

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

% *Judgment Reserved On: 1st February, 2010*
Judgment Delivered On: 4th February, 2010

+ **CRL.APPEAL NO.123/2002**

PITAM SINGHAppellant
Through: Mr.A.K.Goyal, Advocate

Versus

STATERespondent
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.

1. As per the prosecution, appellant Pitam Singh was having a property dispute with his brother Vijay @ Pardesi (deceased) and on 11.3.2000, accompanied by Subodh PW-2, Rajpal PW-5 and Sanjay PW-10, he went to the house of the appellant to demand his share in the property and when the demand was refuted, Vijay picked up a table from the house of the appellant and walked away. When Vijay, Subodh, Rajpal

and Sanjay reached a nallah at some distance from the house of the appellant, the appellant and his son Pratap Singh (proclaimed offender) overtook the 4 and saying that he would teach Vijay a lesson for demanding a share in the property, using a iron rod (saria) the appellant assaulted Vijay as a result whereof he sustained serious and grievous head injuries which proved fatal i.e. Vijay died. When they intervened, Sanjay, Rajpal and Subodh were also assaulted. Vijay was brought dead to the hospital where he was removed after the assault. The appellant and his son fled from the scene of the crime and after he was arrested the appellant admitted to the crime and stated that he could get recovered the iron rod used by him to assault his brother and after making the statement he led the investigating officer to his house and produced an iron rod from the roof of his house.

2. The post-mortem of the deceased was conducted by Dr.Gautam Biswas PW-3 at GTB Hospital and as per the post-mortem report Ex.PW-3/A the deceased had as many as 7 injuries on his person, as under-

“1. Avulsed lacerated wound of size 13.2 x 6.1 cm x cranial cavity deep present over left temporal-parietal region, 5.2 cm above left ear lobule and 7.1 cm away from midline with fracture of underlying bone.

2. Lacerated wound of size 3.1 x 0.7 x 0.9 cm present over left zygomatic area, 2.1 cm away from lateral canthus of left eye and 5.5 cm below injury No.1 with fracture of orbital cavity of left eye.

3. Lacerated wound of size 4.3 x 1.0 x bone deep with underlying fracture of parietal bone in right side present over parietal region whose inner end is 3.5 cm from midline and outer end is 6.0 cm above the right ear lobule.

4. Contusion reddish in colour of size 2.5 x 2.0 cm present over right frontal area, 3.1 cm above the upper margin of right orbit and 5.5 cm lateral to midline.

5. Railroad pattern reddish contusion of size 12.0 x 1.3 cm present horizontally over the forehead, 2.5 cm above the nasion.

6. Contusion of size 1.3 x 1.0 cm present over the bridge of nose (nasion).

7. Reddish abrasion of size 1.3 x 0.7 cm present over the left side ala of nose."

3. Internal examination revealed fracture of the frontal, temporal, parietal and occipital bone. Extravassation was present over the frontal, temporal and parietal region. Massive subdural haemorrhage was noted. Cause of death opined was shock due to anti mortem head injuries. It was further opined that the injuries were produced by a blunt force impact. When sent for serological examination no blood could be detected on the iron rod.

4. Needless to state case of the prosecution hinged upon the testimony of Subodh, Rajpal and Sanjay who were examined as PW-3, PW-5 and PW-10 respectively.

5. Soon after the incident which took place at around 10:30 PM on 11.3.2000 Subodh, Sanjay and Rajpal reported at Guru Teg Bahadur Hospital, Shahdara and got themselves medically examined. The MLC Ex.PW-16/A of Subodh records a lacerated wound over the left temporal area. The MLC Ex.PW-5/B of Sanjay does not record any injury. The MLC Ex.PW-15/C of Rajpal records an abrasion over his chest.

6. Subodh PW-2 did not support the case of the prosecution inasmuch as he deposed that he was at his juice shop near the place where some boys gave a beating to the deceased. Being dark, he could not recognize the boys who were outsiders. He intervened to save Vijay and in the process received a lathi blow on his head.

