

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

% *Date of Decision: 18<sup>th</sup> February, 2010*

+ **CRL.APPEAL NO.73/2010**

ASHOK KUMAR @ BUDDHA ..... Appellant  
Through: Mr.Sumeet Verma, Advocate

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? Yes
3. Whether the judgment should be reported in the Digest? Yes

**PRADEEP NANDRAJOG, J.** (Oral)

1. Lest there be any confusion, we may note that the appellant is named Ashok Kumar. There is another Ashok Kumar who has appeared as PW-2. Thus, we would be referring to the appellant not by his name Ashok Kumar but as accused No.1. We would be referring to the witness Ashok Kumar as Ashok Kumar PW-2.

2. As per the prosecution, accused No.1 and his juvenile co-accused Rajan waylaid Gautam near the Eastern End of Railway Station Badli. The intention was to rob him.

When Gautam resisted, accused No.1 caught him and co-accused Rajan stabbed Gautam. They removed some money from Gautam's pocket and fled. Unknown to them, Ashok Kumar PW-2 had watched the incident.

3. It is the case of the prosecution that Rajan was apprehended at the instance of Ashok Kumar PW-2 who used to see Rajan loitering around at the railway station. Ashok Kumar PW-2 lives in Samaipur Badli itself and either works or runs a shop in Samaipur Badli.

4. On being arrested, Rajan confessed to the commission of the crime and informed about the involvement of accused No.1. He informed the police that he could get recovered the knife which he had used to inflict injury upon Gautam. At his instance accused No.1 was apprehended. Even he confessed to the crime and volunteered to get recovered the clothes which he was wearing at the time when the crime was committed. Thereafter, accused No.1 and Rajan got recovered a knife from the bushes. Accused No.1 got recovered a pant and a shirt from his jhuggi. Even Rajan got recovered a pant and a shirt.

5. As per the report of the serologist, human blood of the same group as that of the deceased was detected on a pair of pant and shirt. Human blood could be detected on a

shirt but group thereof could not be determined. No blood was detected on the second pant.

6. There is no evidence as to whether the pant and shirt on which human blood of group B was detected was got recovered by accused No.1 or Rajan. Similarly, there is no evidence as to who got recovered the other shirt on which human blood was detected. We note that the report of the serologist is lying in the record of the Trial Court as an unexhibited document and we further note that while examining accused No.1 no incriminating evidence pertaining to blood of the same group as that of the deceased being detected on the pant and the shirt got recovered by him has been put. Thus, said part of the recovery and its incriminating worth have been rendered of zero value.

7. It is apparent that the case of the prosecution has hinged upon the ocular evidence of Ashok Kumar PW-2, the sole eye witness cited to prove the case.

8. Having perused the testimony of Ashok Kumar PW-2, during cross-examination it has been brought out that Ashok Kumar PW-2 was a witness of the prosecution in another case registered at the same police station involving a stabbing incident pertaining to his brother-in-law Dhaniya in which offence accused No.1 was the accused.

9. It is thus apparent that Ashok Kumar PW-2 could possibly have a false motive to implicate accused No.1 on account of the previous enmity. Thus, it became imperative for the learned Trial Judge to take note of said fact and to see whether Ashok Kumar PW-2 has been corroborated or alternatively after scrutinizing (with microscopic care) the credibility of Ashok Kumar PW-2, could it be said that his credibility is of the sterling highest value.

10. We note that the learned Trial Judge has just not bothered to appreciate the testimony of Ashok Kumar PW-2 in the context of said backdrop.

11. In the decisions reported as AIR 2001 SC 2328 Takhaji Hiraji Vs. Thakore Kubersing Chamansingh & Ors., AIR 2003 SC 2268 State of Punjab Vs. Harbans Singh & Anr. and AIR 2005 SC 2110 Hemraj Vs. State of Haryana, the Supreme Court highlighted the importance of seeking corroboration to the testimony of an interested witness as also to the importance of putting under microscopic scrutiny of an interested eye witness. The decisions also highlight the fact that if the prosecution has cited interested witnesses and there is evidence of presence of independent witnesses; non-examination of independent witnesses would be treated as fatal to the case of the prosecution.

