

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : INDIAN PENAL CODE

Date of Decision: 3rd July, 2007

CRIMINAL APPEAL NO.615 of 2004

MOHD. SULTAN

..... Appellant
Through: Mr. Rajesh Mahajan, Advocate

versus

STATE

..... Respondent
Through: Mr. Ravinder Chadha,
APP for State with Mr. Jagdish
Prasad, Advocate

WITH

CRIMINAL APPEAL NO. 20 OF 2005

ARVIND

...Appellant
Through: Mr. Puneet Mittal, Advocate

versus

STATE

...Respondent
Through : Mr. Ravinder Chadha, APP
for State with Mr. Jagdish Prasad,
Advocate

AND

CRIMINAL APPEAL NO. 145 OF 2005

VIJAY KUMAR

...Appellant
Through: Ms. Ritu Gauba, Advocate

versus

STATE

...Respondent

Through: Mr. Ravinder Chadha, APP
for State with Mr. Jagdish Prasad,
Advocate

CORAM:

* HON'BLE MR. JUSTICE R.S.SODHI
HON'BLE MR. JUSTICE P.K.BHASIN

P.K.BHASIN, J:

All the three appeals arise out of the judgment dated 23-4-2004 passed by the Court of Additional Sessions Judge, Delhi whereby Sessions Case No. 76 of 2000 arising out of FIR No. 773/99 and Sessions case No. 77/2000 arising out of FIR No. 771/99 registered at Sultan Puri police station were disposed of and the three appellants herein were convicted for the commission of offences of robbery and murder as well as under Section 25 of the Arms Act. The appellants have challenged the said judgment of the trial Court as also the order dated 26-4-2004 whereby all three of them were sentenced to undergo life imprisonment and also to pay a fine of Rs. 500/- each, in default three months rigorous imprisonment, for their conviction for the offence under Section 302 IPC and rigorous imprisonment for ten years and a fine of Rs. 500/- each, in default three months rigorous imprisonment, for their conviction under Section 392 read with 397 IPC and rigorous imprisonment for three years with a fine of Rs. 500/-, in default three months rigorous imprisonment under Section 25 of the Arms Act.

2. The case of the prosecution is that in the intervening night of 26/27-07-1999 PW-2 Ct. Ranbir Singh along with one Ct. Ajmer Singh while on night duty on Prahlad Pur Road at about 2 a.m. saw a three wheeler scooter No. DL-1RC-4209(Ex. P-1) coming from the side of cremation ground and going towards Prahlad Pur Road crossing and on seeing them the head lights of the three wheeler scooter were put off by the driver. When that three wheeler scooter reached near the two constables they gave a signal for stopping the scooter but instead of stopping the driver of the three wheeler scooter accelerated its speed while moving towards the constables. At that time Ct. Ranbir Singh struck the windscreen of the scooter with a lathi due to which its driver lost balance and three wheeler scooter turned turtle. As per the further prosecution case the three appellants were travelling in that scooter and after managing to come out from the scooter they started running but they were apprehended by the two constables

with the help of a third constable Surender Singh(PW-8) who had also in the meantime reached there. From the possession of accused Arvind one katta of 3.5" bore(Ex. P-6) loaded with one 8mm cartridge was recovered and the other two accused Vijay Kumar and Md. Sultan were having one live 8 mm cartridge each. This information was conveyed to the local police station and thereupon SI Surender Kumar(PW-12) reached the spot. He prepared the sketches of the three live cartridges and the katta and sealed them. A seizure memo(Ex. PW-2/C) in that respect was also prepared by him. He also recorded the statement of constable Ranbir Singh(Ex. PW-2/E) and on the basis of that statement FIR No. 771/99 under Section 25 of the Arms Act was registered against the three accused - appellants at Sultan Puri police station. The three wheeler scooter was also taken into police possession vide seizure memo Ex. PW-2/D. During their interrogation by Sub-Inspector Surender Kumar the three accused disclosed that they had robbed the driver of the three wheeler scooter No. DL-1RC-4209 and after killing the driver they were coming on his three wheeler scooter. They offered to lead the policemen to the place where they had killed the driver of the three wheeler scooter and had left his dead body. Thereafter, the three accused took the policemen to a place near the cremation ground in Sector-23, Rohini on the road coming from Begum Pur and pointed out towards the dead body of a person lying behind electric sub-station of DESU. Sub-Inspector Surender Kumar noticed a leather belt and a shoe lace tied around the neck of the deceased whose name later on was found to be Kamal. Since it was a case of murder Sub-Inspector Surender Kumar prepared another rukka(Ex. PW-2/J) for registration of another FIR under Sections 392/302/411/34 IPC and accordingly FIR No. 773 of 1999 was registered. Investigation of that case was entrusted to PW-21 Inspector Sushil Tyagi who reached the place where the dead body of the deceased Kamal had been found and there he conducted inquest proceedings. From that place PW-21 lifted one blood stained shirt, which the prosecution is claiming to be that of accused Arvind since at the time of his arrest he was found to be not wearing any shirt but only a vest. PW-21 also took into possession the shoes of accused Arvind which he was wearing and out of the two shoes one was not having shoe-lace. The prosecution is claiming that the missing shoe-lace was used for strangulating the deceased. It was found out that the three wheeler scooter seized by Sub-Inspector Surender Kumar belonged to PW-1 Ravinder Sahani who had given it on hire to the deceased Kamal couple of days before this incident. The dead body of the deceased was identified by his brother PW-3 Shiv Shankar. Post-mortem examination was got conducted and as per the post-mortem report of PW-18 Dr. L.C. Gupta the cause of death was asphyxia resulting from strangulation with the help of ligature

