupee from the amounts allegedly robbed by them! This in itself, according to Mr Mahajan, proves the falsity of the prosecution case with regard to recoveries.

16. Insofar as Ibrahim is concerned, it was submitted that the hair samples which were taken of Ibrahim did not match with the strands of hair which were found clasped in the hands of the deceased Rekha. Exhibit PW23/P2 indicates that the strands of hair were of human origin and that "no further opinion is offered from this laboratory". According to the learned counsel, this implies that the possibility of the hair belonging to someone else other than the appellants cannot be ruled out. With regard to the recoveries allegedly made from Ibrahim, it was submitted that the gold ring was not identified by Banarsi Dass as per the TIP proceeding exhibit PW13/B. And, insofar as the cash amount of Rs. 18,000/- is concerned, there were no specific marks or numbers by which Banarsi Dass could have identified the said sum of Rs. 18,000/- as being the amount which was allegedly stolen from his house.

17. It was also contended on behalf of the appellant Ibrahim that as he was visiting the police station frequently after the alleged incident, it would have been natural for him, if he was in any way involved, to have removed the articles from his house. It was also submitted that the arrest of Ibrahim was also fake.

18. Thus, the learned counsel for the appellants submitted that a false case has been foisted on the appellants merely on the basis of alleged recoveries which are extremely doubtful, to say the least. According to them, the impugned judgment and order and sentence are liable to be set aside.

19. Mr Sanjay Lao appearing for the state submitted that there was no error in the impugned judgment and order on the point of sentence. According to him the recoveries from the appellants stand established. The stolen articles have been identified by PW1 Banarsi Dass and the appellants Virpal and Mohd Anis have also got their bloodstained shirts recovered pursuant to the disclosure statements. The bloodstained knife has also been recovered at the instance of Virpal. Insofar as Ibrahim is concerned he has also got the stolen articles recovered pursuant to his disclosure statement. It was also submitted that the learned Additional Sessions Judge has correctly concluded that the motive behind the crime was robbery. It was further submitted that the trial court committed no error in raising the presumption of robbery and murder based on the recovery of the stolen articles. Finally, it was submitted that since the explanation of the appellants was found to be false, the learned Additional Sessions Judge committed no error in treating that circumstance as an additional link. According to the learned counsel, the chain of circumstances was complete and the same unerringly pointed towards the guilt of the appellants. He, therefore, contended that the impugned judgment and order on sentence do not warrant any interference by this court.

20. We find that the present case rests heavily on the alleged recoveries made at the instance of the appellants. There is no dispute with the medical evidence on record. Rekha died a homicidal death and she was stabbed in the neck with a sharp edged weapon. The doctor who conducted the post-mortem examination was also of the opinion that the knife which was allegedly recovered at the instance of Virpal could have caused the injuries found on the body of Rekha.

21. The first thing that needs to be established in the present case is whether the recoveries were genuine or not. Because, if we find that the recoveries were doubtful then the circumstance of identification of case property, as correctly submitted by Mr Bhambani, would lose all significance.

22. Let us start with the recoveries allegedly made at the instance of Ibrahim. It is alleged that one gold ring and a sum of Rs. 18,000/- in cash was recovered at his instance. Insofar as the gold ring is concerned, we find that the same has not been identified by PW1 Banarsi Dass in the course of TIP proceedings Exhibit PW13/B. Further more, the cash amount of Rs. 18,000/- could not be specifically identified by Banarsi Dass as he had not given the distinctive numbers of the currency. The cash amount also did not contain any specific marks from which it could be said that PW1 Banarsi Dass was in a position to identify the same as belonging to him.

23. We also agree with the submission made by the learned counsel for Ibrahim that it would have been unnatural for him to have retained the said articles, if they belonged to the deceased or to Banarsi Dass, for over three weeks when he knew that the police were actively investigating the crime. PW 23 Inspector Nirmal Singh who was the investigating officer in this case had stated in the course of his cross examination that several persons including Ibrahim were interrogated on the day of the incident and they had been left as there was no evidence against them. He also admitted that Ibrahim was again interrogated after 3-4 days of the murder. In this backdrop, when Ibrahim was being repeatedly interrogated by the police, it would have been against the course of normal conduct on his part to have retained stolen articles which were allegedly recovered, much later, at his instance on 22/03/2006.

24. We may also point out that PW1 Banarsi Dass has stated that one gold chain Exhibit P-5 and a gold ring Exhibit P-6 were the same which were recovered from Ibrahim. But, we find that even as per the prosecution case no gold chain has allegedly been recovered from Ibrahim. As regards the gold ring Exhibit P-6, we have already seen that the same was not identified by Banarsi Dass in the course of TIP proceedings.

