

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

% Date of Decision : 16th February, 2010

+ **Crl.L.P.No.266/2009 & Crl.M.A.No.14823/2009**

STATE Petitioner
Through: Ms.Richa Kapoor, APP

Versus

SHIBBU Respondent
Through: None

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. The prosecution sought to prove its case against the respondent through the testimony of Amjad (PW-1), who claimed to be an eye-witness as also through the fact that the knife Ex.P-7 which was got recovered by the accused after he was arrested and pursuant to his disclosure statement was the weapon of offence.

2. With respect to the knife Ex.P-7 the evidence was

report of the serologist Ex.PW-11/F, as per which human blood was detected on the knife but group thereof could not be determined and opinion of the doctor who conducted the post-mortem of the deceased that the injuries could possibly be caused with the knife.

3. The learned trial Judge has acquitted the accused holding that the testimony of PW-1, who claimed to be an eye-witness, did not inspire confidence for three reasons. Firstly, the conduct of PW-1 at the time when the crime was committed, being found unnatural. Secondly, his not being able to correctly state what colour and what type of clothes were being worn by the deceased when he was murdered. Lastly, that as per the report of doctor who conducted the post-mortem i.e. Dr.K.K.Banerjee PW-3 two knife injuries could be caused only when the victim moved and PW-1 has not deposed that when assaulted, the victim moved.

4. In respect of knife Ex.P-7 the learned trial Judge has held that the recovery which was 30 days after the crime would rule out the presence of any blood on the knife. Noting that the blood group of the deceased was 'A' and that no such blood group could be found on the knife, learned trial Judge has held that it raises a serious doubt on the investigation conducted.

5. With respect to the finding of the learned trial Judge qua the knife, we agree with the contentions urged by the learned counsel for the State that the inferences drawn are incorrect. That the knife was recovered after 30 days shows that blood thereon would be disintegrated and this appears to be the reason why only human blood could be detected on the knife and not the group thereof. It does mean that the knife was planted.

6. On the third reasoning given by the learned trial Judge to discredit PW-1, we agree with the contentions urged by learned counsel for the State that a witness may not notice the slight movements of a victim and would only state that he saw the accused stabbed the victim.

7. But, the first two reasons given by the Judge to disbelieve PW-1 are sound.

8. Indeed, a blood stained jeans was removed from the dead body. Meaning thereby, that when the crime was committed the deceased was wearing jeans. As against that, PW-1 deposed that when he saw the crime being committed, the deceased was wearing white/cream Kurta and Salwar.

9. That apart, the conduct of PW-1 is suspect. He claims to be the cousin of the deceased. He claims to be an eye-witness. Surprisingly, he reported to the police the day

after the crime was committed. His contemporaneous conduct of not shouting for help or to take his cousin to the hospital, coupled with the fact that he surfaced next day morning, makes it highly improbable that he was present at the spot as claimed by him. In this context it has to be noticed that the crime took place in a jhuggi which was not an isolated jhuggi but was within a slum cluster. If Amjad saw the crime, rescue was nearby. He could have yelled and cried. Slum dwellers would have come to his aid.

10. That apart, his claim that he went with the deceased to the house of the accused at 12:45 in the night as his cousin has lent money to the accused and wanted it returned is highly improbable, for the reason he claims to have travelled by public transport leaving the house of one Yasmin at 10:30 PM. Nobody leaves his house at 10:30 PM at night to reach a debtor post midnight to ask for return of money.

11. We concur with the reasoning of the learned trial Judge that PW-1 being the cousin of the deceased, could possibly be planted or he voluntarily planted himself. His testimony does not inspire confidence.

12. If the eye-witness account fails, the recovery of an ordinary article i.e. the knife as weapon of offence is insufficient evidence wherefrom chain of circumstances can be

treated as conclusively proving the guilt of the respondent. The decisions of Supreme Court JT 2008 (1) SC 191 Mani Vs. State of TamilNadu, 1999 CrLJ 265 Deva Singh Vs. State of Rajasthan, AIR 1994 SC 110 Surjeet Singh Vs. State of Punjab, AIR 1977 SC 1753 Narsinhbhai Haribhai Prajapati etc. Vs. Chhatrasinh & Ors. and AIR 1963 SC 1113 Prabhu Vs. State of UP may be referred to.

13. We see no reason to grant leave to appeal to the State.

14. We notice that vide CrL.M.A.No. 14823/2009 delay in seeking leave to appeal has been prayed to be condoned.

15. Since we are not granting leave to appeal to the State on merits, we dismiss CrL.L.P.No.266/2009 as also CrL.M.A.No.14823/2009.

PRADEEP NANDRAJOG, J

SURESH KAIT, J

FEBRUARY 16, 2010
'mr'