material recovered from the neck and time since death was opined to be 36 hours at the time of post-mortem examination. As per the further prosecution case the three accused persons were then formally arrested in the murder case also and at that time their personal search was conducted again. During that search one ring(Ex.P-3) was recovered from the possession of accused Arvind. That ring was later on identified by PW-3 Shiv Shanker @ Sonu, the brother of the deceased, during the test identification proceedings conducted by PW-16 Shri Dharmesh Sharma, Metropolitan Magistrate, to be belonging to the deceased. From the possession of accused Mohd. Sultan one purse Ex. P-2 was recovered and that purse was also during the test identification proceedings identified by the brother of the deceased and claimed the same also to be belonging to his brother Kamal. At the time of arrest of the accused persons in the case of FIR No. 773 of 1999 blood was noticed on the clothes of all the accused and so the same were seized by the investigating officer and later on sent to Forensic Scientific Laboratory(FSL) where on being examined it was found that the blood on the pant of accused Arvind was of 'A' group which was the blood group of the deceased also. The blood found on the clothes of other two accused was found to be human blood although its group could not be ascertained. The katta(Ex. P-6) and three cartridges(Ex. P-7 to 9) recovered from the possession of the three accused were also sent to FSL and as per FSL report Ex. PX the katta was found to be in working order and the three cartridges were found to be live ones.

3. After the completion of the investigation two charge-sheets were filed against the three appellants- accused one of which was for the offences under Sections 392/397/302/34 IPC arising out of FIR No. 773/2000 and the other one was for the offence under Section 25 of the Arms Act arising out of FIR No. 771 of 1999. In due course both the charge-sheets came to be assigned to the Court of Additional Sessions Judge and the case in respect of FIR No. 773/1999 was registered as Sessions Case No. 76/2000 and the other case under the Arms Act was registered as Sessions case no. 77/2000. In the Sessions case No. 76/2000 charges under Sections 392/397/302/34 IPC were framed against all the three accused persons and in the Sessions case No. 77/2000 all the three accused were separately charged under Section 25 of Arms Act. All the three accused pleaded not guilty and claimed to be tried. Accordingly the prosecution was called upon to adduce its evidence in support of the allegations levelled against the accused persons. At the joint request of the public prosecutor and the defence counsel both the cases were clubbed for the purpose of recording of evidence and the Sessions case no. 76/2000 was

treated as the main case and the entire evidence was recorded in that case only to be read for both the cases.

4. To prove its case the prosecution examined as many as 21 witnesses. Thereafter, statements of the three accused persons were recorded under Section 313 Cr.P.C. All the accused denied the prosecution allegations in toto and claimed false implication. They, however, did not adduce any evidence in defence.

5. The learned trial Judge after considering the prosecution evidence and hearing the counsel for the accused and additional public prosecutor for the State passed a common judgment for both the cases holding the accused persons guilty of all the offences for which they were charged. Feeling aggrieved by the impugned judgment all the three convicted accused persons filed separate appeals which were, however, heard together since the same had arisen out of the same judgment of the trial Court and now all the three appeals are being disposed of by this common judgment.

6. The learned counsel for the appellants did not dispute before us the correctness of the finding of the trial Court to the effect that the deceased Kamal was murdered. That fact is even otherwise fully established by the evidence of the autopsy surgeon PW-18 Dr. L.C. Gupta who, as noticed already, had opined after examining the dead body of the deceased that the cause of death was asphyxia resulting from strangulation with a leather belt and a shoe lace which were found tied around the neck of the deceased. Learned counsel for the appellants, however, seriously and strongly challenged the correctness of the decision of the learned trial Judge holding each one of them guilty for the commission of offences punishable under Sections 392/397/302/34 IPC as well as under Section 25 of the Arms Act.