7. On being cross examined by the learned APP he denied knowledge of any dispute between the appellant and Vijay. He denied that deceased Vijay removed a table from the house of the appellant but admitted that a compromise had been arrived at between the accused and his parents and that the family members of deceased Vijay and accused Pitam

Singh did not want him to be deposed against the accused. Surprisingly, he admitted when confronted with his statement recorded by the police that he had named Pitam Singh as the person who had given blows with an iron rod on the head of the deceased. He also admitted that he had informed the police that the accused had given him a blow on his head with an iron pipe. He admitted that due to bleeding his shirt Ex.P-1 and pant Ex.P-2 were stained with blood which were seized by the police vide memo Ex.PW-2/C and that even he had made a complaint Ex.PW-2/B to the police on 11.3.2000 inculcating the accused.

8. Rajpal PW-5 also did not support the case of the prosecution. He deposed that at around 10:30 PM he was on the way to his house and when he was near a nallah at Ioni road he saw some persons assaulting Vijay. He tried to intervene and in the process sustained an injury on the left side of his chest.

9. On being cross-examined by the learned APP with respect to his statement recorded by the police he stated that his signatures were obtained by the police on blank papers. He denied that any table was removed from the spot where the crime was committed. He denied having gone to the

house of the appellant and having witnessed any exchange of words between the appellant and the deceased.

10. Sanjay PW-10 fully supported the case of the prosecution save and except he referred to the date of the incident as 12.3.2000 and not 11.3.2000. He deposed that he and the deceased went from Bhagwan Pur Kheda to Loni Border and on the way Subodh and Rajpal met them. They went to the house of Vijay Pardesi near a nallah. Vijay @ Pardesi took a table as he wanted his share in the property. When they reached near a nallah the accused Pitam Singh accompanied by Pratap Singh (PO) reached and the accused inflicted blows with a saria on the head of Vijay who sustained injuries. Even Rajpal received an injury on the head when the saria was struck on his head. Accused Pitam gave a fist blow on his chest.

11. Holding that it was apparent that Rajpal PW-5 had been totally won over and that Subodh PW-2 had been partially won over by the accused, but the fact that Sanjay PW-10 had fully supported the case of the prosecution, vide impugned judgment and order dated 6.12.2001 the learned Trial Judge has convicted the appellant for the offence of having murdered the deceased.

12. It may be noted that pertaining to the injuries on Subodh, Rajpal and Sanjay, the appellant was charged for the offence punishable under Section 323/324 IPC. The appellant has been convicted for the said two offences as well.

13. Vide order on sentence dated 6.12.2001 the appellant has been sentenced to undergo imprisonment for life pertaining to the death of Vijay which has been held to be a case of murder. For the offences punishable under Section 323/324 IPC, the appellant has been convicted for a period of 1 year each.

14. At the hearing of the appeal learned counsel for the appellant urged 7 submissions, as under:-

“(i) Date of incident is 11.03.2000 and while deposing in Court Sanjay had said that the incident took place on 12.03.2000.

(ii) As per prosecution the weapon of offence is pipe i.e. a cylindrical metal piece with hollow inside and that the Sanjay had said that the weapon of offence was Saria. Counsel urges that Saria and a pipe are different objects. Submissions made is that since Sanjay has wrongly referred to the weapon of offence, it is apparent that he did not witness the incident.

(iii) It is urged that having deposed that accused met the deceased as also Sanjay, Subodh and Rajpal at Pulia, counsel submits that during cross-examination Sanjay said that it was correct that all had gone to the house of deceased Pardesi and therefrom to the house of Pitam Singh i.e. appellant. It is submitted that Sanjay had half-heartedly supported the case of prosecution.

(iv) It is urged that from the pipe alleged to be the weapon of offence no blood could be detected.

(v) It is urged that the pipe was recovered from the roof of the appellant a place accessible to all.

(vi) It is urged that the pipe has not been proved to be the weapon of the offence.

(vii) That the incident took place at around 9:30 PM on 11.03.2000 it was night, the area was not well lit thus, offence if any made out, is punishable under Section 304 Part I IPC and not Section 302 IPC.”