12. As per Ashok Kumar PW-2, he had gone to the railway station to receive his brother-in-law who was supposed to come from Firozpur. He claims that after the train left and since his brother-in-law did not come, as he started walking back to the shop he saw accused No.1 and another boy quarreling with a boy. They were demanding money. The victim was a person working in a shoe factory. He knew him, but did not recollect his name. He saw accused No.1 catching hold of the victim and his companion stabbing the victim on the chest. The victim fell down. Both accused took out money from the victim. He informed the railway station to further inform the police on the telephone.

13. On being cross-examined Ashok Kumar PW-2 could give no proof of his brother-in-law having booked a train ticket to travel from Firozpur to Badli Railway Station in Delhi. That may be ignored, but what is relevant is that he admitted that the train left the station at 1:00 PM. He stated that the occurrence took place at about 1:30 or 2:00 PM.

14. What was Ashok Kumar PW-2 doing at the railway platform till 1:30 or 2:00 PM when the train in which his brother-in-law had to come had arrived at 1:00 PM and left soon thereafter. His brother-in-law admittedly did not come in the train. The natural course of events would be that Ashok

Kumar PW-2 would have walked home or to his shop. We note that in his examination-in-chief he has said that since his relative did not turn up he started coming back to the shop.

15. It would be relevant to note that information was received at the PCR about the stabbing incident at 2:10 PM as is to be noted in the first DD entry recorded at the police station being Ex.PW-10/A.

16. Learned counsel for the State points out that the Assistant Railway Master Badli Railway Station Sh.C.Narayan PW-6 has stated that some people including Ashok Kumar PW-2 came to him and informed him of the incident and he in turn rang up the police. Thus, learned counsel urges that the presence of Ashok Kumar PW-2 at the railway station is corroborated by the testimony of C.Narayan PW-6.

17. Now, Ashok Kumar PW-2 resides at Samaipur Badli. It is an urbanized village in the Union Territory of Delhi and the possibility of Ashok Kumar hearing about some stabbing incident at the railway station cannot be ruled out. The probability of his going to the railway station after hearing said incident cannot be ruled out.

18. But, what is at the heart of the matter and is most essential to be noted is that the train in question had arrived at the railway station at around 1:00 PM and left soon

thereafter. The stabbing has taken place at the eastern end of the platform. The probable time of the stabbing is around 1:30 – 1:45 PM. Even ignoring said probable time, it has come on record that Ashok Kumar PW-2 reported at the office of the Station Master at around 2:10 PM. It is an unnatural event that Ashok Kumar PW-2 hung around at the railway station for over 1 hour after the train in which his brother-in-law had to arrive had left the station.

19. It is also relevant to note that as per Ashok Kumar PW-2 the train was to arrive at the station at 11:00 AM. He was waiting at the railway station since 11:00 AM till 1:00 PM as the train got late. A person who has been waiting at the railway station for 2 hours would be expected to depart immediately after the purpose of the visit to the station is over or is frustrated.

20. It is also important to note that as per Ashok Kumar he was returning to the shop. Whether the shop was his or he was working in the shop is irrelevant. 26.6.2003 the day of the incident, being a working day, it was all the more reason for Ashok Kumar to leave the railway station with utmost dispatch.

21. Through the testimony of Sh.C.Narayan PW-6 the Assistant Railway Master it has come on record that other persons were also there. We see no reason why the

investigating officer has not examined said independent witnesses.

22. Needless to state that as held in the decision reported as 2009 (13) SCALE 114 Rupchand Chindu Kathewar Vs. State of Maharashtra in the case of a single witness the evidence must be qualitatively unimpeachable.

23. Looked at from any angle, the appellant would certainly be entitled to a benefit of doubt as we do not find the testimony of Ashok Kumar PW-2 inspiring confidence.

24. The appeal is allowed.

25. The impugned judgment and order dated 25.7.2009 convicting the appellant for the offence of murder and robbery is set aside.

26. The appellant is acquitted of all the charges framed against him.

27. Since the appellant is in jail, copy of this order be sent to the Superintendent Central Jail Tihar for necessary action and with a direction that if not required to be kept in custody in any other case, the appellant should be set free.

28. We must express our gratitude to Sh.Sumeet Verma learned counsel for the appellant and Sh.M.N.Dudeja learned counsel for the State. But for their active co-operation and assistance the instant appeal which was listed for the first time

before Court and was admitted on 29.1.2010, has been disposed of on the 20<sup>th</sup> day of its being listed for admission.

**(PRADEEP NANDRAJOG)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

February 18, 2010  
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