7. In this case there is no direct evidence of the murder of the deceased Kamal and the prosecution has relied upon circumstantial evidence only as far as the offences of robbery and murder are concerned. The first incriminating circumstance relied upon by the prosecution is that all the three accused were travelling in a three wheeler scooter No. DL-1-RC-4209 on the night of 26/27-7-99 and that scooter did not belong to anyone of them. PW-1 Ravinder Sahani has claimed himself to be the owner of that scooter and during his cross-examination his statement to that effect has not been challenged. He also claimed that about 2/3 days prior to the present incident he had given that scooter to the deceased Kamal on hire. This statement of PW-1 has also gone unchallenged in cross-examination on behalf of the accused persons. From the statement of PW-1 it, therefore, gets established that three

wheeler scooter no. DL-1-RC-4209 did not belong to any of the three accused persons nor have they, in fact, claimed its ownership. As far as the prosecution case that all the three accused were travelling in the said scooter on the night of 26/27-7-99 is concerned there is evidence of PW-2 Ct. Ranbir who has categorically deposed that on the night of 26/27/-/99 at about 1.30 a.m. when he was on picket duty on Prahlad Pur Road along with one Ct. Ajmer he had seen three wheeler scooter no. DL-1-RC-4209 coming from the side of Begum Pur with its head lights switched off due to which he became suspicious and when he gave a signal for stopping the scooter its driver instead of stopping accelerated its speed and moved towards them and then he struck the windscreen of that scooter with his danda due to which the scooter fell down and at that time Constable Surender also came there. All the three accused persons came out of the scooter and started running away but they apprehended all three of them at the spot itself. He further deposed that on preliminary search of accused Arvind one loaded katta was recovered from his pant pocket and from other two accused persons' possession one live cartridge each was recovered. Intimation about that was given to the police station and Sub-Inspector Surender came there and then custody of the accused persons as also of the recovered katta and the cartridges was handed over to him who sealed the same. The three wheeler scooter was taken into police possession vide memo Ex. PW-2/D. During cross-examination of this witness nothing could be elicited to discredit his testimony on this aspect of the matter. It was not challenged in his cross-examination that the accused persons were not apprehended in the manner claimed by him. If actually the accused persons had not been apprehended in the manner claimed by these police witnesses it was for the accused persons to have come out with their version as to how and from where they were apprehended by the police. They have, however, not come out with any version regarding their arrest. Except for simply claiming at the time of their examination under Section 313 Cr.P.C. that they were wrongly arrested in these cases none of the accused gave any reason as to why the police constables had implicated them falsely for the murder of the deceased Kamal. It, therefore, stood established beyond any doubt that all the three accused persons were travelling together in the middle of night in a three wheeler scooter which did not belong to anyone of them.

8. The other incriminating circumstance which the prosecution has been able to establish beyond any doubt through the evidence of PW-2 Ct. Ranbir and PW-8 Ct. Surender Singh is the conduct of the accused persons. PW-2 has deposed that when he had become suspicious on seeing the three wheeler scooter no. DL-1-RC-4209 coming with its lights switched off he had signalled to the

scooter driver to stop it but instead of stopping the scooter the driver had started driving the scooter at an accelerated speed. He has further deposed that in order to stop the scooter he had hit a danda on the windscreen of the scooter and in that process the scooter had turned turtle and then all the three accused came out from the scooter and started running away. PW-8 Ct. Surender Singh has also testified that he had seen the three accused persons running away and being chased by Ct. Ranbir and Ct. Ajmer and he had also assisted them in apprehending the accused persons. He has also deposed that when he had reached the spot while on patrolling duty he had seen three wheeler scooter lying on the road. In the cross-examination of these two police witnesses it was not challenged on behalf of the accused persons that they were not travelling in the three wheeler scooter or that the scooter had not turned turtle and they had not come out of the scooter and started running away. In these circumstances the testimony of these two police witnesses on this aspect of the matter stood admitted by the accused persons. We are in full agreement with the submission of the learned additional public prosecutor that the afore-said conduct of the accused persons is a strong incriminating circumstance against all the accused persons.