15. That the date of the incident is 12.3.2000 is not in dispute because this is the day when around midnight information was received at the local police station about the crime. The date 11.3.2000 being recorded in the testimony of Sanjay can either be a typographic error or a slip of the tongue

or a memory lapse. All three are trivial. It cannot be said that for said reason it has to be held that Sanjay is a planted witness. The second submission predicated on the weapon of offence being a pipe i.e. a cylindrical metal piece with hollow inside and Sanjay stating that the weapon of offence is a *saria* is in blissful ignorance that a person who sees, when it is dark, a piece of pipe or a small metal rod would hardly be expected to note the difference between the two. That apart, the man on the street uses the two expressions as interchangeable expressions. The third submission is based as if Sanjay was taking an examination in English language and was being subjected to a comprehension of a passage. The common man speaks not only with imperfect reflection but even with a slight mix up of the sequence of events which actually transpired.

16. While deposing in Court Sanjay has clearly said that he and Pardesi came to Loni Border and Subodh and Rajpal met them. He said that Pardesi took them all to his house near nallah and took his table and came to the nallah as he wanted to take his share in the property. When all reached the nallah, accused Pitam Singh who is brother of Pardesi came with his son and gave *saria* blows on the head of Pardesi

saying that he would teach Pardesi a lesson for demanding his share. He then said: Subodh reached there and tried to save Pardesi and received injuries on his head due to saria blow. Rajpal also reached there and even he received an injury. We fail to understand as to how can it be urged that Sanjay has deposed half-heartedly.

17. Having re-read the testimony of Sanjay we find complete consistency and truthfulness in the same. Even Subodh PW-2, has substantially proved the case of the prosecution, notwithstanding he denying knowledge of how the deceased died, but during cross-examination admitting that he had told the police that the appellant had hit him on his head with an iron pipe. He also admitted that he told the police that the appellant had inflicted blows on the head of the deceased with an iron rod. He further admitted that pertaining to the injuries received by him the report Ex.PW-2/B was lodged by him. It is interesting to note that Ex.PW-2/B is the rukka and as told by Subodh, the deceased was assaulted and Subodh, Sanjay and Vijay Pal were injured as disclosed in the Court by Sanjay PW-10.

18. It assumes significance that Subodh admitted that due to a patch up in the family of the accused and the

deceased, who were brothers, he was impressed upon not to depose in Court.

19. That blood could not be detected on the pipe Ex.P-2 is immaterial because the injuries on the person of the deceased are with a blunt object and the blood loss is internal and not external. We are surprised at the argument that the pipe was not proved to be the weapon of offence and hence nothing turns on the pipe Ex.P-2 being the weapon of offence. It is trite that blunt object injuries can be caused by any blunt object and nobody on earth can say that such and such injury can be caused only by a particular blunt object. Injuries by blunt objects can only be opined as possibly being caused with a particular blunt object.

20. Be that as it may, ignoring the evidence pertaining to the recovery and use of the pipe Ex.P-2 in the commission of the offence, we have on record the unblemished eye-witness testimony of Sanjay who has no motive or an axe to grind and substantial corroboration to said eye-witness account even by the truncated testimony of Subodh PW-2. It is settled law that where eye-witness account pertaining to a crime is accepted by the Court and there is nothing to contradict the same, it hardly matters as to whether the

offence was committed by a particular object claimed by the prosecution as the weapon of offence.

21. The last argument of the time being dark and hence a presumption to be drawn that it cannot be said with certainty that the appellant intended to inflict the injury on a particular part of the body and hence the crime is not murder, needs to be noted and rejected for the reason we could have well appreciated the argument if one or two blows were struck. As noted in para 2 above, 7 blows were struck on the deceased. All of them are directed towards the skull or the forehead. It is apparent that the appellant has intentionally and repeatedly targeted the head of the deceased. Everybody knows that the head is a vital part of the body. If not Section 300 thirdly, undoubtedly Section 300 fourthly is attracted in the instant case. So ferocious is the attack directed towards the skull that the frontal, temporal, parietal and occipital bone have been fractured. Massive subdural haemorrhage has resulted.

22. We concur with the view taken by the learned Trial Judge that the offence committed by the appellant is of murder.

23. The appeal is dismissed.

24. Since the appellant is in jail, a copy of this order be sent to the Superintendent, Central Jail, Tihar to be supplied to the appellant.

**(PRADEEP NANDRAJOG)
JUDGE**

**(SURESH KAIT)
JUDGE**

**FEBRUARY 04, 2010
mm / dk**