25. Even the arrest of Ibrahim is not free from doubt. According to Banarsi Dass, he arrived at Sai Baba mandir and made a call to the police and thereafter on their

arrival pointed out the accused Ibrahim to them. Ibrahim was arrested and taken to the police station. However, as per PW22 Inspector Sanjay Bhardwaj, Ibrahim was apprehended on the basis of secret information. We agree with the submission made by the learned counsel that there was no need of secret information when the whereabouts of Ibrahim were already known and he had been attending the police station for interrogation on several occasions.

26. According to PW1 Banarsi Dass the alleged recovery from Ibrahim was made from an almirah lying in his house. However, PW7 head constable Des Raj stated that the said items were recovered from a wooden attaché from a c*hhajja* in the room. PW22 had a different story to tell. According to him the said items were recovered from a grey plastic attaché similar to VIP baggage. PW23 had an altogether different version. According to him the articles were recovered from an attaché case which was neither of wood or steel but of some soft material such as leather, rexine, cloth or plastic.

27. From the above evidence, it is clear that the recoveries insofar as Ibrahim are concerned have not been established by the prosecution. Apart from the alleged recoveries there is no other evidence to connect Ibrahim with the crime. The disclosure statement is of no meaning until and unless it leads to a discovery of a fact. Since that has not happened, the alleged disclosure statement of Ibrahim cannot be looked into at all.

28. Insofar as Mohd Anis is concerned, we find that the stolen articles have allegedly been recovered at his instance after a gap of 22 days. We are unable to convince ourselves that the recovery at his instance is not free from doubt. The most important recovery allegedly made at his instance is that of a striped shirt which is said to be bloodstained. There is no doubt that according to the FSL report the bloodstains in the said shirt are of human origin and of the group "A" which, apparently, is also the blood group of the deceased Rekha. But, the disclosure

statement Exhibit PW1/F alleged to have been made by the appellant Mohd Anis does not have any reference to a bloodstained shirt. Even the seizure memo Exhibit PW1/J does not refer to any bloodstains on the striped shirt allegedly recovered at the instance of the said appellant. PW7 also does not say that there were any bloodstains on the shirt allegedly produced by the said appellant. Even PW23 who is the investigating officer merely states that a used shirt was recovered from his *jhuggi*. There is no mention of bloodstains. Furthermore, there is no evidence that the shirt belonged to the accused or that he was wearing the same at the time of the incident. In any event, the mere production of bloodstained articles by themselves does not lead to the conclusion that the person who produced the said articles was the murderer (see: ***Prabhu v. State of UP:*** ***AIR 1963 SC 1113***).

29. In these circumstances, it cannot be held that the prosecution has proved the alleged recoveries at the instance of the appellant Mohd Anis.

30. The recoveries attributed to Virpal are also not believable. We agree with the submission made by Mr Bhambani that it would be contrary to natural human conduct that a person involved in a murder would preserve a bloodstained shirt and a bloodstained knife for 25 days in his own house in the village. We have already indicated that the story with regard to the recovery of the exact amount of cash is also not believable. This is apart from the question that the cash, in our view, could not have been identified by PW1 Banarsi Dass as belonging to him without him first supplying any distinctive marks or numbers of the currency. The identification of certain articles is also meaningless once we come to the conclusion that the prosecution has not been able to establish the recoveries at the instance of the appellants.

31. Once the recoveries go, the entire case of the prosecution comes falling down like a pack of cards. Apart from the recoveries, there is no other evidence to link the appellants with the crime. We may point out at this juncture that the presumption

which was drawn by the learned Additional Sessions Judge could not, in any event, have been drawn in view of the fact that even the alleged recoveries were not effected "soon after" the robbery. We must not forget that illustration (a) to section 114 of the Indian Evidence Act, 1872 is only an illustration of the substantive provision contained in the said section which stipulates that the court may presume the existence of any fact which it thinks likely to have happened, *regard being had to the common course of natural events, human conduct* and public and private business, in their relation to the facts of the paricular case. Viewed in this light, the retention of stolen articles and bloodstained clothes and bloodstained murder weapon for a period of over three weeks would certainly not fall within the expressions "common course of natural events" or "human conduct". Consequently, the presumption could not have been drawn at all.

32. In view of the foregoing discussion, we are of the view that the prosecution has not been able to prove its case against the appellants beyond reasonable doubt. Consequently, the impugned judgment and order on sentence are set aside. The appellants are acquitted of all charges against them in this case. They are directed to be set at liberty forthwith.

The appeals are allowed.

BADAR DURREZ AHMED, J

MANMOHAN SINGH, J

OCTOBER 13, 2011
HJ