9. The next circumstance relied upon by the prosecution is the recovery of a loaded katta from the possession of accused Arvind and live cartridges from the other two accused at the time of their apprehension by the police. On this aspect of the matter also the evidence relied upon by the prosecution is that of PW-2 Ct. Ranbir who has deposed about these recoveries and we have no reason to disbelieve him. PW-8 Ct. Surender Singh has also deposed about the recovery of katta and cartridges from the accused persons. Except for putting a suggestion to these two police officials in their cross-examination that nothing was recovered from the accused persons, which both of them denied, there is nothing material elicited from them to discredit their testimony and in our view in the absence of any material having been brought on record to even probabalise the plea of false implication by these two police constables their evidence cannot be viewed with suspicion and has been rightly accepted by the learned trial Judge. They had no reason to depose falsely against the accused persons. Regarding the evidence of police witnesses the submission of learned counsel for the appellants was that their evidence should not be believed because they are police officials and so interested witnesses. It was also contended that at least after the apprehension of the accused persons some public persons should have been associated before taking their search and also at the time of recording of their disclosure statements. In our view the evidence of police witnesses cannot be discarded for

the said reason put forth by the learned counsel for the appellants. PW-8 Ct. Surender Singh had claimed in his cross-examination that although public persons were available on the road but they did not join the proceedings. We have no reason to disbelieve him. We have, therefore, no hesitation in accepting statements of PW-2 Ct. Ranbir and PW-8 Ct. Surender Singh regarding the recovery of katta and live cartridges from the accused persons. These recoveries lend credence to the prosecution case that the accused persons are not innocent. They have not offered any explanation for being in possession of arm and ammunition at the time of their apprehension. That recovery not only makes them liable for conviction under the Arms Act but it also is a circumstance which can be utilized by the prosecution for substantiating its case against the three accused for the offences of robbery and murder also.

10. The other circumstance relied upon by the prosecution is that after their apprehension they had taken the police officials to some place near the cremation ground on Begum Pur road and had got recovered the dead body of deceased Kamal from that place. On this aspect of the matter also the witnesses are PWs 2 and 8 both of whom have deposed regarding the accused persons having got recovered the dead body of the deceased pursuant to the disclosure statements made by them while in police custody after their apprehension at Prahlad Pur Road. The investigating officer SI Surender Kumar(PW-11) in respect of FIR No. 771/99 has also deposed to the same effect. To none of these three police witnesses it was suggested on behalf of the accused in cross-examination that the dead body of the deceased Kamal was not recovered pursuant to any information given by the accused persons as had been claimed by them in their chief-examination. So the evidence of these witnesses has remained unchallenged and, in fact, whatever they stated in this regard stood admitted by the accused persons. The learned counsel for the appellants had, however, argued that even if it is accepted that all the three accused persons had made separate disclosure statements and all of them had accompanied the police to the place from where the dead body was recovered that recovery evidence would still be inadmissible since none of the police witnesses has deposed as to who out of the three accused had made the disclosure statement first in point of time and in the absence of evidence to that effect it cannot be said that the dead body of the deceased was recovered pursuant to the information supplied to the police by any particular accused and, therefore, the recovery of the dead body cannot be attributed to any of them. There is no doubt that the prosecution case is that all the three appellants had made disclosure statements after they were apprehended and all of them

in their respective statements had volunteered to get the dead body of the deceased scooter driver recovered and it is not clear from evidence of the investigating officer as to who out of the three accused had given the information about the dead body first in point of time. However, for this reason the evidence about the making of disclosure statements by the three accused and recovery of the dead body of the deceased pursuant thereto cannot be said to be inadmissible since when similar question had come up for consideration before the Hon'ble Supreme Court in the Parliament attack case(AIR 2005 SC 3879) it was held by the Hon'ble Supreme Court that disclosures made by two or more persons in police custody are not inadmissible under Section 27 of the Evidence Act. In view of this decision of the Apex Court this argument put forth by the counsel for the appellants has to be rejected.

11. The prosecution is also relying upon the circumstance of find of 'A' group blood on the pant of accused Arvind which he was wearing at the time of his arrest by PW-21 Inspector Sushil Tyagi and find of human blood on the clothes of other two accused persons which they were wearing at the time when they were formally arrested by PW-21 in the murder case. PW-21 has deposed about the seizure of the clothes of the three accused persons and he has proved seizure memo Ex. PW-11/M in respect of the clothes of Mohd. Sultan, seizure memo Ex. PW-11/N in respect of the clothes of accused Vijay and seizure memo Ex. PW-11/A in respect of the pant of accused Arvind. In all these memos it is recorded that the clothes of the accused were having blood stains. FSL report Ex. PX shows that on the pant of accused Arvind blood of 'A' group was found while on the clothes of other two accused human blood was found of which group, however, could not be ascertained. At the time of post-mortem examination blood sample of the deceased was also preserved and the same was also sent to FSL where it was found to be of 'A' group. It was submitted by learned counsel for the appellants that this piece of circumstantial evidence is highly doubtful since when the three accused were initially arrested at the time of their apprehension by the police constables no blood was noticed by them on the clothes of the accused persons and even the investigating officer SI Surender Kumar(PW-11) did not notice any blood on their clothes at the time of their personal search. In our view, for this reason the evidence of PW-21 Inspector Sushil Tyagi to the effect that he had noticed blood on the clothes of the accused persons cannot be disbelieved. When PW-21 had reached the place where dead body of deceased was lying he must have thought it proper to see the clothes of the accused persons very minutely since by that time it had been known that the accused persons had killed the

deceased. So, if PW-2 Ct. Ranbir, PW-8 Ct. Surender Singh as well as PW-11 SI Surender Kumar do not claim to have noticed blood on the clothes of the accused persons it cannot be inferred that in fact, the clothes of the accused which they were wearing at that time were not having any blood stains. PW-21 Inspector Sushil Tyagi had no reason to claim falsely that he had observed blood on the clothes of the accused persons and that is why he had taken them into possession for being sent to FSL. It was not even suggested to him in cross-examination on behalf of accused persons that he himself had sprinkled human blood on their clothes. We have, thus, no hesitation in accepting the prosecution evidence regarding the find of human blood on the clothes of accused Mohd. Sultan and accused Vijay and human blood of 'A' group, which was the blood group of the deceased also, on the pant of accused Arvind. The accused persons have failed to explain the presence of blood on their clothes and the find of blood on their clothes is also a strong circumstance suggesting their involvement in the murder of the deceased Kamal.

12. The prosecution had also relied upon the circumstance of recovery of one ring from the possession of accused Arvind and one purse from the possession of accused Mohd. Sultan which were identified by the brother of the deceased to be belonging to the deceased. Learned counsel for the appellants had submitted that none of the witnesses has claimed that a ring was recovered from the possession of accused Arvind and one purse from the possession of accused Mohd. Sultan and learned trial Court has accepted these recoveries merely on the basis of personal search memos of these two accused persons prepared by Inspector Sushil Tyagi wherein these recoveries have been stated. Learned counsel submitted that in the absence of any witness claiming about these recoveries the personal search memos could not have been relied upon by the trial Court for coming to a conclusion that a ring was recovered from the possession of accused Arvind and one purse had been recovered from the possession of accused Mohd. Sultan. We have gone through the evidence of the police witnesses including PW-21 Inspector Sushil Tyagi and we do find that none of them has claimed about the recovery of a ring and a purse from the possession of accused Arvind and Mohd. Sultan nor anyone of them was even shown these two items during their evidence. In these circumstances we also feel that these recoveries cannot be said to have been established beyond reasonable doubt and just because PW-3 Shiv Shankar, the brother of the deceased, has claimed that during the test identification proceedings he had identified one ring and one purse to be belonging to his deceased brother it cannot be said that the ring and the purse were, in fact, recovered from the possession of accused Arvind and Mohd. Sultan.

However, even after ignoring this piece of circumstantial evidence relied upon by the prosecution the prosecution case stands established beyond any doubt from the other circumstances which we have found to have been established conclusively. In our view, the afore-said circumstances which we have found to have been established beyond any shadow of doubt are sufficient enough to come to a conclusion about the guilt of the accused persons for the offences of which they have been found guilty by the learned trial Court. All the established circumstances are consistent only with the hypothesis of the guilt of the three accused persons and from those circumstances the only conclusion that can be arrived at is that the accused persons only had robbed the deceased of his three wheeler scooter and killed him. The accused persons have not been able to bring on record any circumstance from which their innocence could be inferred.

13. We have, therefore, no hesitation in affirming the judgment of the learned trial Court holding all the three appellants - accused guilty for the offences of robbery and murder as well as for the offence punishable under Section 25 of the Arms Act. The appeals of the three appellants are consequently liable to be rejected.

14. In the result, we dismiss Criminal Appeal No. 615/04 filed by accused Mohd. Sultan, Criminal Appeal No. 20/05 filed by accused Arvind and Criminal Appeal No. 145/05 filed by accused Vijay Kumar and we affirm the judgment dated 23-4-04 as well as the order on sentence dated 26-4-04 passed by the Additional Sessions Judge, Delhi. The appellants be informed accordingly through the Jail Superintendent concerned.

Sd/-
(P.K.BHASIN)
JUDGE

Sd/-
(R.S.SODHI)
JUDGE